No.__

In the Supreme Court of the United States

BEVERLY CLARNO, Oregon Secretary of State,

Applicant,

v.

PEOPLE NOT POLITICIANS OREGON; COMMON CAUSE; LEAGUE OF WOMEN VOTERS OF OREGON; NAACP OF EUGENE/SPRINGFIELD; INDEPENDENT PARTY OF OREGON; C. NORMAN TURRILL,

Respondents.

On Application to the Honorable Elena Kagan
to Stay Order of the United States District Court
for the District of Oregon

APPLICATION FOR STAY

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July 29, 2020

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APPLICATION FOR A STAY PENDING APPEAL

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

INTRODUCTION

This Court should stay, pending disposition on the appeal in the Ninth Circuit and any timely filed petition for certiorari, the preliminary injunction in this case. That injunction effectively rewrites the provisions governing how the Oregon Constitution can be amended through an initiative. If not stayed, the preliminary injunction threatens to enshrine permanently in the state constitution an amendment that does not meet the constitutional requirements for appearing on the ballot. A stay is warranted immediately but in all events no later than **August 28, 2020**, which is the last day under Oregon law that a candidate can withdraw from the ballot and just days before when the list of measures that will appear on the ballot will be finalized.

Oregon allows individuals to propose constitutional amendments by initiative petition for approval or rejection by the voters. Before a proposed amendment can be placed on the ballot, the state constitution requires its proponents to submit signatures from registered voters equal to eight percent of the total number of votes cast in the last gubernatorial election—here, 149,360 signatures—no later than four months before the election, which for the November 2020 election was July 2, 2020.

Plaintiffs support a proposed constitutional amendment—Initiative Petition (IP) 57, which overhauls the process for drawing congressional and

legislative maps in Oregon—but by their count they obtained only about 64,000 unverified signatures by the July 2nd deadline. They sued on June 30th, arguing that the Oregon Constitution's signature and deadline requirements violate the First Amendment as applied to IP 57 because the requirements made it too hard for them to get IP 57 on the ballot during the COVID-19 pandemic. The district court granted a preliminary injunction requiring the state[1] to place IP 57 on the November 2020 ballot if plaintiffs submit 58,789 valid signatures by August 17th. A motions panel of Ninth Circuit denied the state's motion for a stay without explanation, over a dissent from Judge Callahan.

This Court should stay the preliminary injunction. The Oregon Constitution's signature and deadline requirements do not implicate, much less violate, the First Amendment as applied to IP 57. The preliminary injunction encroaches on the state's sovereign authority to determine for itself the process by which its own constitution can be amended. Changing the rules for initiatives by judicial fiat, this late in the election cycle and only for one privileged measure, is legally unsupportable and fundamentally unfair.

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[1] Oregon's Secretary of State is the nominal applicant (and defendant in the lower courts) because she is responsible for certain tasks associated with placing a statewide measure on the ballot. Because the state is the real party in interest on the constitutional question, *cf.* 28 U.S.C. § 2403(b) (permitting "the State," through its Attorney General, to intervene in defense of the constitutionality of a state law), this application refers to "the state."

OPINIONS BELOW

The district court's order of July 13, 2020, granting a preliminary injunction is attached as Appendix A. The Ninth Circuit's order of July 23, 2020, denying a stay pending appeal is attached as Appendix B.

JURISDICTION

This Court has jurisdiction over this application under 28 U.S.C. §§ 1254(1), 1651(a), 2101(f), and may issue a stay under this Court's Rule 23. The state sought and was denied stays of the preliminary injunction by both the district court and from the Ninth Circuit.

STATEMENT OF THE CASE

1. Oregon is among the minority of states that "offer voters an opportunity to put initiatives to direct vote." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2524 (2019) (Kagan, J., dissenting). The Oregon Constitution allows individuals to propose constitutional amendments to be submitted to a popular vote. Or. Const. art. IV, § 1(2)(c). The constitution imposes two requirements to qualify a constitutional amendment for the ballot that are relevant here.

First, it imposes a signature requirement: The proponents must file a petition with the Secretary of State "signed by a number of qualified voters equal to eight percent of the number of votes cast for all candidates for Governor" at the last regular gubernatorial election. *Id.*

Second, it imposes a deadline requirement: The petition with those signatures must be filed "not less than four months before the election at which

the proposed law or amendment to the Constitution is to be voted upon." Or. Const. art. IV, § 1(2)(e).

For the 2020 general election, those requirements mean that a proposed constitutional amendment required filing a petition with 149,360 valid signatures by July 2, 2020. *See* State Initiative and Referendum Manual at 5 (Mar. 2020), *available at* https://sos.oregon.gov/elections/Documents/stateIR.pdf; *see also* Or. Admin. R. 165-014-0005 (adopting the provisions of the Manual as administrative rules).

2. Initiative Petition (IP) 57 is a proposed constitutional amendment that would create a multipartisan redistricting commission in Oregon. App. A, at 2. On July 2nd—the constitutional deadline for collecting 149,360 valid signatures—IP 57's chief petitioners submitted only 64,172 unverified signatures. *Id.* at 5.

3. Plaintiffs filed this lawsuit and requested a preliminary injunction extending the deadline for submitting signatures for ballot initiatives and reducing the number of signatures required. *Id.* at 1. Plaintiffs argued that although the state constitution's signature and deadline requirements ordinarily would pass muster under the First Amendment, they were unconstitutional as applied to IP 57 because of the circumstances of the COVID-19 pandemic. *Id.*

The district court granted the preliminary injunction. *Id.* at 14. The court held that the signature and deadline requirements violated the First Amendment as applied to IP 57, because plaintiffs had been "reasonably

diligent" in their attempt to meet the signature and deadline requirements but those requirements "significantly inhibit[ed]" their ability to place IP 57 on the ballot. *Id.* at 8–11. The district court ordered the state to place IP 57 on the ballot if plaintiffs produced just 58,789 valid signatures (about 39% of the constitutional requirement of 149,360 signatures) by August 17th (more than six weeks after the July 2nd constitutional deadline). *Id.* at 13. The district court specified that its order changed the requirements only for IP 57, and that proponents of any other state or local initiative must file suit and "show the organizational wherewithal that [p]laintiffs presented here" to receive the same relief. *Id.* at 12 n.5. The court orally denied the state's request for a stay pending appeal.

4. The state promptly appealed and sought a stay from the Ninth Circuit. A divided panel of the Ninth Circuit denied the motion for a stay. App. B, at 1. The two-judge majority gave no explanation for its ruling, beyond a citation to a case setting forth the standard for a stay pending appeal.

Judge Callahan dissented. *Id.* at 2. She would have granted the stay because the state "made a strong showing that adherence to Oregon's constitutionally mandated signature threshold for ballot initiatives either does not implicate the First Amendment at all or does not do so in a way that runs afoul of [plaintiffs'] rights." *Id.* She also concluded that the remaining factors support a stay, noting that "an injunction barring a state from conducting its

election pursuant to its laws 'would seriously and irreparably harm the State.'" *Id.* at 2–3 (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018)).

5. Preparations for the November 2020 election are well underway. The official financial estimates and explanatory statements for measures, which appear in the voters' pamphlet mailed to every Oregon household, must be finalized by August 5th. Or. Rev. Stat. §§ 250.125(5), 250.127, 251.205, 251.215. Until August 25th any individual and organization may submit arguments for or against a ballot measure to be printed in the voters' pamphlet. Or. Rev. Stat. § 251.255(1). The deadline for candidates to withdraw from the ballot is August 28th. Or. Rev. Stat. § 249.180. By September 3rd, the Secretary must issue a directive listing the federal and state contests and the language that will appear on the ballot for each measure. *See* Or. Rev. Stat. § 254.085. Each of Oregon's 36 county election administrators then has just 16 days to design between 6 and 250 unique ballots (listing only the local races in which a voter is eligible to vote), print those ballots, and prepare military and overseas ballots for mailing by September 19. *See* 52 U.S.C. § 20302(a)(8)(A); Or. Rev. Stat. § 253.065(1)(a).

Although the preliminary injunction will have serious consequences even before then, August 28th is the crucial deadline for a stay. That is the deadline for candidates to withdraw from the ballot, and it reflects the Oregon Legislature's judgment that it is the last day when changes can be made to the ballot without undue disruption. Any change to the ballot after that date places

extra strain on the resources of election officials and sharply increases the chances of a mistake. Once the Secretary finalizes the measures that will appear on the ballot in the days following August 28th, it will be extraordinarily difficult to reverse course without having an adverse effect on military and overseas voters. And although the Ninth Circuit has expedited briefing and oral argument in this case, it is unclear whether the court will rule before the end of August or do so soon enough to allow an emergency stay application to this Court within that timeframe.

STANDARDS FOR GRANTING RELIEF

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Further, "[i]n close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.*

Here, rather than seeking a stay pending the filing of a petition for a writ of certiorari, the state seeks a stay pending a decision on the merits by the court of appeals. This Court has granted that lesser relief in the past. *Barr v. E. Bay Sanctuary Covenant*, 140 S. Ct. 3 (2019); *Trump v. Karnoski*, 139 S. Ct. 950 (2019); *Trump v. Hawaii*, 138 S. Ct. 542, 542 (2017); *Dep't of Health & Human Servs. v. Alley*, 556 U.S. 1149 (2009); *Ashcroft v. N. Jersey Media Grp., Inc.*, 536

U.S. 954 (2002). If a petition for certiorari proves necessary, there is both a reasonable probability that there would be four votes in support of certiorari and a fair prospect that a majority would vote to reverse.

REASONS FOR GRANTING THE APPLICATION

A. There is a reasonable probability that four Justices will grant certiorari to resolve a circuit split over the extent to which state-law requirements for initiatives implicate the First Amendment.

This case implicates a circuit split on a basic question of constitutional law: What constraints, if any, does the First Amendment impose on state laws setting the requirements for a voter-initiated measure to appear on the ballot? The answer to that question directly affects states' sovereign choices about how to enact and amend their own laws, including their constitutions.

At least five circuits have held that the First Amendment is not implicated at all by laws that merely regulate the initiative process, as opposed to laws that regulate the communicative acts of signature gatherers or voters. In any of those courts, the Oregon law at issue here—a law requiring a certain number of voters' signatures by a certain date for a measure to appear on the ballot—would be upheld against a First Amendment challenge.

In *Marijuana Policy Project v. United States*, 304 F.3d 82 (D.C. Cir. 2002) (Tatel, J.), for example, the D.C. Circuit rejected a challenge to a subject-matter limitation on initiatives. The court noted that the plaintiff "cites no case, nor are we aware of one, establishing that limits on legislative authority—as opposed to limits on legislative advocacy—violate the First Amendment. This is not

surprising, for although the First Amendment protects public debate about legislation, it confers no right to legislate on a particular subject." *Id.* at 85.

The en banc Tenth Circuit reached the same conclusion in *Initiative & Referendum Institute v. Walker*, 450 F.3d 1082, 1099 (10th Cir. 2006) (en banc) (McConnell, J.). That case involved a First Amendment challenge to a provision in the Utah Constitution under which any initiative related to wildlife management required a supermajority to be enacted. The court concluded that the provision did not implicate the First Amendment at all, explaining that "[a]lthough the First Amendment protects political speech incident to an initiative campaign, it does not protect the right to make law, by initiative or otherwise." *Id.*; *see also Semple v. Griswold*, 934 F.3d 1134, 1137 (10th Cir. 2019) (rejecting First Amendment challenge to requirement that initiative proponents collect signatures from two percent of registered voters in each state senate district).

The Second, Seventh, and Eighth Circuits also have concluded that regulations of the initiative process rather than communications about initiatives do not implicate the First Amendment. *See Molinari v. Bloomberg*, 564 F.3d 587, 602 (2d Cir. 2009) ("As our Sister Circuits (and the Nebraska Supreme Court) have recognized, plaintiffs' First Amendment rights are not implicated by referendum schemes *per se* * * * but by the regulation of advocacy within the referenda process, *i.e.*, petition circulating, discourse and all other protected forms of advocacy."); *Morgan v. White*, — F.3d —, 2020 WL 3818059,

at *2 (7th Cir. July 8, 2020) (per curiam) ("If we understand the Governor's orders, coupled with the signature requirements, as equivalent to a decision to skip all referenda for the 2020 election cycle, there is no federal problem."); *Dobrovolny v. Moore*, 126 F.3d 1111, 1112–13 (8th Cir. 1997) (rejecting First Amendment challenge to Nebraska constitutional provision requiring submission of signatures to place measure on ballot equal to 10% of registered voters because "the constitutional provision at issue here does not in any way impact the communication of appellants' political message or otherwise restrict the circulation of their initiative petitions or their ability to communicate with voters about their proposals").

By contrast, the Sixth Circuit has held that "nondiscriminatory, content-neutral ballot initiative requirements" are subject to First Amendment scrutiny under the framework set out in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). *Thompson v. Dewine*, 959 F.3d 804, 808 (6th Cir. 2020). That framework requires the state to satisfy strict scrutiny when it imposes "severe restrictions, such as exclusion or virtual exclusion from the ballot." *Id.* The Sixth Circuit has acknowledged that its approach departs from that of other circuits, and individual judges on that court have questioned whether the *Anderson-Burdick* framework makes sense for ballot initiative requirements. *Id.* at 808 n.2. But it has said that it will continue to apply that framework absent a contrary en banc ruling. *Id.*; *see also SawariMedia LLC v. Whitmer*, 963 F.3d 595, 597 (6th Cir. 2020) (refusing to stay an order enjoining a

state's signature requirements because the "argument that the *Anderson-Burdick* framework should not apply to signature requirements for ballot initiative * * * is currently foreclosed by panel precedent.").

The Ninth Circuit has not yet ruled definitively on the question that has split the other courts of appeals. In *Angle v. Miller*, 373 F.3d 1122, 1132–36 (9th Cir. 2012), the court applied something like the *Anderson-Burdick* framework to a Nevada law regulating the signatures needed to place an initiative on the ballot. But the court merely "assume[d]" that framework applied and upheld the law under it. *Id.* at 1133. The court did not address the threshold question whether the First Amendment was implicated at all.

The district court in this case sided with the Sixth Circuit in this split, applying the *Anderson-Burdick* framework to Oregon's eight-percent signature threshold for initiatives proposing constitutional amendments and the deadline to submit those signatures to place the measure on the ballot. App. A, at 7. The court concluded that the signature and deadline requirements were subject to strict scrutiny and that they did not satisfy that level of scrutiny. *Id.* at 8–11.

If the Ninth Circuit were to follow suit, it would deepen the circuit split on the question whether laws merely regulating the initiative process, as opposed to laws that regulate communications about initiatives, implicate the First Amendment. Such a decision would directly conflict with, for example, *Wellwood v. Johnson*, 172 F.3d 1007 (8th Cir. 1999), which held that a 30-percent signature threshold for a category of initiatives was not subject to First

Amendment scrutiny. There is a reasonable probability that this Court would grant certiorari in this case to resolve that conflict among the courts of appeals.

B. There is a fair prospect that a majority of the Court will conclude that Oregon's signature and deadline requirements do not implicate the First Amendment because they do not regulate speech.

On the merits, there is a fair prospect that this Court will conclude that—whatever the rule might be for other regulations of initiatives—signature and deadline requirements do not implicate the First Amendment. It is "up to the people of each State, acting in their sovereign capacity, to decide whether and how to permit legislation by popular action." *Doe v. Reed*, 561 U.S. 186, 212 (2010) (Sotomayor, J., concurring). Signature and deadline requirements are rules governing how that branch operates, akin to a rule requiring a certain number of legislators to agree to bring proposed legislation to the floor or the United States Constitution's requirement that two-thirds of Congress vote to submit a proposed amendment to the states for ratification. *See* U.S. Const. art. V.

Of course, laws that regulate communicative conduct related to an initiative *do* implicate the First Amendment. In *Meyer v. Grant*, 486 U.S. 414 (1988), for example, this Court struck down a law prohibiting the hiring of people to gather signatures and thus limiting the ability to advocate for the law's passage. That law implicated the First Amendment because, as the Court explained, the communication between petition circulators and those from whom they sought a signature is "core political speech." *Id.* at 422. This Court has

reached the same conclusion with respect to other laws regulating the expressive conduct of signature gatherers or voters. *See Doe*, 561 U.S. at 194 (compelled disclosure of information about voters who sign petitions); *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 197 (1999) (requirements that signature gatherers be registered voters and wear name tags).

But the signature and deadline requirements do not regulate communication or expressive conduct in any way, on their face or as applied. They simply specify the minimum number of signatures needed to be gathered and the deadline for submitting them. They do not place any restrictions on the manner in which circulators may obtain signatures, or place restrictions on who can circulate, or where, or on whether or how circulators may be compensated.

The COVID-19 pandemic does not affect the analysis. *See Morgan*, 2020 WL 3818059, at *2. Despite the changes to our daily lives related to the pandemic, the signature and deadline requirements have not changed: They are neutral rules governing the lawmaking process that apply the same way regardless of the circumstances. They regulate no speech.

The First Amendment does not require a state that allows legislation by initiative to relax the requirements for getting on the ballot whenever circumstances would make them difficult to meet. States can adopt legislative rules, like Oregon has, that are not flexible and do not provide for any such exceptions. That might mean that getting an initiative on the ballot is more difficult in some years than in others. It might mean that getting an initiative

on the ballot in a particular year is extraordinarily challenging, owing to a pandemic or other natural disaster. But that does not violate the First Amendment, because there is no right to legislate by initiative in the first place.

A contrary rule would place federal courts in the untenable position of rewriting state law on the fly every time circumstances change, as the district court here took it upon itself to do. The district court plucked a new number of signatures and date out of little more than thin air and substituted them for the Oregon Constitution's signature and deadline requirements. There would be no way state officials or initiative proponents could know in advance what signature and deadline requirements applied, or to whom, until the court—typically in accelerated preliminary injunction proceedings—decided what those requirements should be.

There is a fair prospect that a majority of this Court will reject empowering federal courts to dictate the requirements for state and local initiatives appear on the ballot. It is a particularly weighty matter to amend a constitution, and states are entitled to make it difficult to do so even when they choose to allow amendment by initiative. Some states require far more signatures to propose a constitutional amendment than Oregon does. *See* Okla. Const. art. V, § 2 (fifteen percent of voters); Ariz. Const. art. XXI, § 1 (fifteen percent of votes cast in the last gubernatorial election). If Oregon's requirements for a constitutional initiative were unconstitutional as applied during a pandemic, it is likely that other states' thresholds would be as well.

But the First Amendment does not require states to make it any easier than they choose to place a constitutional amendment on the ballot, and it does not empower federal courts to rewrite state law on that subject.

C. The state likely will suffer irreparable harm without a stay, because the preliminary injunction will require it to place a measure on the ballot that does not meet the state constitution's requirements.

The government sustains irreparable harm whenever it "is enjoined by a court from effectuating statutes enacted by representatives of its people." *Maryland v. King*, 567 U.S. 1301, 133 S. Ct. 1, 3 (2012) (Roberts, Circuit Justice) (citation omitted). That is precisely what the preliminary injunction does. It may ultimately require the Secretary to place IP 57 on the ballot even though IP 57 does not satisfy the state constitutional requirements for an amendment to the constitution. If the injunction remains in place when ballots are printed and mailed, Oregonians will be asked to vote on a proposed constitutional amendment that should not be on the ballot. Once that happens, it may be too late to undo the effect of the preliminary injunction. *See Bogaert v. Land*, 543 F.3d 862, 864 (6th Cir. 2008) (2-1 decision holding that an appeal of a preliminary injunction that required placement of an issue on the ballot was moot once the ballots were prepared and sent to printer). Worse yet, an important question of Oregon constitutional law—who is responsible for redistricting?—may turn on a preliminary as-applied First Amendment ruling issued by a federal court.

The injunction will cause other harms in the lead up to the election. If allowed to stand, the injunction will cast doubt on every other signature and deadline requirement in Oregon law during the pandemic, including the requirements for measures or candidates to appear on the ballot for state, county, city, or district contests. *See, e.g.*, Or. Const. art. II, § 18 (recall petitions); Or. Const. art. IV, § 1 (initiatives and referenda); Or. Rev. Stat. ch. 249 (other election requirements). Under the district court's approach, the validity of those requirements will have to be determined case by case through expedited litigation in federal court, with results that offer no predictability to election administrators or campaigns as to which signature thresholds will survive judicial challenge under what circumstances.

The injunction also upends the schedule for the preparations for the November 2020 election. To allow sufficient time for judicial review, the official financial estimates and explanatory statements for measures must be finalized by August 5th, well before the deadline set by the district court for plaintiffs to complete their signature gathering for IP 57. *See* Or. Rev. Stat. §§ 250.125(5), 250.127, 251.205, 251.215. The deadline for the public to submit arguments for or against a ballot measure for the voters' pamphlet is August 25th, which may be before the Secretary of State determines if plaintiffs submitted enough signatures to qualify for the ballot. Or. Rev. Stat. § 251.255(1). By September 3rd, the Secretary must finalize the language that will appear on the ballot for each measure, and all ballots must then be designed, printed, and

mailed to military and overseas voters by September 19th at the absolute latest. *See* 52 U.S.C. § 20302(a)(8)(A); Or. Rev. Stat. §§ 253.065(1)(a); 254.085.

Those tight schedules show the importance of the state constitution's July 2nd deadline for submitting signatures so that the Secretary can determine what measures have qualified for the ballot and then carry out the other responsibilities required to conduct the election. Delaying that determination interferes with orderly preparations for the election and shortens the time for the electorate's deliberation on the proposed constitutional amendment. And under the district court's preliminary injunction, it may not be clear until well after *August 17th*—already more than six weeks after the constitutional deadline, and just 17 days before the ballot must be finalized—whether plaintiffs mustered enough signatures to qualify even with the extraordinarily relaxed threshold the court set.

The harm that the preliminary injunction is causing by rewriting state constitutional law and interfering with orderly preparations for the November election amply justifies a stay.

D. The balance of equities tips in the state's favor, because any harm to plaintiffs is outweighed by the state's interest in fair and predictable election rules.

The balance of equities tips decidedly in favor of a stay. The harm that plaintiffs will suffer if the preliminary injunction is stayed is minimal and speculative. Plaintiffs seeking preliminary relief must "demonstrate that irreparable injury is *likely* in the absence of an injunction," not merely that there is "possibility of irreparable harm." *Winter v. Natural Res. Def. Council*, 555

U.S. 7, 22 (2008) (emphasis in original). Without an injunction, IP 57 will not appear on the November 2020 ballot. But nothing stops plaintiffs from immediately starting the process of trying to place the measure on the 2022 ballot. Although that means that the measure cannot take effect for one more election cycle, it is at best speculative that the delay would cause plaintiffs any serious harm. Redistricting normally happens just once a decade, but nothing prevents plaintiffs from modifying their measure to require a mid-decade redistricting, as a 1952 constitutional initiative did. *See Baum v. Newbry*, 267 P.2d 220, 223 (Or. 1954); *see also League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 423 (2006) (upholding mid-decade redistricting).

Even if a delay in submitting the measure to voters constituted a cognizable injury, that injury is largely due to plaintiffs' choices. For example, despite knowing about the challenges that COVID-19 would pose since at least March 2020, when Oregon's Governor declared a state of emergency, plaintiffs waited until June 30th—two days before the constitutional deadline—to assert a First Amendment claim and seek judicial relief. Had they done so in March or April, it might have been possible for the district court to craft far less intrusive relief—relief that would have made it easier for them to collect the required number of signatures by the deadline rather than rewriting those constitutional requirements. *Cf.* Or. Rev. Stat. § 401.168(2) ("During a state of emergency, the Governor has authority to suspend provisions of any order or rule of any state agency * * * ."). The harm that plaintiffs claimed as the basis for eleventh-hour

relief from the signature and deadline requirements is harm that they could have avoided if they had sought relief months earlier when there was still time to gather signatures before the deadline.

Weighed against whatever harm a stay may cause plaintiffs is the public interest in consistent election rules. The injunction fundamentally changes the requirements to amend the Oregon Constitution after the two-year signature gathering period has ended. Changing the rules at this late date—and especially just for one initiative—undercuts the fairness of the election process by favoring one measure over others that may be similarly situated. Such last-minute injunctions to election laws are strongly disfavored. *See Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (per curiam).

Because of the practical limitations caused by COVID-19, this will probably be the most challenging election season in memory for state and county elections officials. The district court's preliminary injunction adds to their burdens and, by shortening the timeframe to take various steps, increases the likelihood of serious mistakes that affect the integrity of the election. The balance of equities tips decidedly in favor of a stay to ensure an orderly November election.

CONCLUSION

This Court should grant a stay of the preliminary injunction pending a resolution of the appeal in the Ninth Circuit on the merits and any subsequent petition for certiorari.

Respectfully submitted,

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