

**IN THE SUPREME COURT OF THE STATE OF OREGON**

BRYN HAZELL, FRANCIS NELSON, TOM CIVILETTI,  
DAVID DELK, and GARY DUELL, JOAN HORTON, and KEN LEWIS,  
Plaintiffs-Appellants  
Cross-Respondents,  
Petitioners on Review,

v.

KATE BROWN, Secretary of State of the State of Oregon; and  
JOHN R. KROGER, Attorney General of the State of Oregon,  
Defendants-Respondents, Cross-Respondents,  
Respondents on Review,

and

CENTER TO PROTECT FREE SPEECH, INC., an Oregon nonprofit  
corporation, and FRED VANNATTA,  
Intervenors-Respondents, Cross-Appellants,  
Respondents on Review.

Court of Appeals A137397

Supreme Court S059245 (control) S059246

**MOTION OF PETITIONERS ON REVIEW -- FILE SUPPLEMENTAL  
REPLY BRIEF (SUPREME COURT)**

December 16, 2011

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Civiletti, David Delk, and Gary Duell

All Petitioners on Review (the Hazell Petitioners and the Horton Petitioners) move to file a 1,000-word Supplemental Reply Brief, filed this date, to respond to the arguments of the State in its 2,276-word Supplemental Answering Brief of Respondents on Review, Kate Brown, Secretary of State, and John R. Kroger, Attorney General [hereinafter "State's Supplemental Answering Brief" or "Defendants"], accepted by the Court on December 7, 2011.

All Petitioners renew their Motion to Strike Portions of Answering Brief of Intervenor-Respondents and Brief of Amicus Curiae ACLU Foundation of Oregon, filed December 1, 2011. The Intervenor-Respondents' Response (December 5, 2011) argues that it was sufficient that their brief in the Court of Appeals raised the Article I, Section 21, issue, even though that issue was not mentioned in any Petition for Review or response to any Petition for Review. Our Motion (p. 3) shows this Court has held the opposite of that in *McKee Elec. Co., Inc. v. Carson Oil Co.*, 301 Or 339, 342, 723 P2d 288 (1986). Intervenor-Respondents claim that "Petitioners fail to show any prejudice in allowing this Court to consider the arguments in Intervenor's brief." The Court's rules are to be followed, whether or not there is prejudice to the opposing parties. Further, Petitioners did in fact show prejudice to their ability to prepare their Reply Brief in a timely manner.

No one has responded to our motion to strike the Brief of Amicus Curiae

ACLU Foundation of Oregon, which not only argued Article I, Section 21, but also introduced an entirely new issue not raised by any party at any stage of these cases.

However, should the Court nevertheless allow argument on Intervenors' non-preserved issue (Article I, Section 21), we ask the Court to consider the Horton Plaintiffs Combined Reply and Cross-Answering Brief, pp. 29-50 in particular, as our response on that issue.

While Defendants state the purpose of the State's Supplemental Answering Brief to be responding to the non-preserved issue, that brief contains substantial re-argument against the positions of the Petitioners on other issues and further states positions which contradict those of Defendants stated in their Brief on the Merits of Respondents on Review, Kate Brown, Secretary of State, and John R. Kroger, Attorney General (November 23, 2011). Since Petitioners are the appellants, they should be allowed the final say and be allowed to reply to this additional argument against them by the State.

The Petitioners' joint reply brief was filed on the same day that the Court allowed the State to file the State's Supplemental Answering Brief, without ruling upon the Petitioners' pending Motion to Strike, so Petitioners have had no

opportunity before now to reply to the State's Supplemental Answering Brief.

Dated: December 16, 2011

Respectfully Submitted,

/s/ Linda K. Williams

/s/ Daniel W. Meek

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## CERTIFICATE OF FILING AND SERVICE

I hereby certify that I FILED the foregoing MOTION OF PETITIONERS ON REVIEW -- FILE SUPPLEMENTAL REPLY BRIEF (SUPREME COURT) by Efile this date and further that I SERVED it by Efile on the parties listed in No. S059245 (control). I SERVED it also by emailing a true copy to each counsel below.

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Dated: December 16, 2011

/s/ Daniel W. Meek

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