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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

TIM REEVES, ERIC SAUB, GREG BURNETT, CARLA PEALER as the LIBERTARIAN PARTY OF OREGON, and DAVID TERRY, M CARLING and RICHARD BURKE as members of the LIBERTARIAN PARTY OF OREGON,

Plaintiffs,

v.

WES WAGNER, HARRY JOE TABOR, MARK VETANEN, BRUCE KNIGHT, JEFF WESTON, JIM KARLOCK, RICHARD SKYBA, individuals, and LIBERTARIAN PARTY OF OREGON,

Defendants.

Case No. CV 12010345

PLAINTIFFS' RESPONSE TO DEFENDANT LIBERTARIAN PARTY OF OREGON'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, and COUNTERCLAIMS

Plaintiffs respond, reply and assert the following in response to Defendant Libertarian Party of Oregon's Amended Answer, Affirmative Defenses, and Counterclaims ("Defendant LPO's Answer" hereafter):

1 through 41

Paragraphs 1-41 are merely Defendant LPO's Answer for which no response is required.

42 through 54.

Plaintiffs deny the factual allegations in paragraphs 42 through 54 consisting of Defendant LPO's affirmative defenses in their entirety, no reply is required. Plaintiffs herein re-
allege and incorporate the allegations in Plaintiffs' Second Amended Complaint paragraphs 1

1 through 40 and reply that Defendant is estopped through res judicata, or judicial estoppel,
2 standard estoppel, and excuse as laid out in Plaintiffs affirmative defenses below.

3 55.

4 Plaintiffs admit that the 2009 Bylaws governed the LPO in 2011, at all times. Plaintiffs
5 deny Defendant's characterization of the 2009 LPO Bylaws as the words speak for themselves
6 and therefore Plaintiffs deny the second sentence of paragraph 55. Plaintiffs deny the allegation
7 made in the last sentence of paragraph 55.

8 56.

9 Plaintiffs admit that the quoted section of the 2009 Bylaws is a part of the full Bylaws.

10 57.

11 Plaintiffs admit the allegation in paragraph 57.

12 58.

13 Plaintiffs deny the allegations made in paragraph 58.

14 59.

15 Plaintiffs lack sufficient information at this time to admit or deny the allegation made in
16 paragraph 59 and therefore deny the same.

17 60.

18 Plaintiffs deny the allegations made in the first and second sentences of paragraph 42.

19 Plaintiffs admit that at some time after the March 12, 2011 Convention Jeff Weston resigned and
20 upon that resignation Defendant Wagner temporarily served in the role of Chairperson.

21 61 through 65.

22 Plaintiffs deny the allegations made in paragraph 61 through 65 in their entirety.

23 Plaintiffs deny each and every allegation that the "LPO" or LPO State Committee under Wagner

1 took any valid actions subsequent to the March 12, 2011 Convention. No action taken pursuant
2 to the bylaws labeled as the 2011 bylaws was or could be valid. Plaintiffs assert that quorum was
3 present, and under any circumstances defendants failed to make a quorum challenge at the May
4 21, 2011 meeting and are therefore barred from asserting a quorum challenge at this time.

5 66.

6 Plaintiffs admit that Plaintiffs Reeves, Saub, Burnett and Pealer were elected at the May
7 21 state committee meeting. Plaintiffs deny all other allegations in paragraph 66.

8 67 through 72

9 Plaintiffs deny the allegations in paragraphs 67 through 72 as they contain only, or
10 primarily legal argument, legal conclusions for which no response is required and not factual
11 allegations. Plaintiffs deny any remaining allegations in paragraphs 67 through 72.

12 73.

13 Plaintiffs admit that the Oregon Secretary of State has taken the position that it will
14 recognize the officers they had on their officer list as of March 12, 2011 until this dispute is
15 resolved and they received a court order one way or another.

16 74.

17 Plaintiffs deny the allegation made in paragraph 74.

18 75.

19 Plaintiffs acknowledge that fundraising appeals for legal defense and meeting notices
20 have been sent out on behalf of Plaintiffs' Libertarian Party of Oregon. Plaintiffs deny the
21 remainder of paragraph 75, specifically but not limited to the allegation that Defendant Vetanen
22 is Plaintiff LPO's treasurer.

23 76.

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PLAINTIFFS' RESPONSE TO DEFENDANT
LIBERTARIAN PARTY OF OREGON'S AMENDED
ANSWER, AFFIRMATIVE DEFENSES, and
COUNTERCLAIMS

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1 Paragraph 76 is a legal argument for which no response is required, however Plaintiffs
2 note and allege that this argument has been presented to this court, adjudicated, and rejected
3 already in this case.

4 77.

5 Plaintiffs incorporate and re-allege the responses admission denials from paragraphs 1
6 through 76 as if set forth fully herein. Plaintiffs point out that paragraph 77 has an apparent error
7 in reference to Plaintiffs where it should have stated Defendants, and therefore respond, admit or
8 deny as if the correct pleading had been made.

9 78.

10 Paragraph 78 consists of no more than a recitation of Defendant LPO's prayer, and
11 therefore no response is required and Plaintiffs therefore deny the same.

12 79 through 80.

13 Plaintiffs re-allege, respond, and reply to paragraph 79 by incorporating the prior
14 responses to paragraphs 1 through 78 above as if set forth fully herein. Plaintiffs deny the
15 allegations made by Defendant in paragraph 80.

16 **PLAINTIFFS' FIRST AFFIRMATIVE DEFENSE**

17 (Estoppel)

18 81.

19 Plaintiffs reincorporate the allegations in paragraphs 1 through 40 of Plaintiffs Second
20 Amended Complaint as if set forth fully herein. Defendant is estopped from asserting that
21 Plaintiffs are not members of the LPO by Defendants' actions: Defendants' violations of the
22 2009 Bylaws; Defendants' improper registration with the Oregon Secretary of State; Defendants'
23 other actions alleged above; each which precludes Plaintiffs from being able to fully comply with

1 certain Oregon statutes and even some of their own bylaws as a political party.

2 **PLAINTIFFS' SECOND AFFIRMATIVE DEFENSE**

3 (Excuse: Legal impossibility)

4 82.

5 Plaintiffs reincorporate the allegations in paragraphs 1 through 40 of Plaintiffs Second
6 Amended Complaint as if set forth fully herein. Plaintiffs have been prohibited by law from
7 filing certain forms with the Oregon Secretary of State because of Defendants erroneous
8 assertion that it is the legitimate Libertarian Party of Oregon. Any preconditions or obligations
9 Plaintiffs may have had to renew, register, or otherwise comply with party or state requirements
10 between May 21, 2011 and the present have been excused by legal impossibility.

11 **PLAINTIFFS' THIRD AFFIRMATIVE DEFENSE**

12 (Unconstitutionality)

13 83.

14 Plaintiffs are entitled to the protections afforded by the First Amendment to the United
15 States Constitution to free speech and assembly and are therefore entitled to raise funds for their
16 organization, to raise money for their legal defense and to hold their organizational meetings.
17 Any claim and prayer to the contrary by Defendants asks this court to violate Plaintiffs' first
18 amendment rights.

19 **PLAINTIFFS' FOURTH AFFIRMATIVE DEFENSE**

20 (Waiver)

21 84.

22 Defendants waived their right to object to the meeting or quorum established at the May
23 21, 2011 meeting of the Libertarian Party of Oregon, state committee because Defendant Wagner

1 called for the meeting, made the motion to hold the meeting, and none of Plaintiffs showed up in
2 their personal capacities to object to the meeting or object to quorum and waived their
3 opportunity to raise such objection.

4

5 **WHEREFORE**, Plaintiffs pray for Judgment in favor of Plaintiffs as requested in Plaintiffs'
6 Second Amended Complaint, and dismissing Defendant LPO's counterclaims, with prejudice.

7 DATED this 1 day of August, 2012.

Tyler Smith & Associates, P.C.

8

By 

9

Tyler Smith, OSB# 075287

Of Attorneys for Plaintiffs

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