

United States District Court
District of Nebraska

Kent Bernbeck,
Kelsey Bernbeck,
Craig Bernbeck,
Jonathan Alley, and
Joe Kingsley,
Plaintiffs,

v

John A. Gale, and
Nancy A. Morfeld
Defendants.

No. 4:10 CV 03001
Judge Batonillon
Magistrate Judge Thakran

Complaint (Declaratory Judgment)
& Jury Demand

Plaintiffs allege:

Complaint

1. The First Amendment to the United States Constitution secures rights of speech and petition for redress of grievances to the people of the United States. *US Const Amend IV* applies *Amend I* to the State of Nebraska, the City of Stanton, and the Defendants, and guarantees equal protection and due process of law.

2. The Nebraska Legislature purports to have implemented a procedure governing the use of the power of the initiative. In the case of political subdivisions like the City of Stanton, and the Defendants' responsibilities under the facts described below, the statutory procedures purporting to govern the initiative process appear at *Neb Rev Stat* §§ 18-2501 *et seq.* They are supplemented by the *Nebraska Election Act*, *Neb Rev Stat* §§ 32-101 *et seq.* Portions of these laws impose unduly restrictive burdens on the initiative petition process. These burdens do not withstand strict constitutional scrutiny and Plaintiffs contend they are unconstitutional and void.¹

¹ Days before this case was filed the U S District Court, Western District, Michigan decided a case with similarities and collected legal authorities relevant to several aspects of this Complaint. See, *Bogaert v Land*, --- F.Supp.2d ----, 2009 WL 4885228 (W.D. Mich.).

3. Among the statutes enacted by the Nebraska Legislature are these constraints challenged in this litigation for their constitutional infirmity. The Plaintiffs have vibrant interests in the constitutionality of these statutes. They are as follows:

- 3.1. *Neb Rev Stat* § 18-2515. This statute directly impacts Kent Bernbeck who desired to be a chief sponsor of a petition presented to the City Clerk of the City of Stanton. Mr. Bernbeck is a Nebraska resident and has resided in or just outside the City of Stanton for the past twelve years. Mr. Bernbeck and his extended family have historically lived in and belonged to the Stanton community; he has a vital interest in the subject of the petition. Mr. Bernbeck is a Nebraska resident. He and the other Plaintiffs contend the local residency requirement for chief sponsors of petitions like the one in question is invalid.
- 3.2. *Neb Rev Stat* § 32-110. Kelsey Bernbeck executed the petition in question days before she became a qualified elector at age 18. Kelsey would be eligible to vote in the election at which the ballot measure would be submitted to a vote and, accordingly, contends she has a right to petition her government for redress at an election at which she can vote. But, *Neb Rev Stat* § 32-110 prohibits her from doing so and is challenged for constitutional infirmity for this reason.
- 3.3. *Neb Rev Stat* § 32-630(3)(g). Craig Bernbeck desired to participate in the process of petitioning the City of Stanton and its officials to place an initiative subject on the ballot. He desired to be paid as a circulator but circulators may not be paid on a per signature collected basis under *Neb Rev Stat* § 32-630(3)(g), and face sanctions if they do so. Mr. Bernbeck respectfully contends *Neb Rev Stat* § 32-630(3)(g) imposes an unconstitutional ban against paying circulators of petitions for signatures they collect. Paying for effort to express one's self, or to petition the government, is permitted by the Constitution of the United States, and this right cannot be abridged.
- 3.4. *Neb Rev Stat* § 32-629. Jonathan Alley (Kent Bernbeck's nephew), desires to volunteer to circulate petitions but is prohibited by *Neb Rev Stat* § 32-629 from doing so. The prohibition of § 32-629(2) prohibits non-electors of the state of Nebraska to qualify as valid circulators of petitions. This prohibition is unconstitutional as it affects Mr. Alley who wants to circulate the petition, Kent Bernbeck who wants to be a chief sponsor, Kent Bernbeck who wants to be paid per signature and Kelsey Bernbeck, who, as a volunteer, wants to exercise her constitutional right to petition for

placement of an initiative item on the ballot for which she can lawfully cast her vote.

- 3.5. *Neb Rev Stat* §§ 32-110 & 32-630(3)(c). The age disqualifications of *Neb Rev Stat* §§ 32-110 & 32-630(3)(c), and the refusal to count Joe Kingsley's signature as a petitioner because it appears upon the disqualified circulator's petition of Kelsey Bernbeck, all violate the provisions of *US Const Amend I*, *U S Const Amend XIV*, as enforced by 42 *USC* § 1983 and are unconstitutional as written and as applied
- 3.6. These statutes each, and all, impinge on the rights of all plaintiffs to engage in core speech, petition their government, and enjoy equal protection and due process of law. *U S Const Amend I*, *XIV*.

4. The provisions of Nebraska's statutes preventing Kent Bernbeck from serving as a chief sponsor, Kelsey Bernbeck from executing a petition because she is not a "qualified elector" due to age, any Plaintiff from paying, or accepting pay for service as, a circulator, on a pay per signature basis, Joe Kingsley to have his signature count because he signed a disqualified circulator's petition circulated by Kelsey Bernbeck, and prohibiting Jonathan Alley against participating as a petition circulator because he is not a Nebraskan, are all challenged here. The Plaintiffs claim these provisions of Nebraska law violate rights guaranteed by *US Const Amend I* and *XIV*, and for which enforcement is authorized by 42 *USC* § 1983. They ask this Court to issue declaratory and injunctive relief² declaring the offensive statutes unconstitutional, and enjoining Defendants from enforcing the unconstitutional statutes, or keeping their ballot measure off the ballot. The Plaintiffs have no adequate remedy other than injunctive and declaratory relief.

Jurisdiction.

5. The District Court's subject matter jurisdiction lies under 28 *USC* § 1331 as questions of federal law are presented. At issue are ballot and election rights, free speech rights, and rights related to petitioning the government. The Court also has subject matter jurisdiction under 28 *USC* §§ 1343(a)(3) and (4) providing for jurisdiction over suits involving civil rights and the election franchise. Plaintiffs seek, here, to

² *Ex Parte Young*, 209 US 123 (1908).

repress the deprivation of several federal civil rights guaranteed them by the Fourteenth Amendment's due process and equal protection clauses.

6. For purposes of 28 *USC* § 1343, this action is authorized by 42 *USC* § 1983. The court has authority to grant declaratory and injunctive relief under 28 *USC* §§ 2201 & 2202, and injunctive relief under 42 *USC* § 1983. Fees and costs for this litigation are sought under 42 *USC* § 1983.

Parties; Venue

7. All Plaintiffs are United States citizens. Kent Bernbeck is a was at relevant times a resident of Stanton County, Nebraska. Kelsey Bernbeck is a resident of Stanton County, Nebraska. Craig Bernbeck is a resident of Brown County, Nebraska. Joe Kingsley is a resident of Stanton, Stanton County, Nebraska. Plaintiff Jonathan Alley is a non-resident of Nebraska, but a person closely associated with the Bernbeck family and the city of Stanton who has significant personal interests in the welfare of the city and the subject matter of the petition at issue.

8. Venue is proper in the District of Nebraska where these issues arose, and all Defendants reside and a substantial part of the activity giving rise to this claim occurred. 28 *USC* § 1391(b). The Claims asserted here are properly joined, as are the Plaintiffs, as the claims arise from the same transaction or occurrence, or series of transactions or occurrences, and common questions of fact or law will arise in this action.³

9. The Defendants are individuals who hold positions of responsibility and have used those positions to refuse to place the Plaintiffs' initiative petition on the ballot of the City of Stanton, Nebraska, for the vote of the people. They are sued as individuals, and are:

9.1. John Gale, who is the Nebraska Secretary of State. He verified certain matters associated with the petition and, by doing so, acted or purported to act under color of law.

³ *FRCivP* 18(a) & 20(a).

9.2. Nancy A. Morfeld, who is the City Clerk of the City of Stanton. She received the petition before it was circulated, approved it, received the signed petitions after circulation, and issued a November 19, 2009 letter to Joe Kingsley, Plaintiff, confirming her consultation with the Stanton County Clerk, and the Secretary of State. She certified that 147 signatures were needed for the petition to pass, 176 signatures were submitted, and 97 were accepted so the petition failed, and the issue would not be submitted to the ballot.

Factual Background

The Bernbeck family has, and has had, a vital interest in improving the municipal park of the City of Stanton. Kent Bernbeck and daughter, Kelsey, initiated and raised substantial funds from the community for a pool slide at the municipal swimming pool. They sought for the municipality to accept a donation, improve the municipal swimming pool, and thereafter maintain a slide on the pool as a contribution from the Bernbeck family, which has had long term, multigenerational roots in the city. This did not occur. Plaintiffs then tried to place the question of the desired municipal improvement before the voters of the City of Stanton by initiative process, using an initiative petition. The petition circulated by some or all of the Plaintiffs and in which all the Plaintiffs has a vital interest, is a "petition" within the meaning of *Neb Rev Stat* § 18-2508.

10. While circulating the Petition, these steps were taken and these events occurred in September, October and November 2009:

- 10.1. Joe Kingsley acted as chief sponsor of the petition. Mr. Kingsley resides within the City of Stanton, Stanton County, Nebraska.
- 10.2. Kent Bernbeck was prohibited from acting as chief sponsor because he no longer resides within the city limits of the City of Stanton, Stanton County, Nebraska, though he conducts business there, resides near there, and has a vital interest in the petition and outcome.
- 10.3. Kelsey Bernbeck collected signatures but was not 18 years of age and would not be a qualified elector by the date set forth at *Neb Rev Stat* § 32-1546, as required in order to complete a circulator's affidavit. Accordingly, though she circulated a petition, her petition was not counted and she, and her petitioners, were deemed disqualified.

- 10.4. Kelsey Bernbeck is a citizen of the United States whose residence is within Nebraska and who was, at all relevant times, 17 years of age and would not attain the age of 18 years on or before the first Tuesday after the first Monday in November of the then current year, but nonetheless had a vital interest in the subject matter, anticipated registering to vote, and to be able to vote on the ballot measure when placed on the ballot.
- 10.5. Joe Kingsley, the chief sponsor, signed the petition circulated by Kelsey Bernbeck and despite his status as chief sponsor and resident of the City of Stanton, his signature was disqualified, though he has a vital interest in having it qualified so the subject matter of the initiative is placed before the people of Stanton on the ballot.
- 10.6. Craig Bernbeck circulated petitions and collected signatures for which Kent Bernbeck sought to pay him \$1 per signature, but Kent Bernbeck was prohibited from paying, and Craig Bernbeck was prohibited from accepting, this sum by *Neb Rev Stat* § 32-630(3)(g). Nonetheless, Kent Bernbeck paid Craig Bernbeck \$6.00 for his efforts.

11. The petition was circulated after its form and content were approved by Defendant Morfeld following its filing with her. One hundred seventy six persons signed the petition thereafter. All are claimed to be authorized lawful electors qualified to sign it. One hundred forty seven signatures were required to place the initiative issue on the municipal ballot of the City of Stanton in May 2010. *Neb Rev Stat* § 18-2501 includes, within its terms, the City of Stanton, Stanton County, Nebraska, which is a municipal subdivision of the State.

12. Ninety seven signatures were rejected. One hundred forty seven signatures would have been qualified and the petition would have succeeded except that Defendants Morfeld and Gale determined that:

- 12.1. Signatures collected by Jonathan Alley were those of proper qualified electors, but Mr. Alley was an out-of-state circulator so petitions circulated by him were disqualified. Defendant Jonathan Alley is not a resident of Nebraska. He circulated a petition, disclosed his non-resident status, and the signatures he collected, though otherwise valid, were disallowed because of his status as a non-resident. Nebraska has no interest in thwarting the initiative process by prohibiting circulators from other states from presenting potential ballot issues, and initiatives or petitions, to Nebraskans who are qualified electors and otherwise authorized by law to

execute a petition. Accordingly, Mr. Alley and the other Plaintiffs challenge as invalid *Neb Rev Stat* § 32-629 because it deprives Mr. Alley of his right to speak, and all the Plaintiffs of their right to petition their government for redress, speak, and participate in the elective process.

- 12.2. Signatures collected by Kelsey Bernbeck were those of proper qualified electors, but, because of her age, signatures on the petitions she circulated were disqualified, including the signature of the chief sponsor, Mr. Kingsley.
- 12.3. Kent Bernbeck was prohibited from participating in the process as a chief sponsor, or as a person participating to encourage the effort by paying for persons to collect signatures, on a per signature basis. *Neb Rev Stat* § 18-2515 prohibits Kent Bernbeck from serving as a chief sponsor of the initiative petition despite his vital interest in it and the vital interests of his family. He challenges this statute's restrictions, accordingly.
- 12.4. *Neb Rev Stat* § 32-620 prohibited Kent Bernbeck from paying a circulator based on the number of signatures collected and is challenged as unconstitutional because this prohibition is indefensible and the State has no vibrant or active interests in preventing the initiative process on this basis.

13. The initiative process commenced in November, 2009, requesting that a petition be placed on the City of Stanton, Nebraska municipal ballot for the May 2010 election, if the governing body of the City of Stanton did not enact the ordinance and take the requested action when presented with the outcome of the election, if successful, as required by law. The petition was circulated within the time periods specified by law, presented to the official required by law, and disallowed, in documents certified by the Stanton County Clerk to the Defendant Morfeld, and approved by Defendant Gale the Secretary of State of Nebraska, for reasons specified above. The petition, and the circulation process, complied with Nebraska statutory requirements except as expressly stated in this Complaint where circulators were underage, or non-residents, or paid for signatures. Had all signatures collected from electors of the City of Stanton been counted, the petition would have succeeded, and the issue would be placed on the ballot for consideration by the voters of the city in May 2010. Only the

application of each and all the Nebraska statutes challenged for their Constitutional invalidity, prevented this from occurring.

14. Nebraska has no interest in thwarting the initiative process by prohibiting circulators from other states from presenting potential ballot issues, and initiatives or petitions, to Nebraskans who are qualified electors and otherwise authorized by law to execute a petition. It has no interest in disenfranchising qualified electors who sign petitions circulated by persons who are not of voting age on the date when the petition is signed but will be of voting age when the election is held. Nebraska has no legitimate interest in prohibiting one from exercising free speech by paying circulators per signature. And, Nebraska has no legitimate interest in preventing one who lives outside a political subdivision from acting as a chief sponsor, or circulator, of a petition within the political subdivision. By enforcing the laws challenged here each Defendant acted under color of state law, and infringed upon well established constitutional rights held by one or more of the Plaintiffs. Accordingly, Mr. Alley and the other Plaintiffs challenge as invalid the statutes assailed here because they deprive the Plaintiffs of their right to petition their government for redress, speak, and participate in the elective process.

15. The Constitution and statutes of Nebraska relevant to this litigation include these provisions of law:

Neb Const Art III

Sec. 2. First power reserved; initiative

The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. This power may be invoked by petition wherein the proposed measure shall be set forth at length. If the petition be for the enactment of a law, it shall be signed by seven percent of the registered voters of the state, and if the petition be for the amendment of the Constitution, the petition therefor shall be signed by ten percent of such registered voters. In all cases the registered voters signing such petition shall be so distributed as to include five percent of the registered voters of each of two-fifths of the counties of the state, and when thus signed, the petition shall be filed with the Secretary of State who shall submit the

measure thus proposed to the electors of the state at the first general election held not less than four months after such petition shall have been filed. The same measure, either in form or in essential substance, shall not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once in three years. If conflicting measures submitted to the people at the same election be approved, the one receiving the highest number of affirmative votes shall thereby become law as to all conflicting provisions. The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative. Initiative measures shall contain only one subject. The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of this initiative measure or at any time thereafter, except upon a vote of at least two-thirds of all the members of the Legislature.

Sec. 4. Initiative or referendum; signatures required; veto; election returns; constitutional amendments; non-partisan ballot

The whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition shall be the basis on which the number of signatures to such petition shall be computed. The veto power of the Governor shall not extend to measures initiated by or referred to the people. A measure initiated shall become a law or part of the Constitution, as the case may be, when a majority of the votes cast thereon, and not less than thirty-five per cent of the total vote cast at the election at which the same was submitted, are cast in favor thereof, and shall take effect upon proclamation by the Governor which shall be made within ten days after the official canvass of such votes. The vote upon initiative and referendum measures shall be returned and canvassed in the manner prescribed for the canvass of votes for president. The method of submitting and adopting amendments to the Constitution provided by this section shall be supplementary to the method prescribed in the article of this Constitution, entitled, "Amendments" and the latter shall in no case be construed to conflict herewith. The provisions with respect to the initiative and referendum shall be self-executing, but legislation may be enacted to facilitate their operation. All propositions submitted in pursuance hereof shall be submitted in a non-partisan manner and without any indication or suggestion on the ballot that they have been approved or endorsed by any political party or organization. Only the title or proper descriptive words of measures shall be printed on the ballot and when two or more measures have the same title they shall be numbered consecutively in the order of filing with the Secretary of State and the number shall be followed by the name of the first petitioner on the corresponding petition.

18-2501. Powers; use; provisions governing

(1) The powers of initiative and referendum are hereby reserved to the qualified electors of each municipal subdivision in the state. Sections 18-2501 to 18-2537 shall govern the use of initiative to enact, and the use of referendum to amend or repeal measures affecting the governance of all municipal subdivisions in the state, except those operating under home rule charter and as specified in section 18-2537.

18-2524. Initiative petition; failure of municipal governing body to pass; effect; regular or special election.

Whenever an initiative petition bearing signatures equal in number to at least fifteen percent of the qualified electors of a municipal subdivision has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to consider passage of the measure contained in the petition, including an override of any veto, if necessary.

18-2503. Circulator, defined.

Circulator shall mean any person who solicits signatures for an initiative or referendum petition.

18-2504. City clerk, defined.

City clerk shall mean the city or village clerk or the municipal official in charge of elections. Defendant Nancy Morfeld is the City Clerk for the City of Stanton.

18-2506. Measure, defined.

Measure shall mean an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to pass, and which is not excluded from the operation of referendum by the exceptions in section 18-2528.

18- 2508 Petition.

Petition shall mean a document authorized for circulation pursuant to section 18-2512, or any copy of such document.

18-2508.01. Place of residence, defined.

Place of residence shall mean the street and number of the residence. If there is no street and number for the residence, place of residence shall mean the mailing address.

18-2510. Qualified electors, defined.

Qualified electors shall mean all persons registered to vote, at the time the prospective petition is filed, in the jurisdiction governed or to be governed by any measure sought to be enacted by initiative, or altered or repealed by referendum.

32-110. Elector, defined.

Elector shall mean a citizen of the United States whose residence is within the state and who is at least eighteen years of age or is seventeen years of age and will attain the age of eighteen years on or before the first Tuesday after the first Monday in November of the then current calendar year.

32-1404. Initiative and referendum petitions; signers and circulators; requirements.

A signer of an initiative and referendum petition shall be a registered voter of the State of Nebraska on or before the date on which the petition is required to be filed with the Secretary of State and shall meet the requirements of section 32-630. A person who circulates initiative and referendum petitions shall comply with the requirements of section 32-629 and subsection (2) of section 32-630 and with the prohibitions contained in subdivisions (3)(a), (d), (f), and (g) of section 32-630.

18-2510.01. Residence, defined.

Residence shall mean that place at which a person has established his or her home, where he or she is habitually present, and to which, when he or she departs, he or she intends to return. Kent Bernbeck has vital interests in Stanton but is not a resident of Stanton. Joe Kingsley is a Stanton resident.

18-2515. Petition; contents; chief petitioners or sponsors; requirements.

(2) Every petition shall contain the name and place of residence of not more than three persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the municipal subdivision potentially affected by the initiative or referendum proposal.

32-629. Petitions; signers; qualifications; exception; circulators; qualifications.

(2) Only an elector of the State of Nebraska shall qualify as a valid circulator of a petition and may circulate petitions under the Election Act.

32-630. Petitions; signers and circulators; duties; prohibited acts.

(3) No person shall:

- (a) Sign any name other than his or her own to any petition;
- (b) Knowingly sign his or her name more than once for the same petition effort or measure;
- (c) Sign a petition if he or she is not a registered voter and qualified to sign the same except as provided in section 32-1404;
- (d) Falsely swear to any signature upon any such petition;
- (e) Accept money or other thing of value for signing any petition;
- (f) Offer money or other thing of value in exchange for a signature upon any petition; or
- (g) Pay a circulator based on the number of signatures collected.

18-2516. Signature sheet; requirements.

Every signature sheet shall:

- (1) Contain the caption required in subdivision (1)(a) of section 18-2513;
- (2) Be part of a complete and authorized petition when presented to potential signatories; and
- (3) Comply with the requirements of section 32-628

18-2517. Petition; signers and circulators; requirements.

Signers and circulators shall comply with sections 32-629 and 32-630.

32-629. Petitions; signers; qualifications; exception; circulators;

qualifications.

- (1) Except as otherwise provided in section 32-1404 for initiative and referendum petitions, only a registered voter of the State of Nebraska shall qualify as a valid signer of a petition and may sign petitions under the Election Act.
- (2) Only an elector of the State of Nebraska shall qualify as a valid circulator of a petition and may circulate petitions under the Election Act.

32-1404. Initiative and referendum petitions; signers and circulators; requirements.

A signer of an initiative and referendum petition shall be a registered voter of the State of Nebraska on or before the date on which the petition is required to be filed with the Secretary of State and shall meet the requirements of section 32-630. A person who circulates initiative and referendum petitions shall comply with the requirements of section 32-629 and subsection (2) of section 32-630 and with the prohibitions contained in subdivisions (3)(a), (d), (f), and (g) of section 32-630.

18-2536. Election Act; applicability.

The Election Act [§§ 31-101 et seq] so far as applicable and when not in conflict with sections 18-2501 to 18-2531, shall apply to voting on ordinances by the registered voters pursuant to such sections

16. The residency requirement of *Neb Rev Stat* § 32-629(2) permits “only an elector of the State of Nebraska” to qualify “as a valid circulator of a petition....” This statute, enacted February 19, 2008 by a vote of 30-17-2, became law over gubernatorial veto. *Neb Rev Stat* § 32-110 defines an “elector” as “a citizen of the United States whose residence is within the State and who is at least 18 years of age or is 17 years of age and will attain the age of 18 before the first Tuesday after the first Monday of the then current year.” As noted above, these statutes disenfranchise Kelsey Bernbeck, and preclude circulation of petitions by Kelsey Bernbeck and Jonathon Alley. They impose residency and age requirements for petition circulators.

17. The circulation of the initiative petition at issue by the Plaintiffs constituted core political speech.⁴ The requirements of the statutes challenged impose severe burdens on the Plaintiffs' First Amendment rights. They prevented the Plaintiffs from achieving placement of their ballot issue on a ballot of the City of Stanton for the electors of the city, who supported their petition in sufficient numbers to place it on the ballot had all petitions been counted, from being presented for public vote. Accordingly, the Plaintiffs' First Amendment expression was thwarted, their right to exercise the elective franchise was thwarted, they were denied equal protection of the law, and their effort to petition their government for an election was declared invalid and thwarted.

18. The residency, age, payment of circulators per signature, and other requirements are not justified by sufficiently weighty state interests and are not narrowly tailored to advance compelling state interests as required by law. Such requirements are unconstitutional and void.⁵

Actual, Justiciable Controversies Require Resolution

19. The Plaintiffs' claims pose actual, justiciable controversies. The Plaintiffs are each, and all, entitled to declarations of their rights.

20. Unless declaratory relief is granted and injunctions are issued, the Plaintiffs will continue to suffer infringement of their Constitutional rights because of the actions of the Defendants. So will the voters of Stanton. Injunctive relief is also essential to prevent enforcement of unconstitutional laws and continuing infringement on the well established constitutional rights of each Plaintiff.

21. No timely and adequate state-court review is available, and there is no reason for this Court to decline jurisdiction. Significant questions of state law bearing on policy problems of substantial public import whose importance transcends the result in

⁴ *Buckley v Am. Constitutional Law Found., Inc.*, 525 US 182, 186 (1999) (quoting *Meyer v Grant*, 486 US 414, 422, 425 (1988)). This requires "exacting" and "strict" scrutiny for any limitation on that core political speech. *Meyer*, 486 US at 421; *see also Buckley*, 525 US 182.

⁵ *See, e.g., Nader v Blackwell*, 545 F3d 459 (6th Cir 2008). ; *Krislov v Rednour*, 226 F3d 851, 858-66 (7th Cir 2000); *Nader v Brewer*, 531 F3d 1028 (9th Cir 2008); *Yes on Term Limits v Savage*, 550 F3d 1023 (10th Cir 2008); *Lerman v Bd. of Elections*, 232 F3d 135, 149 (2^d Cir 2000); *Bogaert v Land*, --- F.Supp.2d ----, 2009 WL 4885228 (WD Mich 12-17-09).

this case alone, are presented in this Complaint. No disruption of any state effort will occur as a result of exercise of federal jurisdiction.⁶

22. Plaintiffs have no adequate remedy at law for the Defendants' acts and omissions. The Plaintiffs suffer, and continue to suffer, irreparable harm as a result of the Defendants' violations of the law, impingements on their Constitutional rights which are well-established, and action under color of state law and as state actors.

23. The declaratory judgment sought will a) settle significant controversies affecting well-established constitutional rights of the Plaintiffs upon which Defendants infringed under color of state law, b) serve useful purposes to clarify permissible relations between the initiative process and the status of those who seek to participate in it and express themselves freely by doing so, and c) create no friction in federal – state relations.⁷

24. In each instance of each law challenged in this Complaint, the burden of the restriction imposed by Nebraska law on the initiative process fails to outweigh any reasonable benefit therefrom, and in each instance the burden imposed is greater than is necessary or reasonable to protect the integrity of the initiative process.⁸ As such none of the challenged restrictions withstands strict constitutional scrutiny.⁹

25. Defendants acted, at all relevant times, under the color of state law as Secretary of State of Nebraska and City Clerk of the City of Stanton. Their conduct infringes on well-established constitutional rights of each Plaintiff and is actionable under

⁶ *New Orleans Pub. Serv, Inc. v Council of City of New Orleans*, 491 US 350, 361 (1989).

⁷ *Public Serv Comm'n of Utah v Wycoff*, 344 US 237, 241 (1952); *Bituminous Cas. Corp. v J & L Lumber Co., Inc.*, 373 F3d 807, 813 (6th Cir 2004).

⁸ *Timmons v Twin Cities Area New Party*, 520 US 351 (1997).

⁹ *Buckley v Am. Const. Law Found., Inc.*, 525 US 182, 194, (1999); *Nader v Brewer*, 531 F3d 1028, 1036 (9th Cir 2008); *Chandler v City of Arvada*, 292 F3d 1236, 1242 (10th Cir 2002); *Lerman v Bd. of Elections*, 232 F3d 135, 149 (2d Cir 2000); *Krislov v Rednour*, 226 F3d 851, 860 (7th Cir.2000).

42 USC §1983.¹⁰ These rights include freedom of speech,¹¹ to vote,¹² to participate in the election and initiative process,¹³ and to petition government.¹⁴

26. Plaintiffs' seek attorneys' fees and costs as permitted by law, in addition to declaratory and injunctive relief.

First Claim – Chief Sponsor, Age of Circulator, Signature of Chief Sponsor

27. All allegations above are renewed here.

28. The provisions of the laws, including *Neb Rev Stat* § 18-2515, and other laws outlined above, prohibiting Kent Bernbeck from serving as a chief sponsor, Kelsey Bernbeck from serving as a circulator, Craig Bernbeck from circulating and being paid per signature, Jonathan Alley from circulating because he is a non-resident, and Joe Kingsley from having his signature counted because he signed Kelsey Bernbeck's petition, are all invalid and all violate the provisions of *US Const Amend I*, and the equal protection and due process clauses of *US Const Amend XIV*, and the provisions of *Neb Const Art V* § 1, & *Article V* § 19 and *Article III* § 2, guaranteeing the right to speech, petition the government, and enjoy the right of initiative.¹⁵

Second Claim – Residency

29. The residency requirements of *Neb Rev Stat* § 32-629(2) violate *US Const Amend I*, *US Const Amend XIV*, and 42 USC § 1983. They are not narrowly tailored to serve any compelling State interest, and they articulate no such interest.

30. The local residency requirement of *Neb Rev Stat* § 18-2515 affecting Kent Bernbeck offends or violates *US Const Amend I*, *US Const Amend XIV*, as enforced

¹⁰ *White v McKinley*, 519 F3d 806, 814 (8th Cir 2008).

¹¹ U S Const Amend I; *Norman v Schuetzle*, 585 F3d 1097 (8th Cir 2009).

¹² It is a well established principle of constitutional law that the right to vote is fundamental, as it is preservative of all other rights. See, e.g., *Yick Wo v Hopkins*, 118 US 356, 370, 6 S Ct 1064, 30 L Ed 220 (1886). *Weber v Shelly*, 347 F3d 1101 (9th Cir 2003).

¹³ *Pickering v Board of Education*, 391 US 563, 571-73 (1968)(retaliation case).

¹⁴ *Sprouse v Babcock*, 870 F2d 450, 452 (8th Cir 1989).

¹⁵ *Meyer v Grant*, 486 US 414 (1988); *Citizens for Tax Reform v Deters*, 518 F3d 375 (6th Cir 2008).

by 42 USC § 1983.¹⁶ It does not withstand strict constitutional scrutiny as it must to be valid.¹⁷

Third Claim – Non-Resident Circulators

31. The provisions of *Neb Rev Stat* § 30-629, prohibiting a non-resident from circulating petitions caused disqualification of the petitions submitted by Jonathan Alley, a non-resident of Nebraska. *Neb Rev Stat* § 32-629's state residency requirement violates *US Const Amend I* permitting Mr. Alley and all Plaintiffs to exercise freedom of speech. It also violates *US Const Amend I*, and *Neb Const Art I* § 19 permitting the Plaintiffs to petition their government, and *US Const Amend XIV*, and specifically the equal protection clause, all as enforced by 42 USC § 1983.¹⁸

Fourth Claim – Pay Per Signature

32. The provisions of *Neb Rev Stat* § 32-630(3)(g) prohibiting Craig Bernbeck from being paid for signatures gathered on petitions on a per signature basis violates the Constitutional rights of Plaintiff Kent Bernbeck who wanted to pay, Craig Bernbeck who wanted to be paid, and all Plaintiffs who wanted their ballot measure placed on the ballot, by chilling their speech rights under *US Const Amend I*, and *Neb Const Art I* § 5, and their rights to petition their government under *US Const Amend I* and *Neb Const Amend Art I* § 19, and the equal protection and due process clauses of *US Const Amend XIV*, all as enforced by 42 USC § 1983.¹⁹

33. Nonetheless, Kent Bernbeck paid Craig Bernbeck \$6.00 for his efforts but was fearful of making more payments and therefore both Ken and Craig Bernbeck suffered chilling effects on their well-established constitutional rights.

¹⁶ See, e.g., *Nader v Blackwell*, 545 F3d 459 (6th Cir 2008). ; *Krislov v Rednour*, 226 F3d 851, 858-66 (7th Cir. 2000); *Nader v Brewer*, 531 F3d 1028 (9th Cir 2008); *Yes on Term Limits v Savage*, 550 F3d 1023 (10th Cir 2008); *Lerman v Bd. of Elections*, 232 F3d 135, 149 (2d Cir 2000); *Boegart v Land*, --- F.Supp.2d ----, 2009 WL 4885228 (WD Mich 12-17-09).

¹⁷ *Republican Party of Minn. v White*, 536 US 765, 774-75 (2002).

¹⁸ See, e.g., *Chandler v City of Arvada*, 292 F3d 1236, 13 A.L.R.6th 861 (10th Cir 2002); *Nader v Blackwell*, 545 F3d 459 (6th Cir 2008) ; *Krislov v Rednour*, 226 F3d 851, 858-66 (7th Cir. 2000); *Nader v Brewer*, 531 F3d 1028 (9th Cir 2008); *Yes on Term Limits v Savage*, 550 F3d 1023 (10th Cir 2008); *Lerman v Bd. of Elections*, 232 F3d 135, 149 (2d Cir 2000); *Boegart v Land*, --- F.Supp.2d ----, 2009 WL 4885228 (WD Mich 12-17-09).

¹⁹ *Meyer v Grant*, 486 US 414 (1988); *Citizens for Tax Reform v Deters*, 518 F3d 375 (6th Cir 2008).

Fifth Claim – Age Restriction

34. The age disqualification of *Neb Rev Stat* §§ 32-110 & 32-630(3)(c), and the refusal to count Joe Kingsley’s signature as a petitioner because it appears upon the disqualified circulator’s petition of Kelsey Bernbeck, all violate the provisions of *US Const Amend I*, *U S Const Amend XIV*, as enforced by 42 *USC* § 1983 and are unconstitutional as written and as applied.²⁰

Requests for Relief

35. On the foregoing basis, Plaintiffs each, and all, request that this Court (1) declare that the provisions of the following statutes of Nebraska law are unconstitutional and void, and permanently enjoin their enforcement:

35.1. *Neb Rev Stat* § 18-2515, unconstitutionally imposing a local residency requirement for chief sponsors of petitions;

35.2. *Neb Rev Stat* § 18-2524, unconstitutionally imposing limitations governing signatures by qualified electors;

35.3. *Neb Rev Stat* § 18-2510, unconstitutionally imposing impermissible limiting definitions to be and function as qualified electors;

35.4. *Neb Rev Stat* § 32-110, unconstitutionally imposing undue definitional restrictions on electors, all of which disenfranchise Kelsey Bernbeck from serving as a petition circulator due to age and therefore invidiously discriminate against her, and chill the speech rights of Kelsey Bernbeck and all Plaintiffs;

35.5. *Neb Rev Stat* § 32-630(3)(g), unconstitutionally banning payment to circulators of petitions per signature;

35.6. *Neb Rev Stat* § 32-629, unconstitutionally imposing a state residency requirement for circulators and invalidating the petition circulated by Jonathan Alley;

²⁰ Cf., analysis in *American Constitutional Law Found., Inc. v Meyer*, 120 F3d 1092, 1096 (10th Cir 1997) (internal quotation marks omitted), *aff’d sub nom. Buckley v American Constitutional Law Found., Inc.*, 525 US 182, 119 S Ct 636, 142 L Ed 2d 599 (1999).

35.7. *Neb Rev Stat* § 32-110, unconstitutionally disqualifying Mr. Kingsley's signature because he executed the petition circulated by Kelsey Bernbeck;

35.8. *Neb Rev Stat* §§ 32-110 & 32-630(3)(c), unconstitutionally disqualifying Kelsey Bernbeck's petition and unconstitutionally disqualifying Joe Kingsley's petition signature;

35.9. Other cited or relevant provisions of Nebraska law unconstitutionally imposing undue burdens on speech and the initiative petition process and participation in them by Plaintiffs in Nebraska;

35.10. Declaring that the signatures on the petitions circulated and filed with defendant Morfeld are valid;

35.11. Ordering that a Stanton municipal election be scheduled and held on the valid questions set forth in the petitions;

35.12. Enjoining enforcement of the unconstitutional laws of Nebraska challenged here; and

35.13. Awarding attorney's fees, litigation expenses and court costs for Plaintiffs and their lawyers.

Notice to Attorney General

36. Notice is given to the Attorney General of Nebraska that Plaintiffs seek a declaratory judgment, declaring the foregoing provisions of Nebraska law unconstitutional and void as set forth in this Complaint. This notice is given pursuant to, and in satisfaction of, any and all provisions of law requiring that the Attorney General be notified of a challenge to the Constitutional validity of any statute or ordinance of the State of Nebraska. A copy of this Complaint is being served on the Attorney General by Certified Mail immediately after it is docketed and filed with this Court.

Jury Demand

37. Plaintiffs respectfully demand trial by jury on all issues so triable.
if any.

January 5, 2010.

Kent Bernbeck, Kelsey Bernbeck,
Craig Bernbeck, Jonathan Alley, and
Joe Kingsley, Plaintiffs

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