



HARRANG LONG
GARY RUDNICK P.C.
ATTORNEYS AT LAW

C. ROBERT STERINGER

Admitted in Oregon and Washington
1001 SW Fifth Avenue, 16th Floor
Portland, OR 97204
bob.steringer@harrang.com
503.242.0000
503.241.1458 (FAX)

September 30, 2013

VIA FIRST CLASS MAIL

The Honorable Henry C. Breithaupt
OREGON TAX COURT
1163 State Street
Salem, OR 97301

Re: *Tim Reeves, et al v. Libertarian Party of Oregon, et al*
Clackamas County Circuit Court Case No. CV12010345

Dear Judge Breithaupt:

Enclosed for your consideration is defendants' proposed form of General Judgment of Dismissal. It is my understanding the plaintiffs object to this form of judgment and will file an alternative version.

The material difference between the forms offered by defendants and plaintiffs is with regard to the recognition of prevailing parties and entitlement to costs and disbursements. Defendants' form of General Judgment and Dismissal appropriately captures the court's decision at summary judgment and the consequences of the court's decision: defendants are prevailing parties and entitled to costs and disbursements. Plaintiffs' form of judgment incorrectly states that there are no prevailing parties. As such, plaintiffs' form is contrary to the Oregon Rules of Civil Procedure, applicable law and the circumstances of this case.

Although ORCP 68 does not define the term "prevailing party," courts have assumed that the definition of prevailing party under ORCP 68 relating to costs and disbursements is consistent with the definition of the same term under ORS 20.077 relating to attorney fee awards. See *Hamlin v. Hampton Lumber Mills, Inc.*, 227 Or App 165, 170-171, 205 P3d 70 (2009) (designating the plaintiff as the prevailing party under ORS 20.077 and stating that, therefore, "he will automatically recover [the] filing fee, ORS 20.310(2), and will also be awarded the prevailing party fee, ORS 20.190(1)(a)"); *Barbara Parmenter Living Trust v. Lemon*, 345 Or 334, 347, 194 P3d 796 (2008) (assuming that the party who is eligible for an award of attorney fees as the prevailing party would also be eligible for an award of prevailing party fees). ORS 20.077(2) defines "prevailing party" as "the party who receives a favorable judgment or arbitration award on the claim."

Here, defendants received a favorable judgment on plaintiffs' claims because the court agreed with the fundamental premise advanced by defendants—that a court should stay out of an intraparty dispute—and granted Defendant LPO's corresponding motion for summary judgment. As a result, plaintiffs have acknowledged that their claims must be dismissed with prejudice. The fact that defendants have agreed to dismiss their counterclaims without prejudice in order to obtain a final judgment does not mean that "neither party prevailed on its substantive claims or counterclaims." Rather, the dismissal of defendants' counterclaims is consistent with the position they took from the beginning of this litigation: First Amendment principles precluded the court's involvement in the parties' dispute, but defendants were entitled to the mirror image of plaintiffs' requested relief if the court would not dismiss the litigation.

As summarized in the colloquy between the court and plaintiffs' counsel in the enclosed excerpt from the August 1, 2013, hearing on defendants' Motion for Findings Under ORS 20.105, there were winners and losers in this case. Defendants won and plaintiffs lost. Tr. from 8/1/13 at 14:4-:21. Defendants are the prevailing party and entitled to costs and disbursements. A general judgment that suggested otherwise would be contrary to ORCP 68 and the circumstances of this case.

Defendants respectfully request that the court enter their proposed form of judgment.

Sincerely,



C. Robert Steringer

Encls.

c: All Counsel (w/ encls.)
Libertarian Party of Oregon (w/ encls.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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,

vs.

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

COPY

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled
matter came on regularly for hearing before the
Honorable Henry C. Breithaupt, Judge of the Circuit
Court of the County of Clackamas, State of Oregon,
commencing at the hour of 10:45 a.m. on Thursday,
August 1, 2013.

APPEARANCES

1

2

Mr. Tyler Smith
Attorney at Law
Appearing on behalf of the Plaintiff;

3

4

Mr. C. Robert Steringer
Attorney at Law
Appearing on behalf of Defendant LPO;

5

6

Mr. James E. Leuenberger
Attorney at Law
Appearing on behalf of Defendant Wagner;

7

8

Mr. Colin Andries
Attorney at Law
Appearing on behalf of Defendants Tabor,
Vetanen, Knight, Weston, Karlock and Skyba.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PROCEEDINGS 8/1/2013

1 have known about them, when you take -- this is
 2 Mr. Steringer talking. When you take my clients around
 3 the block and they have to hire me and expend money and
 4 then you lose for precisely the reason that you lost,
 5 it's objectively unreasonable -- that -- I ought to get
 6 attorneys' fees under 20.105 because I pass over the
 7 somewhat high hurdle of no objectively reasonable basis
 8 in the law.
 9 MR. SMITH: And, Your Honor, I'm going
 10 there. I didn't even get the chance to state the
 11 standard that I think we're subject to. I -- I disagree
 12 100 percent with the hypothetical argument that you're
 13 saying he's making, the argument that he's making on
 14 that.
 15 First Amendment, the reason the First
 16 Amendment does not operate the way they say, going
 17 directly to the First Amendment, and I'll address the
 18 Secretary of State in this, the First Amendment --
 19 first, we're not saying solely because the Secretary of
 20 State said that that alone is the only reason.
 21 Here the legal standard under Williams is
 22 entirely void of legal or factual support. And here we
 23 have support on both of those. We have lots of support.
 24 The Secretary of State's statement that you have to go
 25 to court is factual support. It's factual support that

11

1 important that we -- we here draw a distinction between
 2 the claims that were alleged and the subjective mind-set
 3 of the plaintiffs in deciding whether or not to file
 4 their claims.
 5 THE COURT: Because subjective -- it's
 6 objectively reasonable is the standard.
 7 MR. STERINGER: Exactly. And if Mr. Trout
 8 said something to Mr. Smith that would make Mr. Smith
 9 and his clients subjectively believe that they had a
 10 stronger case than they actually had, that's irrelevant.
 11 So then the question is, did Mr. Trout's
 12 statement have any factual bearing on the claims
 13 themselves, and I honestly can't -- I can't draw any
 14 conclusion -- any connection between Mr. Trout's
 15 statement and the claims that were alleged here as far
 16 as being relevant to those claims.
 17 THE COURT: Okay. Mr. Smith?
 18 MR. SMITH: Your Honor, Mr. Steringer made
 19 the exact same claim that we made for declaratory
 20 relief. His first counterclaim is declaratory relief.
 21 How could it be objectively unreasonable for us to make
 22 a declaratory relief claim, for him to make a
 23 declaratory relief claim and for only for us for it to
 24 be objectively unreasonable?
 25 THE COURT: Easy.

13

1 a reasonable attorney would listen to the Director of
 2 Elections when he says the only way to resolve this
 3 elections dispute is by going to court.
 4 THE COURT: Stop just a moment. You're
 5 claiming it's factual support.
 6 MR. SMITH: The Director of Elections,
 7 factual support.
 8 THE COURT: Are you claiming it's legal
 9 support?
 10 MR. SMITH: It would -- it would go to
 11 that. I mean, the Director of Elections has --
 12 THE COURT: Well, here -- let's try this
 13 again. It's a simple question. It requires either yes,
 14 no or I don't know. Are you claiming that the statement
 15 of the Secretary of State's employee is legal support
 16 for your having brought the claim?
 17 MR. SMITH: It would be both, Your Honor.
 18 THE COURT: Okay. Now, Mr. --
 19 MR. SMITH: The Director of Elections
 20 has -- I'm sorry.
 21 THE COURT: Mr. Steringer, what do you
 22 say?
 23 MR. STERINGER: The -- the opinion of
 24 Mr. Trout would not provide factual support for the
 25 claims that were alleged. And I -- I think it's

12

1 MR. SMITH: And how -- how --
 2 THE COURT: That's easy. I mean, come on.
 3 MR. SMITH: Judge --
 4 THE COURT: There are winners and there
 5 are losers. The reason we have the attorney fee statute
 6 is when you lose and you lose for a really good reason
 7 that you knew or should have known about, you get to pay
 8 the other side's fees because you can't just take them
 9 around the block.
 10 MR. SMITH: And -- and, Your Honor --
 11 THE COURT: And there's -- and to answer
 12 your question, that's what happens. I mean, otherwise,
 13 everybody who not only defended against the claim but
 14 made a counterclaim would be faced with the argument,
 15 well, you can't recover attorneys' fees because after
 16 all, you made a claim as well. I mean, that's
 17 ridiculous.
 18 MR. SMITH: I'm pointing it out, Your
 19 Honor, because it's the exact same claim.
 20 THE COURT: I don't care. It's
 21 ridiculous. You lost. They won.
 22 MR. SMITH: And, Your Honor --
 23 THE COURT: I'm not saying they
 24 necessarily get attorneys' fees, but the argument that
 25 because they fired back, therefore my having taken out

14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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,

Case No. CV 12010345

GENERAL JUDGMENT OF DISMISSAL

Plaintiffs,

vs.

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

Defendants.

THIS MATTER having come before the Court on Defendant Libertarian Party of Oregon's Motions for Summary Judgment, the Court having found in its opinion letter dated May 21, 2013, either that plaintiffs' claims are nonjusticiable or that it is within the Court's discretion to abstain from deciding plaintiffs' claims, the Court having further clarified in its letter ruling dated June 4, 2013, that a court should not insert itself into internal disputes of a political party, and

///
///

1 the parties having filed a Stipulated Dismissal of Counterclaims Without Prejudice
2 pursuant to ORCP 54A(1), it is hereby:

3 ADJUDGED that plaintiffs' claims are dismissed with prejudice.

4 It is further ADJUDGED that defendants' counterclaims against plaintiffs
5 are dismissed without prejudice pursuant to ORCP 54A(1).

6 It is further ADJUDGED that defendants are the prevailing parties and the
7 appropriate costs and disbursements to which defendants may be entitled shall be
8 determined pursuant to ORCP 68.

9 DATED this ____ day of _____, 2013.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Henry C. Breithaupt
Clackamas County Circuit Court
Judge Pro Tem

Submitted By:
HARRANG LONG GARY RUDNICK P.C.
C. Robert Steringer, OSB #983514
John C. Rake, OSB #105808
Of Attorneys for Defendant,
Libertarian Party of Oregon

1 **CERTIFICATE OF COMPLIANCE**

2 Pursuant to UTCR 5.100, I certify that I forwarded a true and correct copy
3 of the **GENERAL JUDGMENT OF DISMISSAL** to all parties on September
4 24, 2013, as follows:

5 **VIA EMAIL AND**
6 **FIRST CLASS MAIL**
7 Tyler Smith
8 Nathan Goin
9 TYLER SMITH & ASSOCIATES, P.C.
10 181 N. Grant Street, Suite 212
11 Canby, OR 97013

VIA EMAIL
James E. Leuenberger PC
ATTORNEY AND COUNSELOR AT LAW
5200 SW Meadows Road, Suite 150
Lake Oswego, OR 97035


Attorneys for Defendant Wes Wagner

12 Attorneys for Plaintiffs

13 **VIA EMAIL**
14 Colin Andries
15 Andries Law Offices
16 1001 SW 5th Avenue, Suite 1100
17 Portland, OR 97204

18 Attorneys for Defendants Harry Joe
19 Tabor, Mark Vetanen. Bruce Knight,
20 Jeff Weston, Jim Karlock, and Richard
21 Skyba

HARRANG LONG GARY RUDNICK P.C.

22 By: 
23 C. Robert Steringer, OSB #983514
24 bob.steringer@harrang.com
25 Telephone: 503.242.0000
26 Facsimile: 503.241.1458

Of Attorneys for Defendant Libertarian
Party of Oregon

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify that on September 30, 2013, I served or caused to be served a true and complete copy of the foregoing **GENERAL JUDGMENT OF DISMISSAL** on the party or parties listed below as follows:

- Via First Class Mail, Postage Prepaid
- Via Email Transmission

VIA EMAIL AND FIRST CLASS MAIL
 Tyler Smith
 Nathan Goin
 TYLER SMITH & ASSOCIATES, P.C.
 181 N. Grant Street, Suite 212
 Canby, OR 97013

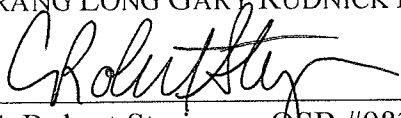
VIA EMAIL
 James E. Leuenberger PC
 ATTORNEY AND COUNSELOR AT LAW
 5200 SW Meadows Road, Suite 150
 Lake Oswego, OR 97035
 Attorneys for Defendant Wes Wagner

Attorneys for Plaintiffs

VIA EMAIL
 Colin Andries
 Andries Law Offices
 1001 SW 5th Avenue, Suite 1100
 Portland, OR 97204

Attorneys for Defendants Harry Joe Tabor, Mark Vetanen. Bruce Knight, Jeff Weston, Jim Karlock, and Richard Skyba

HARRANG LONG GARY RUDNICK P.C.

By: 
 C. Robert Steringer, OSB #983514
 bob.steringer@harrang.com
 John C. Rake, OSB #105808
 john.rake@harrang.com
 Telephone: 503.242.0000
 Facsimile: 503.241.1458

Of Attorneys for Defendant, Libertarian Party of Oregon