

Herbert G. Grey, OSB #81025
4800 SW Griffith Drive, Suite 320
Beaverton, Oregon 97005-8716
hgrey.law1@verizon.net
Tel: (503) 641-4908
Fax: (503) 641-8757

Jonathan A. Clark, OSB # 022740
Jonathan A. Clark, P.C.
960 Liberty Street SE, Suite 250
Salem, Oregon 97302
jonathan@jyclawoffice.com
Tel: (503) 581-1229
Fax: (503) 365-0374

Benjamin W. Bull*
Brian W. Raum*
Austin R. Nimocks*
ALLIANCE DEFENSE FUND
15100 North 90th Street
Scottsdale, Arizona 85260
bbull@telladf.org
braum@telladf.org
animocks@telladf.org
Tel: (480) 444-0020
Fax: (480) 444-0028

Dale M. Schowengerdt*
ALLIANCE DEFENSE FUND
15192 Rosewood
Leawood, Kansas 66224
dschowengerdt@telladf.org
Tel: (913) 685-8000
Fax: (913) 685-8001

* Admitted *Pro hac vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

PHILLIP LEMONS et al,

Plaintiffs,

v.

BILL BRADBURY, Secretary of the State of Oregon, in his official and individual capacity, et al,

Defendants.

Case No: CV 07-1782-MO

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Oral Argument Requested

NOW COME the Plaintiffs, by and through their attorneys of record, and for their motion for a temporary restraining order and preliminary injunction, state as follows:

1. The instant action is one for injunctive and other relief wherein the constitutionality of Oregon's statutory and administrative scheme relating to petitions and/or referendums to place a statewide advisory question upon the ballot, is in issue. Plaintiffs are signers of Referendum 303 and claim that, *inter alia*, the statutory and administrative scheme utilized by the Defendants unconstitutionally disenfranchised them.

2. Though more than enough signatures were presented to sustain Referendum 303, the Oregon Secretary of State currently lists Referendum 303 as needing only five (5) signatures to qualify for the November 2008 ballot. The Plaintiffs in this matter currently number twenty-eight (28) and additional Plaintiffs will likely be added.

3. Under Article IV, Section 1 of the Oregon Constitution, the people of Oregon have the final say over whether HB 2007 shall become law. Once a referendum is certified for the ballot,

the law addressed by the referendum is reverted to the status of only a bill, and is no longer a law unless and until the voters approve it at the next general election. *See Portland Pendleton Motor Transp. v. Heltzel*, 197 Or. 644, 647-648 (1953) (quoting with approval *Davis v. Van Winkle*, 130 Or. 304, 307 (1929) (holding that a legislative enactment referred to voters under Article IV Section 1 does not become operative until after the voters approve it).

4. If HB 2007 is allowed to take effect on January 1, 2008, its currently scheduled effective date, substantial and irreparable harm will occur upon the Plaintiffs, and the tens of thousands of other Oregonians who also signed Referendum 303, as their collective voices which were sufficient in number would be unconstitutionally suppressed. Money damages are not sufficient or adequate to cure this constitutional wrong.

5. A temporary restraining order or other injunctive relief would not result in any harm upon the state and county officials identified as Defendants herein. If any prospective harm did result to the Defendants from this Court providing injunctive relief, that harm would not be excessive in any regard.

6. A temporary restraining order or other injunctive relief is clearly within the public interest in this matter. The taxpayers of Oregon have no clear interest in instituting a law for over eleven (11) months which may be ultimately repealed by the citizens, thereby causing the state and various counties to administratively reverse the sanctioning of relationships that the voters reject. Oregon has already seen how this type of circumstance does not benefit the public in *Li v. State*, 338 Or. 376, 110 P.3d 91 (2005), where over 3,000 improperly issued marriage licenses were required to be reversed approximately 400 days after they were issued. The *Li* case was a public debacle that

does not need to be repeated.

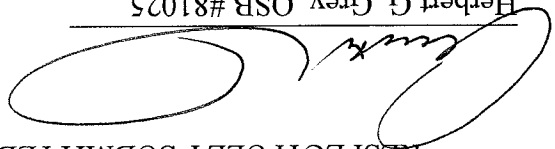
7. Of the twenty-eight (28) named Plaintiffs in this matter, at least five (5) had signatures that matched their voter registration and were inexplicably excluded, and at least twelve (12) permissibly updated their voter registration record during the 30-day constitutional window provided by Article IV, § 1 of the Oregon Constitution and were still inexplicably excluded. In other words, there are well more than five (5) signatures that were impermissibly and inexplicably excluded from the petition, and these signatures are likely to be reinstated.

Moreover, the Oregon laws and rules at issue in this matter clearly and unequivocally provide different processes for treating signatures in elections versus petitions, though there exists no logical, legal, or other justification for this disparate treatment and clear lack of equal protection in an identical context. Therefore, there exists a substantial likelihood of success on the merits of this matter.

8. Because of the circumstances presented herein, coupled with the nature of the Defendants as public servants accountable to the very Plaintiffs bringing this lawsuit, there does not exist the possibility of costs or damages to the Defendants that would require the showing or posting of security by the Plaintiffs. Accordingly, the Plaintiffs respectfully request that they not be required to post or otherwise provide security herein.

WHEREFORE, PREMISIS CONSIDERED, the plaintiffs request that this Court issue an order staying the January 1, 2008 effective date of HB 2007.

RESPECTFULLY SUBMITTED this the 18th day of December, 2007.



Herbert G. Grey, OSB #81025
4800 SW Griffith Drive, Suite 320
Beaverton, Oregon 97005-8716
Tel: (503) 641-4908
Fax: (503) 641-8757
hgrey.law1@verizon.net

Jonathan A. Clark, OSB # 022740
Jonathan A. Clark, P.C.
960 Liberty Street SE, Suite 250
Salem, Oregon 97302
jonathan@jaclawoffice.com
Tel: (503) 581-1229
Fax: (503) 365-0374

Benjamin W. Bull*
Brian W. Raum*
Austin R. Nimocks*
ALLIANCE DEFENSE FUND
15100 North 90th Street
Scottsdale, Arizona 85260
bbull@tellaadf.org
braum@tellaadf.org
animoaks@tellaadf.org
Tel: (480) 444-0020
Fax: (480) 444-0028

Dale M. Schowengerdt*
ALLIANCE DEFENSE FUND
15192 Rosewood
Leawood, Kansas 66224
dschowengerdt@tellaadf.org
Tel: (913) 685-8000
Fax: (913) 685-8001
* Admitted *Pro hac vice*

Attorneys for Plaintiffs