

**No. 23-35452**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

Marc Thielman, Ben Edtl, Janice Dysinger, Don Powers, Sandra Nelson, Chuck Wiese,  
Loretta A. Johnson, Terry Noonkester, Steve Corderio, Jeanine Wenning, Diane Rich,  
Pam Lewis, Senator Dennis Linthicum

*Plaintiffs-Appellants*

v.

LaVonne Griffin-Valade, Clackamas County, Washington County, Multnomah  
County, Lane County, Linn County, Marion County, Jackson County, Deschutes  
County, Yamhill County, Douglas County, Klamath County, Coos County

*Respondents-Appellees.*

On Appeal from the United States District Court  
for the District of Oregon  
No. 3:22-cv-1516-SB  
Hon. Stacie F. Beckerman

---

**APPELLANTS' REPLY BRIEF**

---

Stephen J. Joncus  
JONCUS LAW P.C.  
13203 SE 172<sup>nd</sup> Ave Ste 166 #344  
Happy Valley, Oregon 97086  
971-236-1200  
steve@joncus.net  
*Attorney for Appellants*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTRODUCTION.....	1
ARGUMENT .....	3
A. Justice Thomas’ statement of law is correct .....	3
B. Plaintiffs have shown a particularized injury .....	4
1. A particularized injury boils down to the question of whether the injury is concrete .....	4
2. The Secretary’s erroneous analysis of Plaintiffs’ concrete injury .....	8
3. The Secretary’s other authorities are not on point .....	11
CONCLUSION .....	13

RETRIEVED FROM DEMOCRACYPOCKET.COM

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Pages</b>
<i>Baker v. USD 229 Blue Valley</i> , 979 F.3d 866 (10th Cir. 2020) .....	12, 13
<i>Brown v. Board of Educ.</i> , 347 U.S. 483 (1954) .....	12
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008) .....	1, 4, 7, 11
<i>FEC v. Akins</i> , 524 U.S. 11 (1998) .....	5, 6
<i>In re Anastaplo</i> , 366 U.S. 82 (1961) .....	8
<i>Meland v. Weber</i> , 2 F.4 <sup>th</sup> 838 (9th Cir. 2021) .....	9
<i>Novak v. United States</i> , 795 F.3d 1012 (9th Cir. 2015) .....	5, 6
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006) .....	4, 6, 7, 11
<i>Republican Party v. Degraffenreid</i> , 141 S. Ct. 732 (2021) .....	1, 3, 7, 8, 11
<i>Spokeo Inc. v. Robins</i> , 578 U.S. 330 (2018) .....	6
<b>Other Authorities</b>	
THE DECLARATION OF INDEPENDENCE, para. 2 (U.S. 1776) .....	7, 8

## INTRODUCTION

There is only one characteristic of elections that differentiates a free and fair election from the kind of elections held in Iran, China, and Venezuela. Free and fair elections have processes that give citizens confidence in the fairness of the election. Such processes do not exist in Oregon, hence this lawsuit.

“Elections enable self-governance *only when* they include processes that ‘give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’”<sup>1</sup> This accurate statement of law—its correctness is uncontested by the Secretary<sup>2</sup>—and it governs this case. This is not a case claiming fraud, yet the Secretary attempts to change the subject and treat it like one.

Plaintiffs’ legal challenge is unique because the conduct of elections in Oregon have devolved to a point where there are no processes that give citizens confidence in the fairness of elections. In many historical cases, Courts defend a state’s election laws as justified by their interest in preventing fraud.<sup>3</sup> Here, the situation is flipped on its head. The processes in Oregon, by their very nature, are

---

<sup>1</sup> *Republican Party v. Degraffenreid*, 141 S. Ct. 732, 734 (2021) (J. Thomas dissenting in denial of certiorari) (quoting *Democratic National Committee v. Wisconsin State Legislature*, 141 S.Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (emphasis added).

<sup>2</sup> The Oregon Secretary of State filed a substantive response that is joined by the Appellee Counties. Appellees will collectively be referred to as the “Secretary.”

<sup>3</sup> *E.g.*, *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008) (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters”).

designed to enable fraud; and the purported protections against fraud are shams.<sup>4</sup> To cite a prominent example, the only proof identification needed to register to vote in Oregon is four digits of a social security number.<sup>5</sup> The statute makes a mockery of itself by providing that the four digits must be from a *valid* social security number—fooling no one. The only possible reason for such a statute is to enable criminals to create phantom voters to cast ballots. The Secretary makes no attempt to explain why this statute, or any other confidence destroying process in Oregon’s election system, should actually create voter confidence. And there are no possible explanations.

In this situation, what legal process can a free people utilize to take control of their elections again? The citizens cannot prove fraud because the entire process is hidden behind layers of security and in black boxes without any chain of custody for their precious votes. The Secretary’s answer is that Plaintiffs can do nothing and have no standing to sue the Secretary for redress. According to the Secretary, there is no way out of the boxed canyon. The Secretary cannot be correct, because this is the United States of America, a country founded on the principle of freedom and individual liberty. Oregon and its election system belong to the people. The people are entitled to an election system that they can trust, so that they can be free.

---

<sup>4</sup> Opening Br. pp. 15-36.

<sup>5</sup> Addendum 1.

## ARGUMENT

### A. Justice Thomas' statement of law is correct.

In a dissenting opinion, Justice Thomas wrote, "Elections enable self-governance *only when* they include processes that 'give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.'"<sup>6</sup> This is a profound articulation of the law. It does not matter that this statement of law was written in a dissenting opinion; who could disagree? Justice Thomas' statement recognizes that government officials are servants of the people, and it is part of their duty to the people to run fair elections that are verifiable.

Justice Thomas' statement captures the crucial characteristic of fair elections held by free people that distinguish them from elections held for show in countries like Iran, China, and Venezuela. Elections held by free people have processes that give the people confidence in the fairness of the election. The Secretary does not dispute that Justice Thomas' statement in *Degraffenreid* is a correct statement of the law, but the Secretary's Answering Brief fails to make any effort to apply it.

Lack of confidence is a substantive harm with real-world consequences as recognized by the United States Supreme Court.

Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of

---

<sup>6</sup> *Degraffenreid*, 141 S. Ct. at 734 (emphasis added).

our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.<sup>7</sup>

While maintaining public confidence is closely related to the interest in preventing voter fraud, “*public confidence in the integrity of the electoral process has independent significance*, because it encourages citizen participation in the democratic process.”<sup>8</sup>

The Supreme Court has told us that confidence in the integrity of elections is essential to the functioning of our democracy—that it has an independent significance—and is distinct from preventing voter fraud. The Secretary fails to address these issues. The Secretary fails to recognize why Plaintiffs’ lack of confidence in Oregon’s election system gives them standing to seek redress in the federal courts.

**B. Plaintiffs have shown a particularized injury.**

1. *A particularized injury boils down to the question of whether the injury is concrete.*

The Secretary’s first reason for upholding the District Court is their contention that Plaintiffs do not have a personalized injury.<sup>9</sup> The Secretary characterizes Plaintiffs’ allegations as generalized grievances about government

---

<sup>7</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

<sup>8</sup> *Crawford*, 553 U.S. at 196 (emphasis added).

<sup>9</sup> Answering Br. pp. 9-11.

which do not affect Plaintiffs in a personal and individual way.<sup>10</sup> But the Secretary fails to respond Plaintiffs' argument in their Opening Brief, citing *Novak v. United States*,<sup>11</sup> and explaining that “particularized” does not necessarily mean that the harm cannot be widespread.<sup>12</sup>

In *Novak*, a small group of Hawaiians sued the United States challenging the constitutionality of portions of the Jones Act under the Commerce Clause.<sup>13</sup> Addressing the “injury in fact” prong of standing, the Ninth Circuit determined that the “district court mistakenly focused only on the size of the population allegedly harmed.”<sup>14</sup> The Ninth Circuit’s analysis of the “injury in fact” prong relied heavily on the Supreme Court’s opinion in *FEC v. Akins*.<sup>15</sup> *Akins* explained that the bar against generalized grievances *was limited* to harms that were also “abstract and indefinite” in nature.<sup>16</sup> “[W]here a harm is concrete, though widely shared, this Court has found ‘injury in fact.’”<sup>17</sup>

Therefore, the first reason cited by the Secretary for upholding the District Court’s opinion<sup>18</sup> boils down to the second issue raised by the Secretary—whether

---

<sup>10</sup> Answering Br. p. 9.

<sup>11</sup> 795 F.3d 1012 (9th Cir. 2015).

<sup>12</sup> Opening Br. pp. 36-37.

<sup>13</sup> *Novak*, 795 F.3d at 1016-17.

<sup>14</sup> *Id.* at 1018.

<sup>15</sup> *Id.* (citing *FEC v. Akins*, 524 U.S. 11 (1998)).

<sup>16</sup> *Akins*, 524 U.S. at 23.

<sup>17</sup> *Id.* at 24.

<sup>18</sup> Answering Br. pp. 8-11.



the injury is concrete.<sup>19</sup> Merely arguing that the harm is widespread or generalized does not win the day. Plaintiffs have standing when their injury is concrete, whether or not the injury is experienced by many people.<sup>20</sup> The Secretary has no answer for *Novak*, failing to even cite *Novak* or *Akins* in its Answering Brief.

Consequently, the Secretary's point that Plaintiffs' concerns "are shared with other voters"<sup>21</sup> is irrelevant. The population of people harmed is not the issue.<sup>22</sup> The question is whether the harm is concrete.<sup>23</sup> By concrete, the Supreme Court means that the injury must actually exist.<sup>24</sup> A concrete injury means "real and not abstract."<sup>25</sup>

Plaintiffs pleaded extraordinary facts demonstrating that Oregon's election system does not have processes that give citizens confidence in their election system.<sup>26</sup> The injury caused by this lack of confidence is real and not abstract.

The United States Supreme Court has recognized that lack of confidence in elections causes real-world injuries.<sup>27</sup> Public confidence in the integrity of the electoral process has a significance that is independent of the interest in preventing

---

<sup>19</sup> *Novak*, 795 F.3d at 1016-17; *Akins*, 524 U.S. at 24.

<sup>20</sup> *Akins*, 524 U.S. at 24.

<sup>21</sup> Answering Br. p. 10.

<sup>22</sup> *Novak*, 795 F.3d at 1018.

<sup>23</sup> *Akins*, 524 U.S. at 24.

<sup>24</sup> *Spokeo Inc. v. Robins*, 578 U.S. 330, 340 (2018).

<sup>25</sup> *Id.*

<sup>26</sup> *E.g.*, Opening Br. pp. 17-36.

<sup>27</sup> *Purcell*, 549 U.S. at 4.

voter fraud because public confidence in elections encourages voter participation in the democratic process.<sup>28</sup> Confidence in the fairness of elections, the Supreme Court tells us, is of the utmost importance.<sup>29</sup>

Why does the Supreme Court view public confidence in the integrity of elections with such importance? Because public confidence in the integrity of elections is necessary for self-governance.<sup>30</sup> The absence of processes that create public confidence in the integrity of elections means that Plaintiffs have lost their inalienable right to govern themselves.<sup>31</sup> In other words, Plaintiffs are no longer free.<sup>32</sup>

It is hard to imagine a more personal and concrete injury than the loss of one's freedom—for America was born in a bloody revolution under the mottos

---

<sup>28</sup> *Crawford*, 553 U.S. at 196.

<sup>29</sup> *E.g.*, *Purcell*, 549 U.S. at 4 (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.”); *Degraffenreid*, 141 S. Ct. at 734 (2021) (“Elections enable self-governance **only when** they include processes that ‘give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’”) (emphasis added) (J. Thomas dissenting in denial of certiorari).

<sup>30</sup> *Degraffenreid*, 141 S. Ct. at 734 (“Elections enable self-governance **only when** they include processes that ‘give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’”) (emphasis added).

<sup>31</sup> *See id.*

<sup>32</sup> *See* THE DECLARATION OF INDEPENDENCE para. 2 (1776) (“Governments are instituted among Men, deriving their just powers from the consent of the governed”).

“live free or die”<sup>33</sup> and “give me liberty or give me death”<sup>34</sup> lead by men who pledged their lives for the cause of freedom.<sup>35</sup> The injury to Plaintiffs is both personal and concrete.

2. *The Secretary’s erroneous analysis of Plaintiffs’ concrete injury.*

The second reason for upholding the District Court’s opinion, according to the Secretary, is her argument that Plaintiffs’ injuries are not concrete.<sup>36</sup> But, the Secretary mischaracterizes Plaintiffs’ allegations. The Secretary argues that “this court would need to imagine a series of speculative events” leading to fraud.<sup>37</sup> That is not so.

The lack of processes that give Plaintiffs confidence in the fairness of elections is, in and of itself, the cause of the injury. When confidence-creating processes do not exist, the people are no longer governing themselves.<sup>38</sup> When a

---

<sup>33</sup> State Emblem, New Hampshire Almanac, <https://www.nh.gov/almanac/emblem.htm> (“The words “Live Free or Die,” written by General John Stark, July 31, 1809, shall be the official motto of the state.”) (viewed Sept. 26, 2023).

<sup>34</sup> See *In re Anastaplo*, 366 U.S. 82, 113 (1961).

<sup>35</sup> See THE DECLARATION OF INDEPENDENCE (U.S. 1776) (“And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”).

<sup>36</sup> Answering Br. pp. 11-17.

<sup>37</sup> Answering Br. p. 11.

<sup>38</sup> See *Degraffenreid*, 141 S. Ct. at 734 (“Elections enable self-governance **only when** they include processes that ‘give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’”) (emphasis added).

people do not govern themselves, they are not free.<sup>39</sup> Without processes that give Plaintiffs confidence in the election, Plaintiffs have lost their freedom. Plaintiffs are injured by their loss of freedom. As stated above, it is hard to imagine a more concrete injury than the loss of one's freedom.

The Secretary then argues that Plaintiffs' claims are not concrete because they rely on a vote-dilution theory.<sup>40</sup> Certainly vote-dilution is a concern of Plaintiffs, but Plaintiffs' harm is caused by the lack of processes that would detect or prevent vote dilution. Indeed, the unmistakable intention of Oregon's election processes is to enable vote dilution and prevent its detection.<sup>41</sup> But the harm claimed by Plaintiffs is grounded in the lack of processes that create confidence, not the likelihood of fraud. The harm is Plaintiffs' loss of freedom, not dilution of votes due to fraud.

The Secretary next argues that Oregon has ample safeguards to protect against fraud.<sup>42</sup> Such argument is out-of-bounds in the context of an appeal from a motion to dismiss. Plaintiffs' allegations are to be taken as true and the pleadings are to be construed in the light most favorable to Plaintiffs.<sup>43</sup> In sum, Plaintiffs

---

<sup>39</sup> See THE DECLARATION OF INDEPENDENCE para. 2 (1776) ("Governments are instituted among Men, deriving their just powers from the consent of the governed").

<sup>40</sup> Answering Br. p. 12.

<sup>41</sup> Opening Br. pp. 17-36.

<sup>42</sup> Answering Br. p. 12.

<sup>43</sup> *Meland v. Weber*, 2 F.4<sup>th</sup> 838, 843 (9th Cir. 2021).

have alleged that Oregon’s protections against fraud are each a sham.<sup>44</sup> The Secretary is not permitted to contest those allegations at the motion-to-dismiss stage of the litigation. Plaintiffs look forward to the opportunity to obtain discovery and to disprove the Secretary’s assertions that Oregon has ample safeguards against fraud. But this Court must first reverse and remand this case to the District Court.

The Secretary mischaracterizes Plaintiffs’ claims as fraud claims, thereby creating a strawman to attack. For instance, the Secretary cites Plaintiffs’ criticism of voter registration.<sup>45</sup> But these allegations present objective evidence of Oregon’s processes that cause Plaintiffs’ lack of confidence. Oregon has confidence destroying processes, not processes that engender trust in the fairness of elections. Because Plaintiffs are not attempting to allege actual fraud, the Secretary’s criticisms and case cites concerning “speculative theories of fraud-based vote dilution”<sup>46</sup> are completely off the mark.

Plaintiffs’ allegations are simply that Oregon’s election system lacks processes that give citizens confidence in the fairness of elections. Plaintiffs’ allegations are specific, detailed, and comprehensive. Taken as true, as the Court

---

<sup>44</sup> Opening Br. pp. 15-36.

<sup>45</sup> Answering Br. pp. 13-15.

<sup>46</sup> Answering Br. p. 15.

must, Plaintiffs’ allegations demonstrate objectively that no one could have confidence in the fairness of Oregon’s election system.

The Secretary argues that Plaintiffs’ injury is merely emotional which is not sufficient to establish standing.<sup>47</sup> Plaintiffs are not alleging an emotional injury. Plaintiffs allege Oregon’s election system lacks processes that give citizens confidence in the fairness of elections. “[P]ublic confidence in the integrity of the electoral process has independent significance.”<sup>48</sup> Confidence in the fairness of elections, the Supreme Court tells us, is of the utmost importance.<sup>49</sup> Only one characteristic differentiates between free and fair elections from elections in Iran, China, and Venezuela: processes that give citizens confidence in the fairness of the election. Without confidence-generating processes, Plaintiffs have lost their freedom. Plaintiffs’ loss of freedom is a concrete injury, not a mere emotional injury.

3. *The Secretary’s other authorities are not on point.*

The Secretary criticizes Plaintiffs’ reliance on *Purcell* and *Degraffenreid* because the statements were dicta and/or involved entirely different issues.

---

<sup>47</sup> Answering Br. pp. 15-17.

<sup>48</sup> *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008).

<sup>49</sup> *E.g.*, *Purcell*, 549 U.S. at 4 (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.”); *Degraffenreid*, 141 S. Ct. at 734 (2021) (“Elections enable self-governance **only when** they include processes that ‘give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’”) (emphasis added) (J. Thomas dissenting in denial of certiorari).

However, the Secretary does not contest that the quoted statements from *Purcell* and *Degraffenreid* are correct statements of law. Plaintiffs rely on *Purcell* and *Degraffenreid* not because of the factual circumstances of those cases, but because of the statements of law. The Secretary's criticisms are without merit.

The Secretary's criticism of Plaintiffs' citation to *Brown*<sup>50</sup> is similarly without merit. In *Brown*, even though the tangible factors (such physical facilities) may be equal, "to separate [blacks] from others of similar age and qualifications solely because of their race **generates a feeling** of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."<sup>51</sup> The injury in *Brown* was a lack of equality.<sup>52</sup> The evidence of the injury was the "feeling of inferiority."<sup>53</sup> Here the injury to Plaintiffs is their loss of freedom. The evidence of that injury is Plaintiffs' lack of confidence in Oregon's election system and the lack of processes that give citizens confidence in the fairness of the election system.

The Secretary cites a Tenth Circuit case<sup>54</sup> for the proposition that lack of confidence about government processes was not a ground for standing. *Baker* concerned a plaintiff's lack of confidence in the validity of a regulation. Unlike

---

<sup>50</sup> *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

<sup>51</sup> *Id.* at 494 (emphasis added).

<sup>52</sup> *Id.* at 495 ("Separate educational facilities are inherently unequal.").

<sup>53</sup> *Id.* at 494.

<sup>54</sup> *Baker v. USD 229 Blue Valley*, 979 F.3d 866 (10th Cir. 2020).

this case, the injury in *Baker* was not the loss of plaintiff's freedom.<sup>55</sup> *Baker* is inapposite.

The Secretary complains that Plaintiffs have not explained how the voter's crisis of confidence is a cognizable injury.<sup>56</sup> Plaintiffs certainly did explain it. Plaintiffs' crisis of confidence means they are harmed by the loss of self-governance, which is the very same thing as saying that they have lost their freedom.<sup>57</sup>

### CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the case remanded for consideration of Plaintiffs' claims on their merits.

Date: September 27, 2023

JONCUS LAW P.C.

/s/ Stephen J. Joncus

Stephen J. Joncus

*Attorney for Appellants*

---

<sup>55</sup> *Id.* at 874.

<sup>56</sup> Answering Br. pp. 18-19.

<sup>57</sup> Opening Br. p. 39.



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s) 23-35452

I am the attorney or self-represented party.

This brief contains 2,917 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

it is a joint brief submitted by separately represented parties.

a party or parties are filing a single brief in response to multiple briefs.

a party or parties are filing a single brief in response to a longer joint brief.

complies with the length limit designated by court order dated \_\_\_\_\_.

is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Stephen Joncus Date September 27, 2023  
(use "s/[typed name]" to sign electronically-filed documents)