

3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF MULTNOMAH

6 REYNOLDS SCHOOL DISTRICT NO. 7,)
7 MULTNOMAH COUNTY, OREGON, an)
8 Oregon Common School District, Ted)
9 Vogelpohl and Isaac Zapata,)
10 Plaintiffs,)

No. 0505-04985

11 vs.)

PEREMPTORY WRIT OF MANDAMUS

12 JOHN KAUFFMAN, DIRECTOR OF)
13 ELECTIONS, MULTNOMAH COUNTY,)
14 OREGON, and MULTNOMAH COUNTY,)
15 OREGON,)
16 Defendants.)

17 This matter came before the Court for hearing on this 16th day of May, 2005, pursuant to the
18 Alternative Writ of Mandamus issued on May 11, 2005. The Alternative Writ directed the defendants to
19 appear and show cause why a peremptory writ of mandamus should not be entered in connection with
20 the Reynolds School District No. 7 election of directors scheduled for May 17, 2005.

21 Plaintiffs were present at the hearing by and through their attorney John W. Osburn. Defendants
22 John Kauffman, Director of Elections, Multnomah County, Oregon, and Multnomah County were
23 present by and through their attorney Agnes Sowle, Multnomah County Attorney.

24 The facts are agreed to by all parties, and the Court finds as follows:

25 A. Reynolds School District No. 7 is an Oregon common school district in Multnomah County,
26 Oregon, governed by a seven member board of directors, whose positions are numbered 1 through 7.
The District's regular election for school board members is scheduled for May 17, 2005. At that
election, Positions 1, 2, 3 and 4 are subject to election. There is no issue before the Court as to the
elections for Positions 3 and 4. With regard to Position 1, Wendy Witter and Isaac Zapata filed
declarations of candidacy for that position. Ted Vogelpohl is the incumbent director, and is the only

1 candidate for election to Position 2. Through an error, the ballots printed and circulated by the
2 Multnomah County Director of Elections show Isaac Zapata as a candidate for Position 2. As a result,
3 Wendy Witter appears to be unopposed for Position 1, whereas in fact Isaac Zapata is a declared
4 candidate for that position. Isaac Zapata appears to be running against Ted Vogelpohl, whereas in fact
5 Ted Vogelpohl is unopposed. The purported elections for Positions 1 and 2 are erroneous and invalid.

6 B. In Oregon, ballots are distributed to electors by mail, and electors may return their ballots by
7 mail or deposit them with the Elections Division. The ballots for the elections for Positions 1 and 2
8 have been distributed, and many have already been returned by mail. The balance of the ballots to be
9 cast will be received tomorrow, May 17, 2005. In the ordinary course, the Director of Elections would
10 commence to count the votes and certify the results of the election. Because the purported elections for
11 Positions 1 and 2 are invalid, the Court should order and direct that the Director of Elections refrain
12 from counting the tendered votes for Positions 1 and 2, and from certifying the results of the invalid
13 election, give notice of a continued election in the manner provided by law and at the expense of
14 Multnomah County, mail correct ballots to electors, and conduct the election for Positions 1 and 2 with
15 corrected ballots.

16 C. Plaintiffs have no plain, speedy or adequate remedy in the ordinary course of the law.

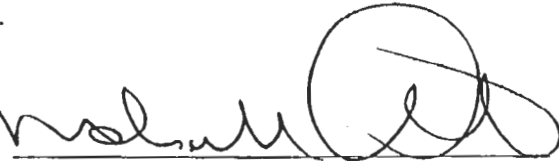
17 NOW, THEREFORE, IT IS HEREBY ORDERED:

- 18 1. The proceedings for the election of directors of Reynolds School District No. 7,
19 Position 1 and Position 2, on May 17, 2005, based upon improperly printed ballots,
20 are hereby declared to be invalid. The Director of Elections for Multnomah County is
21 ordered not to count the ballots received for those positions, or to certify the results of
22 that election.
- 23 2. The Director shall prepare and circulate new and correct ballots to electors of the
24 District, identifying Wendy Witter and Isaac Zapata as candidates for Position 1, and
25 Ted Vogelpohl as the sole candidate for Position 2. The Director shall administer a
26 further election for those positions in the manner provided by law, the election to be

1 held on September 20, 2005, the next regularly scheduled election date. The expense
2 of preparing and circulating ballots and administering the election shall be borne by
3 Multnomah County.

- 4 3. The remaining issues raised by the Complaint in this proceeding shall be determined
5 in the usual course.

6 Dated this 16th day of May, 2005.

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9 Circuit Judge