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U.S. DISTRICT COURT
Salem, Oregon

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PAUL DAMIAN WELLS,

Plaintiff,

v.

PHIL KIESLING, Oregon
Secretary of State,

Defendant,

Civil No. 92-658-MA

OPINION

Paul Damian Wells
23025 N.E. Mountaintop Road
Newberg, OR 97132

Plaintiff Pro Se

CHARLES S. CROOKHAM
Attorney General
KENDALL M. BARNES
Assistant Attorney General
Department of Justice
450 Justice Building
Salem, OR 97310

Attorneys for Defendant

MARSH, Judge.

Plaintiff is an independent candidate for the office of United States Senator who has filed a petition for nomination with the

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Oregon Secretary of State with more than 1,000 but less than 36,051 signatures in support of his petition. Defendant has informed plaintiff that pursuant to ORS 249.740 he needs a minimum of 36,051 signatures to secure his nomination for the office of United States Senator. Plaintiff has filed this action challenging the constitutionality of the signature requirement of ORS 249.740.

The parties now cross-move for summary judgment pursuant to Fed. R. Civ. P. 56.¹ For the reasons stated below, defendant's motion for summary judgment #5 is GRANTED and plaintiff's motion for judgment on the pleadings #11 is DENIED.

BACKGROUND

In Oregon, candidates for statewide, partisan office² secure the placement of their names on the general election ballot by being nominated by either a major party, a minor party, an assembly of electors or individual electors. ORS 249.016, 249.705.

A candidate is nominated by a major political party³ by

¹ Plaintiff has actually filed a motion for judgment on the pleadings. However, on July 9, 1992, I informed the parties at a telephone conference and by minute order that I would treat plaintiff's motion for judgment on the pleadings as a cross-motion for summary judgment. Neither party objected.

² Statewide, partisan offices include the offices of United States Senator, Governor, Secretary of State, State Treasurer, Attorney General and Commissioner of the Bureau of Labor and Industries.

³ A major political party is an affiliation of qualified voters whose candidates for presidential electors polled at least 20% of the total votes cast for that office. ORS 248.006.

winning that party's primary election. A candidate is placed on the primary election ballot for a party's nomination by filing with the Secretary of State either a declaration of candidacy or a nominating petition. ORS 249.046, 249.020(1). Both a declaration of candidacy and a nominating petition require substantial information about the candidate. ORS 249.031. They differ, however, in that a declaration of candidacy must be accompanied by a filing fee⁴ whereas a nominating petition must contain signatures from members of the same major party as the candidate. ORS 249.056, 249.068. A nominating petition for the office of United States Senator must contain the lesser of 1,000 signatures, or the number of signatures at least equal to two percent of the votes cast in the state for the candidates of that major party for presidential electors at the last presidential election. ORS 249.068(1).

A minor party⁵ nominates a candidate simply by filing a certificate of nomination naming its nominee. ORS 249.705. There are no statutory restrictions on how a minor party chooses its nominee.

An assembly of electors for a statewide nomination must include at least 1,000 qualified voters all assembled

⁴ For the office of United States Senator, the filing fee is \$150.

⁵ A minor political party is an affiliation of qualified voters who file with the Secretary of State a petition with the signatures of at least a number of qualified voters equal to two and one-half percent of the number of qualified voters registered in the electoral district. ORS 249.732.

simultaneously at a nominating convention. ORS 249.735. The candidate receiving the highest number of votes at the assembly is the nominee of the assembly. Id. The assembly then nominates the candidate by filing a certificate of nomination. ORS 249.705.

Individual electors also nominate a candidate by filing a certificate of nomination. ORS 249.740. However, a certificate of nomination for a statewide office from individual electors must be accompanied by a number of signatures equal to three percent of all the votes cast in the state for all candidates for presidential electors at the last general election. Id.

Thus, in Oregon, an independent candidate for the United States Senate may have his or her name placed on the 1992 general election ballot if that candidate collects 36,051 signatures from qualified Oregon voters. However, a candidate running in a major party primary for the same office or a candidate running in a nominating election⁶ for a statewide, nonpartisan office⁷ can have his or her name placed on the ballot for the primary or nominating election if that candidate collects 1,000 signatures. ORS 249.020, 249.068, 249.072.

⁶ Nominating elections are held only for nonpartisan offices and are conducted simultaneously with the major parties' primary elections. At a nominating election, the two candidates receiving the most votes for a nonpartisan office win spots on the general election ballot for that nonpartisan office. ORS 249.088. However, if a candidate for a nonpartisan office, other than a candidate for sheriff or a candidate to fill a vacancy, receives a majority of the votes cast for a particular office at the nominating election, that candidate is elected. Id.

⁷ Statewide, nonpartisan offices include the offices of Superintendent of Public Instruction, and Judge of the Supreme Court, Court of Appeals or Oregon Tax Court.

STANDARDS

Summary judgment is appropriate if the court finds that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). There is no genuine issue of material fact where the nonmoving party fails "to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Harper v. Wallingford, 877 F.2d 728, 731 (9th Cir. 1989).

All reasonable doubts as to the existence of genuine issues of fact must be resolved against the moving party. Hector v. Wiens, 533 F.2d 429, 432 (9th Cir. 1976). The inferences drawn from underlying facts must be viewed in the light most favorable to the party opposing the motion. Valadingham v. Bojorquez, 866 F.2d 1135, 1137 (9th Cir. 1989). Where different ultimate inferences can be drawn, summary judgment is inappropriate. Sankovich v. Insurance Company of North America, 638 F.2d 136, 140 (9th Cir. 1981).

DISCUSSION

In this action, plaintiff claims that the signature requirement of ORS 249.740 violates his constitutional rights to free speech and association secured under the First and Fourteenth Amendments. Plaintiff's pleadings, broadly construed, also allege that ORS 249.740 violates the Equal Protection Clause of the Fourteenth Amendment by placing additional burdens on independent candidates running for statewide, partisan offices. Thus,

1 plaintiff filed this action seeking a declaration that ORS 249.740
2 is unconstitutional insofar as it requires independent candidates
3 to obtain more than 1,000 signatures in order to appear on the
4 general election ballot for statewide, partisan office. Plaintiff
5 also seeks an injunction requiring the Secretary of State to place
6 his name on the 1992 general election ballot.

7 1. Free Speech and Association

8 In considering a challenge to a state election law, a court
9 "must weigh 'the character and magnitude of the asserted injury to
10 the rights protected by the First and Fourteenth Amendments that
11 the plaintiff seeks to vindicate' against the 'precise interests
12 put forth by the State as justifications for the burden imposed by
13 this rule.'" Burdick v. Takushi, 112 S.Ct. 2059, 2063 (1992)
14 (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983)).

15 As a general premise, states have "an undoubted right to
16 require candidates to make a preliminary showing of substantial
17 support in order to qualify for a place on the ballot." Munro v.
18 Socialist Workers Party, 479 U.S. 189, 193 (1986) (quoting
19 Anderson, 460 U.S. at 788-89, n. 9). Support requirements further
20 an important state interest in avoiding confusion, deception, and
21 even frustration in the democratic process at the general
22 election. Jenness v. Fortson, 403 U.S. 431, 442 (1971).

23 In Jenness, the Supreme Court upheld a Georgia law requiring
24 independent candidates to file a petition signed by at least 5% of
25 the registered voters in order to have their names printed on the
26 general election ballot. The court emphasized the "open quality"

1 of the Georgia election system noting that Georgia provided for
2 write-in votes, did not require that all candidates be nominated
3 by established political parties, did not fix an unreasonably
4 early filing deadline for candidates not endorsed by established
5 parties, and did not impose burdensome restrictions on the
6 circulation of nominating petitions for independent candidates.
7 Id., at 438-39. When taken as a whole, the court found nothing in
8 Georgia's election system "that abridges the rights of free speech
9 and association secured by the First and Fourteenth Amendments."
10 Id., at 440.

11 In the present case, Oregon's ballot access scheme for
12 independent candidates is less burdensome than the scheme upheld
13 in Jenness. In Oregon, an independent candidate may be placed on
14 the ballot for United States Senator by filing a certificate of
15 nomination with the signatures of 3% of the voters in the last
16 presidential election. Also, unlike the Georgia scheme approved
17 in Jenness, Oregon provides an alternative method whereby an
18 independent candidate in Oregon will be placed on the general
19 election ballot if that candidate is nominated by an assembly of
20 at least 1,000 qualified voters. ORS 249.735. Further, Oregon's
21 election system has an "open quality" by permitting write-in
22 votes, allowing minor parties to nominate candidates without a
23 primary, and by permitting all qualified voters to sign
24 certificates of nomination for independent candidates, and
25 finally, Oregon imposes no time period during which an independent
26 candidate may collect signatures.

Taken as a whole, I find Oregon's ballot access laws ensure the rights of free speech and association guaranteed by the First and Fourteenth Amendments for independent candidates.

2. Equal Protection

Plaintiff claims Oregon's ballot access scheme violates the Equal Protection Clause of the Fourteenth Amendment because it requires independent candidates to collect approximately 36,000 signatures to get on the general election ballot, but allows partisan candidates on the ballot with only 1,000 signatures.

However, under Oregon law, no candidate, partisan or independent, may be placed on the general ballot by collecting 1,000 signatures from Oregon voters. A major party candidate must collect the 1,000 signatures then win the party primary to be placed on the general election ballot.

To the extent plaintiff claims it is more burdensome for an independent candidate to get on the general election ballot than a major party candidate, that claim fails. In Jeness, the Court specifically refuted such a claim. 403 U.S. at 440-41. Likewise, plaintiff's claim also fails to the extent it is based on the premise that it is more burdensome for an independent candidate for statewide, partisan office to get on the general election ballot than it is for an independent candidate for statewide, nonpartisan office. Accordingly, I find that Oregon's system is consistent with the Equal Protection Clause of the Fourteenth Amendment.

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CONCLUSION

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2 Based on the foregoing, defendant's motion for summary
3 judgment #5 is GRANTED and plaintiff's motion for judgment on the
4 pleadings #11 is DENIED.

5 DATED this 13 day of August, 1992.

6 Malcolm F. Marsh
7 Malcolm F. Marsh
8 United States District Judge
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