

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CHRISTY J. HARGESHEIMER and)	Case No.
RICHARD S. HARGESHEIMER,)	
)	
Plaintiffs,)	
)	
vs.)	COMPLAINT FOR INJUNCTIVE
)	AND DECLARATORY RELIEF
JOHN GALE, Secretary of State for the)	
State of Nebraska, NEBRASKANS FOR)	
THE DEATH PENALTY, INC., a)	
Nebraska Corporation and Ballot)	
Question Committee,)	
JUDY GLASBURNER,)	
AIMEE MELTON, and BOB EVNEN,)	
)	
Defendants.)	

COME NOW the Plaintiffs, and for their cause of action against the Defendants, allege:

PARTIES

1. Plaintiffs, Dr. Christy J. Hargesheimer and Richard S. Hargesheimer, are residents of the State of Nebraska, registered voters, and citizen supporters of LB 268 passed in 2015. They are opposed to the current Referendum effort attempting to suspend and overturn that law.
2. Defendant John Gale is the duly elected Secretary of State of Nebraska. He is sued only in his official capacity, and not personally.
3. Defendant Nebraskans For the Death Penalty, Inc., is a Nebraska Corporation. Under the same name, Nebraskans For the Death Penalty, Inc., it has registered as a Ballot Question Committee in favor of the Referendum on LB 268. It is listed on a document filed with the Referendum draft, as a sponsor of the Referendum petition.
4. Defendants Judy Glasburner, Aimee Melton, and Bob Evnen are each identified as "Board member" of Nebraskans For the Death Penalty, Inc., and listed as alleged

sponsors of the Referendum petition on a document filed with the Secretary of State on or about June 1, 2015, along with a draft of a Referendum aimed at LB 268.

STANDING OF PLAINTIFFS, JURISDICTION AND VENUE

5. The Plaintiffs, as residents of this state, are authorized and have standing to bring this action pursuant to Neb. Rev. Stat. §32-1412(2), because they allege and expect to prove that the referendum petition on LB 268 is not legally sufficient under Neb. Rev. Stat. §32-1405(1).
6. This Court has jurisdiction over this action and the requested relief sought under Neb. Rev. Stat. §32-1412(2) and (4) and Neb. Rev. Stat. §25-21,149.
7. Venue in this Court is proper under Neb. Rev. Stat. § 32-1412(2).

PLAINTIFFS' CLAIM:

8. A Referendum petition was filed on or about June 1, 2015, seeking to suspend and ultimately repeal by election, the laws LB 268 enacted in the First Legislative Session (2015) of the 104th Nebraska Legislature. The Legislature enacted LB 268, overriding a veto by Nebraska Governor Pete Ricketts on May 27, 2015. That law became effective August 30, 2015, repealed the death penalty and many related provisions of Nebraska law which refer to and regulate imposition and execution of the death penalty for capital crimes in this state. The Referendum seeks to refer to the voters of the State at the November 8, 2016 general election, the question of whether or not the death penalty should be reinstated as law, through invalidating LB 268, thus “repealing the repeal.”
9. On or about August 26, 2015, persons supporting the referendum filed an unknown number of signatures on Referendum petitions, and claimed they had accumulated more than 166,000 such signatures.

10. As part of his duties, the Secretary of State is in the process of seeking from the various counties of Nebraska, verification or disqualification of the individual signatures, in order to determine whether or not sufficient numbers are valid signatures of registered voters to require that the Secretary of State prepare the issue for the general election ballot for November 8, 2016.
11. When the Defendants or persons operating with or for them filed the proposed Referendum petition on June 1, 2015 with the Secretary of State, they also filed a document captioned as follows:

“Referendum Petition Regarding LB 268 (2015)

Sworn List of Sponsors.”

A list of the Defendants herein, other than Secretary Gale, followed with their street addresses. The list did not contain the name or street address of Nebraska Governor Pete Ricketts or anyone else except the Defendants Glasburner, Melton, and Bob Evnen and Nebraskans For the Death Penalty, Inc. On information and belief, Governor Ricketts is in actuality the primary initiating force behind and one of the sponsors of this Referendum petition. The omission of his name on the filed list is a critical, and by law fatal omission, because Nebraska law pertaining to such a referendum at Neb. Rev. Stat. §32-1405(1) requires as follows:

32-1405. Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.

(1) Prior to obtaining any signatures on an initiative or referendum petition, a statement of the object of the petition and the text of the measure shall be filed with the Secretary of State together with a sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition. [Emphasis added.]

12. That statute is among several statutory provisions intended to prevent fraud in the petition process, and in particular to require full disclosure of “every” true principal and real leader behind the Referendum. That statutory requirement is not directory but mandatory, and the leaders of this Referendum petition effort violated it intentionally and materially. Knowledge by potential petition signers about the true and actual sponsors of a Referendum drive can be and is a material influence on their decision whether to sign or not sign a petition. Some Nebraska registered voters might be influenced favorably toward signing by learning that their state Governor is the real sponsor, early instigator, organizer, decision maker, selector of the manager and other workers for the drive, financier, and, in effect, “boss” of a petition drive. However, other registered voters may be put off by such a disclosure of the primary sponsor as the very Governor whose veto was just overridden by the duly elected Legislature, and they may be influenced in the opposite way, that is, toward declining to sign. Our Supreme Court has noted, for example, in a similar case where a completed and sworn statement of sponsors with their addresses was not filed, that if a sponsor such as a large casino is behind a proposed gambling expansion petition, that may influence potential signers, and they are entitled to know who is really making decisions and running the show.

13. Here, on information and belief, Plaintiffs allege that Governor Pete Ricketts is an undisclosed sponsor. In regard to that allegation, the Defendants and Governor Ricketts possess detailed factual information about his sponsoring work, status, efforts, and potential concealment thereof, which until discovery is available and completed, will be solely in their possession and is not now available to Plaintiffs. Further, Plaintiffs allege that their information and belief that Governor Ricketts is a sponsor is in part based on

facts they have become aware of including: (1) that Governor Ricketts began as early as May 22, 23, 24, and/or 25, 2015, the Memorial Day weekend, to warn persons involved with LB 268, that a Referendum would ensue if his veto was overridden; (2) further that Jessica Moenning, Chris Peterson, and others of the Governor's close allies on his request, order or encouragement took on various campaign management, public relations, organizing and publicity roles, beginning on or before the June 1, 2015 filing date of the Referendum and list of sponsors; (3) further, that the Governor campaigned using his title as Governor to raise money for the Referendum in letters to Nebraskans during the summer of 2015; (4) further, that Governor Ricketts and his father, at some time shortly after the referendum was filed, became by far the largest financiers and donors to the Referendum campaign and the Governor's extraordinary financial backing was almost certainly promised even earlier, the exact date to be determined in discovery; (5) further, that the Governor and his representatives and agents solicited other political, social or business allies also to contribute money; (6) further, that the Governor personally and/or through his close advisors and agents managed, organized and controlled the referendum campaign; (7) further, that alleged sponsor Aimee Melton indicated publicly that she was recruited by someone "close to the Governor" to put her name in as a leader or sponsor. Discovery will refine, detail, and supplement these initial factual bases of Plaintiffs' information and belief.

14. The failure of Defendants, other than Secretary Gale, to disclose by a sworn statement that Governor Ricketts was a sponsor, on information and belief, to some degree masked his material violation of his duty as Governor to "execute" and enforce all Nebraska laws, rather than sponsor and lead a Referendum aimed at repealing one of them. The

Governor's Article IV, §6 constitutional duty, as the official holder of the "Supreme Executive Power" of the Executive Branch of Nebraska government, was to "take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered." No exceptions are mentioned for laws with which a Governor disagrees. LB 268 became law according to the Constitution when the Governor's veto was overridden on May 27, 2015, with an effective date of August 30, 2015.

15. Plaintiffs allege that the Governor had his lawful opportunity to defeat the will of the substantial majority of the Legislators who passed this legislation, by his Constitutional power of veto, as granted him in Neb. Const. Article IV, §15. He properly exercised that gubernatorial veto power against LB 268. But this power was checked when the Legislature voted to override his veto by a three/fifths majority on May 27, 2015. The bill then became law over his veto, as provided in that same Constitutional provision Article IV, §15:

Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor. If he approves he shall sign it, and thereupon it shall become a law, but if he does not approve or reduces any item or items of appropriations, he shall return it with his objections to the Legislature, which shall enter the objections at large upon its journal, and proceed to reconsider the bill with the objections as a whole, or proceed to reconsider individually the item or items disapproved or reduced. If then three-fifths of the members elected agree to pass the bill with objections it shall become a law. . . .
[Emphasis added.]

16. The Governor's sponsorship of the Referendum would show formally that rather than prepare to support, enforce and execute this duly passed law, he has instead aligned himself, his political allies and persons directly controlled and organized by him and sponsored this Referendum. He has with his personal and family fortune largely financed

the attempt to do away with this law he disfavors. At least as of July 2015, the Governor was sending Referendum fund-raising solicitation letters with his title as Governor of Nebraska prominently displayed. If the filed Referendum is legally insufficient, as Plaintiffs allege, then the Governor should do his duty to execute and enforce LB 268.

17. The Governor is of course a citizen, albeit one who has attained high office, and he is entitled to rights under the Nebraska Constitution Article III, §3 Right of Referendum, which Plaintiffs respect. But as Governor he now also has a Constitutional limitation on all his actions: a concurrent duty and obligation to perform with his “Supreme Executive Power” in the manner and direction which Nebraska Constitution Article IV, section 6 of the Constitution prescribes. His actual sponsorship of this Referendum is contrary to those duties. On information and belief, that is one reason he has not been disclosed by himself or by Defendants as a sponsor on a sworn statement that must list every alleged sponsor.

18. The statutory requirements in Neb. Rev. Stat. §1405(1) are and for decades have been deemed in holdings of the Nebraska Supreme Court decisions to be mandatory, and not just optional, “directory” or to be enforced casually or by “substantial compliance.” Omitting the name and address of a sponsor, indeed a key sponsor, from the list means the Referendum petition is not a valid and sufficient one, and the Referendum in this case should now be invalidated and ended without further expense and efforts by all involved, including local and state election officials, the Secretary of State, the Attorney General, and the Ballot Question committees pro and con. The reported fact that the Governor and his political allies, and some other citizens, have spent hundreds of thousands of dollars of their vast money resources on this effort is irrelevant and unfortunate. But strict

compliance with 32-1405(1) is not excused by the size of their investments. Nor does the “technical” nature of the omission of Governor Pete Ricketts from the purported sworn statement of sponsors, provide any ground to relax the statute’s demand for completeness of the sworn list of sponsors.

19. Other than this suit for declaratory and injunctive relief, Plaintiffs have no legal or equitable remedy. They are entitled to a temporary injunction, and after trial or judgment, a permanent injunction against the Referendum attack on LB 268, the repeal of the Nebraska death penalty. As a direct result of the Referendum leaders’ failure to comply with the strict requirements of §32-1405(1), their Referendum must be declared insufficient and invalid.
20. Upon information and belief, unless restrained by this Court’s injunction, the Secretary of State will complete the verification and ballot title and election preparation processes, and if there are sufficient signatures of registered voters, he will then certify the Defendants’ and Governor Ricketts’ Referendum for the November 8, 2016 ballot.

PRAYER FOR RELIEF

The Plaintiffs request the following relief and judgment:

1. A judgment in favor of Plaintiffs and against the Defendants, and under the authority of Neb. Rev. Stat. §§25-1062 to 25-1080 and Neb.Rev. Stat. §25-21,156, entry of a temporary and after trial a permanent injunction enjoining the Defendant Secretary of State, John Gale, from placing the proposed Referendum on the ballot for the general election of November 8, 2016.
2. A declaratory judgment in favor of the Plaintiffs pursuant to the Nebraska Declaratory Judgments Act, §§25-21,149 to 25-21,164, finding and determining that:

- a. The leaders and sponsors of the Referendum petition effort against LB 268 failed to file before circulating petitions and gathering any signatures, the required sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition, as required by the mandatory language of §32-1405(1).
 - b. The omission by the Referendum leaders and sponsors to list the name and address of one or more principal sponsors, and specifically Governor Pete Ricketts, who the Court finds was and is a sponsor, is a material and fatal omission under the mandatory requirements of that statute, and makes the Referendum on LB 268 insufficient and invalid as a matter of law.
3. An order and judgment that Plaintiffs recover the costs of this action.
 4. Such other and further relief as the Court deems just in the premises.

Dated: September 17th, 2015.

Dr. Christy J. Hargesheimer and
Richard S. Hargesheimer,
Plaintiffs, by and through their attorneys:



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