

PRO SE STATUS
Paul Damian Wells
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Paul Damian Wells

Plaintiff

v.

Civil Action, File Number CV-92-658-MA

Phil Keisling
Oregon Secretary of State

Defendant

COMPLAINT

Constitutionality of State Statutes - Ballot Access

NATURE OF COMPLAINT

1. This is a civil action seeking injunctive and declaratory relief against the enforcement of certain Oregon Election Laws. More particularly, Chapter 249, Title 28 of the Oregon Statutes which implements a Ballot Access scheme, is challenged in its entirety.
2. The Ballot Access scheme employed by the State of Oregon is based on ~~the~~ Australian Ballot. In this ballot system, candidates gain access to the ballot by proving significant voter support. Oregon's ballot access scheme is a highly modified version of the Australian Ballot, in that the state has chosen to classify candidates and political offices by partisan and non-partisan affiliation and sets separate qualifying procedures and voter support thresholds based on these classifications.
3. The plaintiff in this case is a registered independent voter and a non-partisan candidate for the U.S. Senate. Plaintiff asserts that his 1st Amendment right to Free Political Association, and the 14th Amendment right to Equal Access, have been violated by the imposition of unjustifiably high voter support thresholds for non-partisan candidates running for partisan statewide office relative to:
 - a. voter support thresholds for non-partisan candidates running for non-partisan statewide office
 - b. and voter support thresholds for partisan candidates running for partisan statewide office.

PROCEDURAL DECLARATIONS

DEFENDANTS

4. Defendant, Phil Keisling, is the Secretary of State for the State of Oregon and is responsible for the enforcement of ORS.249 as challenged herein. The defendant is sued in his official capacity.
5. The conduct of the defendant, as hereinafter alleged was performed under the color of the laws of the State of Oregon and therefore constitute acts of the State within the meaning of 42 U.S.C. §1983.

PLAINTIFF

6. Plaintiff, Paul Damian Wells is a resident and registered independent voter of the state of Oregon. Plaintiff has previously filed as an independent candidate for the U.S. Senate, with the Oregon Secretary of State. Plaintiff is fully qualified for the said office.

STANDING TO SUE

7. Plaintiff has shown a *level of voter support* equal to that required of major party candidates for U.S. Senator and non-partisan statewide offices by collecting 1000 signatures of eligible voters, including the signatures of voters in 10% of the precincts in 7 counties as required by ORS.249.068-ORS.249.072. Having shown an equivalent *level of voter support*, plaintiff asserts standing to sue.

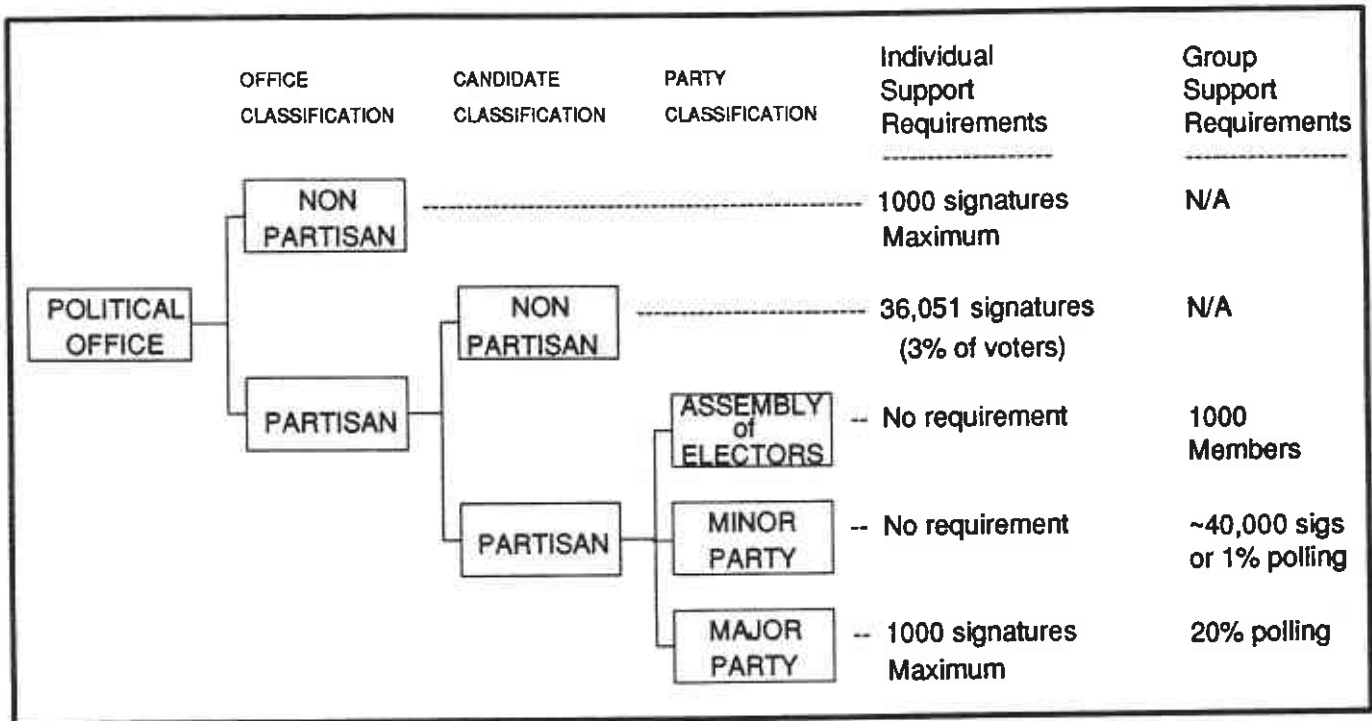
JURISDICTION

8. This action arises under the Constitution and laws of the United States of America, particularly, the First Amendment right to Freedom of Association, and the Fourteenth Amendment guarantee to Equal Access. The jurisdiction of the court is invoked under 28 U.S.C. §1331.
9. This is also an action brought under the Federal Civil Rights act, 42 U.S.C. §1983, to redress by injunctive relief the deprivation, under color of state law, of rights, privileges and immunities secured to plaintiff by the Constitution of the United States, particularly the first amendment thereto. The jurisdiction of this court, is invoked under 28 U.S.C. §1343.
10. This is also an action where plaintiff is seeking a declaration of his rights under the Constitution and the laws of the United States. Under 28 U.S.C. §§2201 and 2202, this court, in a case of actual controversy within its jurisdiction, may declare the rights of a plaintiff seeking such a declaration.

FACTUAL ALLEGATIONS

11. This is a prima facie case based on chapter 249, title 28 of the Oregon State Statutes. Listed below are the relevant sections. Plaintiff is a non-partisan candidate for a statewide office (U.S. Senate). Only those regulations pertaining to statewide office will be addressed in this pleading.

12. Generally, the state distinguishes between partisan and non-partisan offices. For partisan offices the state then distinguishes between partisan candidates and non-partisan candidates. Partisan candidates are further distinguished by the level of voter support for their party. The graph below shows the breakdown.



Non-Partisan Offices/Candidates (ORS249.072)

13. For non-partisan offices there is a single qualification for all candidates. For statewide office a candidate must submit signatures;

- a. equal to 1% of the number of votes cast for governor in the last election.
- b. or 1000 whichever is less

Notice that there is an exemption for required signatures over 1000.

Partisan Offices

14. For nomination to Partisan offices, the state makes the further distinction between "Organized Political Bodies"(Parties), and candidates not affiliated with any organization(Non-partisan). There are three types of political bodies defined under Oregon State law and one method of qualifying as a non-partisan candidate for partisan office.

Major Party Candidates (ORS249.068)

15. A political body qualifies as a major party when its candidate for president polls at least 20% of the votes cast for president in the last general election. Major party candidates are chosen by the primary election process.

16. To qualify for a major party nomination to state-wide office, a candidate must submit;

- a. A number of signatures equal to 2% of the number of votes cast for the party's nominee for president in the last general election.
- b. or 1000 signatures whichever is less.

Notice the 1000 signature exemption is identical to the exemption for state-wide non-partisan office.

Minor Party Candidates (ORS249.732)

17. A political body qualifies as a minor party in a voting district by;

- a. submitting signatures equal to 2.5% of the number of registered voters in the district
- b. or when candidate nominated by the minor party polls at least 1% of the total vote cast for U.S. Congress in the district.

18. To qualify for a minor party nomination to state-wide office, a candidate apparently must do nothing. No showing of voter support is required.

Assembly of Electors Candidate (ORS249.735)

19. A political body qualifies as an Assembly of Electors by holding a convention attended by not less than 1000 electors. (For statewide office).

20. To qualify for an Assembly of Electors nomination to statewide office, a candidate apparently must do nothing. No showing of voter support is required except for a plurality of the votes cast by the 1000 electors of the assembly.

Non-Partisan Candidates/Individual Electors(ORS249.740)

21. Candidates for partisan office not affiliated with a political body (non-partisan) may only qualify for statewide office by submitting a number of signatures equal to 3% of the number of votes cast for president in the last general election. For the 1992 general election this number comes out to be 36,051 signatures. Note there is no 1000 signature exemption.

PRAYER FOR RELIEF

Declaratory Relief Sought

22. Plaintiff requests the following declaratory relief:

- a. Non-partisan candidates for partisan statewide office must submit 36,051 signatures to qualify for ballot access.
- b. Partisan candidates for partisan statewide office must submit a maximum of 1000 signatures to qualify for ballot access.
- c. Non-partisan candidates for non-partisan statewide office must submit a maximum of 1000 signatures to qualify for ballot access.
- d. The Decision in **Illinois State Board of Elections v. Socialist Workers Party** (440 U.S. 173) is binding precedent in this case.
- e. The state has made an implicit admission that 1000 signatures in an identical statewide political unit adequately serves its interest in regulating the number of candidates on the ballot.
- f. The Oregon State Statutes, insofar as they require non-partisan candidates for statewide office to submit 36,051 signatures to qualify for ballot access, violate the First Amendment Right to Free Political Association, and the Fourteenth Amendment Equal Access Clause.

23. Making the distinction between partisan and non-partisan offices to justify unequal voter support thresholds for non-partisan candidates is an invidious discrimination and violates the First Amendment Right to Free Political Association.

Injunctive Relief Sought

23. Plaintiff requests that the court enjoin the state from enforcing ORS249.740 (Individual Electors) and qualify the plaintiff for ballot access based on satisfaction of ORS249.072 (Non-partisan).

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