

No. 20-35630

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PEOPLE NOT POLITICIANS OREGON, et al,

Plaintiffs-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of State,

Defendant-Appellant.

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR A STAY
PENDING APPEAL—RULING REQUESTED BY JULY 22, 2020**

Appeal from the United States District Court
for the District of Oregon

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CIRCUIT RULE 27-3 CERTIFICATE

- (i) The names, telephone numbers, e-mail addresses, and office addresses of the attorneys for all parties are as follows:

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- (ii) The facts showing the existence of the emergency are as follows: The district court ordered Oregon to place on the November 2020 ballot a proposed constitutional amendment that does not meet the state constitution's signature and deadline requirements as long as the plaintiffs produce 39% of the required signatures by August 17, 2020, six weeks after the deadline. That order requires the state to violate the provisions of the Oregon Constitution regarding constitutional amendments. And it will require the state and others to take immediate steps to comply, including by verifying signatures and

preparing the material that will appear in the voter's pamphlet. Once the ballot design is finalized and ballots are printed and mailed, it will be too late to remove the measure from the ballot even if the preliminary injunction is overturned. The Secretary of State must finalize what is on the ballot by September 3rd at the latest to allow ballots to be mailed no later than September 19th. If this court denies a stay but expedites the appeal so that it can be decided by the end of August, a scheduling order needs to be issued promptly. To prevent the irreparable harm that will occur immediately and to ensure that there is time to expedite the appeal if needed, the state requests a ruling by **July 22, 2020**.

- (iii) The motion could not have been filed earlier because the district court issued its written order entering its preliminary injunction on July 13, 2020. The state could not appeal and seek a stay before that date, and this motion is submitted just two days later.
- (iv) Undersigned counsel spoke to counsel for plaintiffs, Steve Elzinga, on July 13, 2020, to inform him about this motion, and exchanged emails about the motion on July 14th and July 15th. Mr. Elzinga informed me that plaintiffs oppose the motion. Mr. Elzinga will be served through ECF and I am also emailing him a copy of the motion.

- (v) The relief sought here was first sought in the district court. Trial counsel for the state informs me that the district court stated orally on Friday, July 10, 2020, that it would deny a stay and that counsel did not need to file a motion because it was deemed denied.

/s/ Benjamin Gutman
Benjamin Gutman

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**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR A STAY
PENDING APPEAL—RULING REQUESTED BY JULY 22, 2020**

INTRODUCTION

Oregon’s constitution allows its citizens to propose constitutional amendments by initiative for popular vote. To appear on the ballot, the constitution requires the proponents of a measure to obtain signatures from registered voters equal to “eight percent of the total number of votes cast for all candidates for Governor” in the last gubernatorial election—here, 149,360 signatures. Or. Const. art. IV, § 1(2)(c). Those signatures must be submitted “not less than four months before the election,” which for the November 2020 election was July 2, 2020. *Id.* § 1(2)(e).

On July 13, 2020, the district court (McShane, J.) issued a preliminary injunction that will require the state¹ to place a constitutional amendment on the November 2020 ballot even though its proponents did submitted only a fraction of the required number of signatures by July 2nd. Although Oregon Constitution’s signature and deadline requirements are clear and without exception, the court held that the First Amendment required Oregon to replace

¹ This motion refers to “the state” because the state is the real party in interest, even though the Secretary of State (in her official capacity) was the nominal defendant in the district court.

its unambiguous signature requirement with a lesser requirement of the court's creation and to extend the deadline to a date chosen by the court.

This Court should immediately stay the preliminary injunction. The state is likely to prevail on appeal because the signature and deadline requirements do not implicate, much less violate, the First Amendment, even during the pandemic. Restrictions on the *manner* in which signatures may be gathered are subject to First Amendment scrutiny, because signature gathering is core political speech. But the constitutional provisions challenged here do not regulate the manner in which signatures are gathered. They regulate the legislative process, not speech. As several other circuits have explicitly recognized, such procedural rules do not implicate the First Amendment. In ruling to the contrary, the district court encroached on the state's sovereign authority to determine for itself the procedures by which its own constitution is to be amended. The balance of harms and public interest also favor keeping the constitutionally mandated rules for initiatives in place rather than changing them for one privileged initiative shortly before the election.

Although this Court recently denied a stay in *Reclaim Idaho v. Little*, No. 20-35584, the case for a stay is considerably stronger here. The preliminary injunction in *Reclaim Idaho* was primarily about the manner in which signatures are gathered to put an initiative on the ballot—specifically, whether

the state had to accept electronic signatures. Although the district court in that case gave the state the option to place the measure on the ballot with fewer signatures than usual, it pointedly refused to order the state to do so—expressly “recognizing the State’s interest in upholding its conditions, specifically the numerical and geographic requirements.” *Reclaim Idaho v. Little*, 2020 WL 3490216, at *11 (D. Idaho June 26, 2020). Although the state ultimately should prevail in *Reclaim Idaho* as well, regulations governing the manner of collecting signatures touch much more closely on the First-Amendment-protected communications between signature gatherers and voters than the bare numerical requirement at issue here, which does not implicate the First Amendment at all. Moreover, the state defendants in *Reclaim Idaho* apparently have the power under Idaho law to waive or amend the statutory requirements for initiative petitions, *id.* at *8 and *10, unlike in this case. Only the people of Oregon—not the Secretary of State—can amend the state’s constitution. And unlike in *Reclaim Idaho*, an immediate stay is needed here to prevent a constitutional amendment that does not meet the constitutionally required signature threshold from appearing on the ballot.²

² The United States Supreme Court is considering a motion for a stay pending appeal in a case out of the Sixth Circuit, *Whitmer v. SawariMedia, LLC*, No. 20A1, which also involves a district court order invalidating the state’s signature and deadline requirements for initiatives. Michigan Governor

Footnote continued...

BACKGROUND

A. To place a proposed constitutional amendment on the November 2020 ballot, the Oregon Constitution requires proponents to collect 149,360 signatures by July 2, 2020.

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, the 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” in the last gubernatorial election. *Id.*

Second, the deadline requirement: The petition 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 5.³

(...continued)

Gretchen Whitmer has asked the Supreme Court to rule by July 17, 2020. If a stay is granted in *Whitmer*, that will provide further support for a stay here.

³ The provisions of the Manual, which is available at <https://sos.oregon.gov/elections/Documents/stateIR.pdf>, constitute administrative rules. *See* Or. Admin. R. 165-014-0005.

B. Plaintiffs collected less than half of the required signatures for Initiative Petition 57 before the July 2nd deadline.

Initiative Petition (IP) 57 is a proposed constitutional amendment that would create a redistricting commission in Oregon. *See* Davis Decl., Ex. B (attached to this motion). IP 57 was approved for circulation on April 9, 2020. *Id.* ¶ 12. By the July 2nd deadline, petitioners claimed to have collected a little over 64,000 signatures, less than half of the constitutional requirement. *Id.* ¶ 15.

C. The district court issued a preliminary injunction requiring the Secretary of State to place IP 57 on the ballot as long as plaintiffs present 58,789 signatures by August 17th.

One of IP 57's chief petitioners and five organizations that support IP 57 filed this lawsuit on June 30, 2020, two days before the deadline to submit petition signatures. Plaintiffs requested a temporary restraining order extending the deadline for submitting signatures for ballot initiatives and reducing the number of signatures required. Mot. for TRO at 40. 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. Reply in support of Mot. for PI at 5.

The district court treated the motion as a request for a preliminary injunction, which it granted after a hearing. 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. Op. at 8-11. The district court ordered the state either to place IP 57 on the ballot immediately or to do so if plaintiffs produced just 58,789 valid signatures (about 39% of the constitutional requirement of 149,360 signatures) by August 17th, six weeks after the constitutional deadline. *Id.* at 13. The state objected to both proposed remedies but explained that it understood the court’s decision to effectively require the latter. Def. Notice in Response to Court Order (July 13, 2020).

ARGUMENT

In considering whether to grant a stay pending appeal, the Court must consider four factors: (1) the applicant’s likelihood of success on the merits; (2) whether the applicant will suffer irreparable injury; (3) the balance of hardships to other parties interested in the proceeding; and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). All four factors weigh in favor of a stay.

A. The Secretary is likely to prevail on appeal, because the Oregon Constitution’s signature and deadline requirements for initiative petitions do not violate the First Amendment as applied to plaintiffs.

A preliminary injunction is an “extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). That

principle carries particular force in the elections context. *See Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012) (“[G]iven the imminent nature of the election, we find it important not to disturb long-established expectations that might have unintended consequences.”). Moreover, “[w]hen a mandatory preliminary injunction is requested, the district court should deny such relief unless the facts and law clearly favor the moving party.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quotation marks and citation omitted).

In granting a preliminary injunction, the district court concluded that the signature and deadline requirements in the Oregon Constitution violate the First Amendment as applied to IP 57. That conclusion is wrong as matter of law.

1. Signature and deadlines requirements for initiatives do not implicate the First Amendment, because they are legislative rules rather than regulations of speech.

Plaintiffs’ entire legal theory is based on the First Amendment, but the First Amendment simply is not implicated by signature and deadline requirements for placing an initiative on the ballot. Accordingly, the federal courts have no authority to enjoin those requirements at all—much less to rewrite state law on the eve on an election.

The First Amendment does not limit the number of signatures a state can choose to require for an initiative or the deadline for submitting those signatures, because those requirements are fundamentally legislative rules

rather than regulation of speech. In Oregon, the people—when acting through the initiative process—are a coequal legislative branch. *See State v. Vallin*, 434 P.3d 413, 419 (Or. 2019). The 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.

Every state is free to establish the procedural mechanisms by which laws may be enacted and its state constitution may be amended. The right of voters to legislate through initiative is one such mechanism that many states, including Oregon, provide. But the state is free to define the procedural requirements that must be met to effectuate that state-created right. Non-discriminatory, content-neutral ballot initiative requirements like the signature gathering requirements here at issue do not implicate the First Amendment.

To be sure, gathering support for a ballot initiative is core political speech, and thus laws that regulate the *manner* in which signature gathering is done can implicate the First Amendment by regulating speech between a signature gatherer and voter. But the constitutional provisions challenged in this case are neutral and non-discriminatory requirements that establish the minimum number of signatures needed to be gathered and the deadline for submitting them. They regulate no speech.

The overwhelming weight of authority from other circuits that have considered the issue concludes that such neutral procedural laws 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.”); *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1099 (10th Cir. 2006) (“Although the First Amendment protects political speech incident to an initiative campaign, it does not protect the right to make law, by initiative or otherwise.”); *Marijuana Policy Project v. United States*, 304 F.3d 82, 85 (D.C. Cir. 2002) (noting 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.”); *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”). Just last week, the Seventh Circuit reached a similar conclusion, explaining that initiatives and referenda are “wholly a matter of state law,” and that there would be no First Amendment issue if the state decided to “skip all referenda for the 2020 election cycle”:

The federal Constitution does not require any state or local government to put referenda or initiatives on the ballot. That is wholly a matter of state law. 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. Illinois may decide for itself whether a pandemic is a good time to be soliciting signatures on the streets in order to add referenda to a ballot.

Morgan v. White, ___ F.3d ___, 2020 WL 3818059, *2 (No. 20-1801) (7th Cir. July 8, 2020) (per curiam) (citation omitted).

Those decisions reflect that the First Amendment’s Free Speech Clause is about speech, not about legislative procedures. Rules about how many signatures the proponents of a measure must collect to place it on the ballot do not regulate speech.

None of that is to suggest that merely because the initiative power is a state-created right that states are therefore free to regulate expressive conduct associated with that right in any way it wants. *See Meyer v. Grant*, 486 U.S. 414, 424-25 (1988) (“[T]he power to ban initiatives entirely” does not include

“the power to limit discussion of political issues raised in initiative petitions.”). But there is a difference between regulations that govern the manner in which the initiative right, once created, can be effectuated, and laws that create or define initiative right in the first place. It is up to the state to define the initiative power by establishing the procedures by which an initiative becomes law. Once that power is established, a right to speech is created, and regulations that restrict that may right trigger the First Amendment. But laws establishing the nature of the initiative power in the first instance are not themselves speech regulations. The constitutional provisions here at issue are ones that *define* what the initiative power is in the first place by setting forth the procedures by which initiatives can become Oregon law. They do not implicate the First Amendment. By treating them otherwise, the district court claimed for the federal judiciary power that properly belongs to the sovereign state.

2. *Angle v. Miller* does not support the district court’s ruling.

The district court’s ruling relied on this court’s decision in *Angle v. Miller*, 373 F.3d 1122 (9th Cir. 2012). Op. at 7. But *Angle* did not answer the question posed here, and the district court’s discussion and application of that case are incorrect.

In *Angle*, the plaintiffs raised a facial challenge under the First Amendment to a Nevada rule that required initiative proponents to meet a ten-

percent signature threshold in each of Nevada’s three congressional districts in order to place an initiative on the ballot. *Id.* at 1126-27. In analyzing that rule, the court considered whether the rule imposed a “severe burden” on the plaintiffs’ speech, which would trigger heightened scrutiny, or whether the burden was a lesser one, which would entail less exacting review. *Id.* at 1132.

In concluding that the rule did not impose a severe burden, the court discussed two factors: whether the regulations limit one-on-one communication between petition circulators and voters and whether the regulations “make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot.” *Id.* at 1132-33 (citing *Meyer*, 486 U.S. at 422). The Nevada rule in question did not limit one-on-one communication at all and so did not impose a severe burden under that factor. *Id.* at 1132. As to the second factor, the court noted that *Meyer* recognized that ballot access restrictions may indirectly impact core political speech by preventing an issue from become “the focus of statewide discussion.” *Id.* at 1133 (quoting *Meyer*, 486 U.S. at 423). The court then stated that “as applied to the initiative process, *we assume* that ballot access restrictions place a severe burden on core political speech, and trigger strict scrutiny, when they significantly inhibit the ability of initiative proponents to place initiatives on the ballot.” *Angle*, 673 F.3d at 1133

(emphasis added). But under that factor, the plaintiffs failed to demonstrate that the rule at issue severely burdened core political speech. *Id.*

Although *Angle* applied a First Amendment standard in upholding the Nevada law, it merely “assume[d]” that the standard applied and concluded that the law satisfied it. *Id.* *Angle* did not consider, much less address, the threshold question whether the First Amendment was implicated at all—and it did not have to, because the Nevada statute satisfied the First Amendment even if it was implicated. The Nevada statute was arguably manner-of-collection regulation, as it defined *where* signature collectors needed to go in the state, not how many signatures needed to be collected in total. *Angle* thus did not answer the question presented here, which is a question that other federal courts of appeals around the country have resolved in favor of states.

The district court nonetheless relied on *Angle* to conclude that Oregon’s constitutional requirements for signature gathering imposed a severe burden on core political speech under both factors discussed in that case. First, the court concluded that plaintiffs’ ability to gather signatures one-on-one was limited by the pandemic and the Governor’s Executive Orders issued in response to the pandemic, and so the application of Oregon’s constitutional requirements imposed a burden on their speech. *Op.* at 7-8. Second, the court concluded that plaintiffs could not place their initiative on the ballot because the state adhered

to the constitutional requirements and therefore burdened plaintiffs' core political speech. Both conclusions are wrong.

As to the restriction on one-on-one communication, the district court's reliance on the Governor's Executive Orders—which plaintiffs did not challenge—to conclude that enforcement of the constitutional requirements restricted their speech is not supported by *Angle* or by *Meyer*. The question under those cases is whether the challenged regulation—here the constitutional requirements—limited one-on-one communication. Oregon's signature and deadline requirements do not restrict one-on-one communication in any way, either facially or as applied to plaintiffs. *See Reclaim Idaho*, 2020 WL 3490216 at *8 (concluding that the first *Angle* factor did not apply because it was Idaho's management of COVID-19 and not the initiative requirements that limited one-on-one communication). Simply put, the district court's reasoning was fundamentally flawed because it targeted the wrong regulation. Although the state disputes the district court's conclusion that the Executive Orders restricted one-on-one communication, even if that were true any restriction on speech would follow from *those* orders and the pandemic—not from application of the constitutional requirements for putting a measure on the ballot.

The district court also made a fundamental error in describing and applying the second factor. First, neither *Angle* nor *Meyer* support the district

court's assertion that core political speech is burdened when "the regulations make it less likely that proponents can obtain the necessary signatures to place the initiative on the ballot." *Op.* at 7. Again, the court in *Angle* assumed—but did not decide—that core political speech could be burdened by regulations "when they significantly inhibit the ability of initiative proponents to place initiatives on the ballot." 673 F.3d at 1133. But the concern underlying that line of inquiry is that signature gathering restrictions can indirectly limit speech by making it less likely for an issue to become a matter of statewide discussion. 486 U.S. at 423. Under *Meyer*, a regulation on signature gathering not only directly regulates speech but *also* may have an indirect effect on speech by making it less likely that an issue will make it on to the statewide ballot. But nothing in *Meyer* suggests that *any* procedural requirement that does not regulate speech at all but happens to make it less likely for an issue to make it on the ballot triggers First Amendment scrutiny. If that were the case, virtually any procedural requirement for adopting legislation would be unlawful.

Neither *Angle* nor *Meyer* addressed whether a numerical signature threshold or a deadline could be a restriction on core political speech. And even if the standard from those cases controlled here, the district court badly misapplied the standard. As with its conclusion concerning one-on-one communication, the court reasoned that the state's "insistence on strictly

applying the initiative requirements made it less likely that Plaintiffs could obtain the necessary signatures.” Op. at 8. That circular reasoning is fundamentally unsound. Any signature requirement beyond zero “make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot,” as does any deadline before election day. But the cause of plaintiffs’ inability to timely “garner the necessary signatures” is not the fact that plaintiffs must collect the necessary number of signatures by a deadline.

The district court was also wrong to blame to the Secretary of State for failing to make accommodations for plaintiffs. Op. at 11. The Oregon Constitution does not give the Secretary any authority to waive the number of signatures required or the deadline for submission. The constitutional requirements for citizen initiatives were put in place by the citizens themselves and can be amended only by the same process, a process that the First Amendment does not control.

There are other problems with the district court’s reasoning that the Secretary intends to address in the merits briefs on appeal. But the points above suffice to show that the preliminary injunction was legally flawed. Because the district court erred in applying the First Amendment and erred in its consideration of *Angle* and *Meyer*, the state has a strong likelihood of prevailing on appeal and this Court should grant the stay.

B. The remaining factors also favor a stay.

The Secretary and the public will suffer irreparable injury if the preliminary injunction is not stayed. 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 (2012) (Roberts, Circuit Justice). The preliminary injunction requires 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 a stay is not granted before ballots are printed and mailed, Oregonians will be asked to vote on a proposed constitutional amendment that should not be on the ballot. The district court’s preliminary ruling thus threatens to enshrine permanently in the Oregon Constitution an amendment that did not comply with the state constitutional process for amendments. At the very least, there is likely to be protracted litigation about the validity of the amendment. Indeed, if the ruling is not promptly stayed, in December the federal courts may find themselves in the position of telling Oregon—based on the First Amendment—what is or is not in the state’s constitution.

The injunction will also impose burdens on entities that are not part of this case. Preparations for the November 2020 election are already well

underway. A committee of five public officials started meeting July 8th⁴ to produce a financial estimate of the “amount” and “description” of the “financial effects” of the ballot measures by July 27th. *See* Or. Rev. Stat. § 250.127(5). The committee then must hold a hearing with public comment and produce a final statement by August 5th. Or. Rev. Stat. § 250.127. The resulting financial estimate will be printed on the ballot. Or. Rev. Stat. § 250.125(5). Separate committees will soon be appointed to produce official explanatory statements for each ballot measure, which will be printed in the Voters’ Pamphlet. Or. Rev. Stat. § 251.205. The explanatory statement process has similar deadlines and public comment requirements as the financial estimate. *See* Or. Rev. Stat. §§ 251.205, 251.215. The deadline for “any person” to petition the Oregon Supreme Court to challenge either statement is August 10th. Or. Rev. Stat. § 250.131(2) (Financial Estimate); *id.* § 250.235(1) (Explanatory Statement). And arguments for or against a ballot measure must be filed with the Secretary by August 25th for inclusion in the official Voters’ Pamphlet mailed to every Oregon household. *See* State Voters’ Pamphlet Manual at 4–5.

⁴ *See* Secretary of State Elections Division, Financial Estimate Committee (FEC) Meeting Schedule, <https://content.govdelivery.com/accounts/ORSOS/bulletins/2944fcc>.

By September 3rd, the Secretary of State 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; Davis Decl. ¶ 37. Over the next 16 calendar days, each of Oregon’s 36 county election administrators then must 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. Military and overseas ballots must be mailed by September 19th and will be sent earlier if possible to ensure those voters have time to vote. *See* 52 U.S.C. § 20302(a)(8)(A); Or. Rev. Stat. § 253.065(1)(a); Davis Decl. ¶¶ 36–37.

If not stayed, the preliminary injunction will interfere with all of those preparations. County election administrators will have to design ballots around the measure. Persons who are for or against the measure will likely spend time and money on efforts to support or oppose it. All of that effort will be wasted if this Court reverses the preliminary injunction or if a court ultimately determines that the measure, despite having been placed on the ballot, was invalid.

The need to avoid those harms significantly outweighs any harm to plaintiffs in not having their initiative appear on the November 2020 ballot. Any harm suffered by plaintiffs is largely the result of their own choices and the pandemic, not the result of the Oregon Constitution or the Governor’s orders.

The petition to begin the process for IP 57 was not filed until November 2019, and a court challenge to the ballot title (which was required before plaintiffs could begin collecting signatures) was not resolved until March 27, 2020. See Davis Decl. ¶ 12. IP 57 was approved for circulation on April 9, only 84 days before the July 2nd deadline. *Id.* That is later in the election cycle than most successful initiative campaigns even in years not affected by a pandemic: Of the 30 initiative petitions proposing constitutional amendments that have qualified for the ballot since 2000, all but two were approved for circulate no later than March of the election year. *Id.* ¶ 9.

The public interest also favors a stay. The preliminary injunction fundamentally changes the requirements to amend the Oregon Constitution late in an election cycle, after the two-year signature gathering period has ended. The state has a strong interest in ensuring the efficient and orderly administration of its elections and in applying consistent state constitutional standards to each matter proposed for inclusion on the ballot. Changing the rules at this late date—and especially just for one initiative—undercuts the fairness of the election process, favors one measure over others that may be similarly situated, and undermines state and county officials’ administration of the election. And it very well could result in the federal courts having to tell

Oregon what Oregon's constitution says and does not say, which is not their proper role.

Such last-minute injunctions to election laws are strongly disfavored. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). When an election is “imminent,” it is “important not to disturb long-established expectations that might have unintended consequences.” *Lair*, 697 F.3d at 1214 (issuing stay pending appeal); *see also Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (“the Supreme Court has warned us many times to tread carefully where preliminary relief would disrupt a state voting system on the eve of an election”).

Because of the practical limitations caused by COVID-19, this will probably be the most challenging election season in memory for state and local 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 hardships and public interest weigh heavily in favor of a stay to ensure an orderly November election.

C. If the Court does not grant a stay, it should expedite the appeal so that it can be decided before the end of August.

In the alternative, if the Court denies the motion for a stay pending appeal, it should expedite consideration of this appeal so that a merits panel can

rule before the end of August. This Court recently did that in *Reclaim Idaho v. Little*, No. 20-35584, which is scheduled for oral argument on August 10th. Although a ruling by the end of August reversing the preliminary injunction will not alleviate all of the harms discussed above, it *might* still allow the state to pull IP 57 from the ballots before they are printed and mailed.

The state proposes the following briefing schedule:

- Opening brief on July 24, 2020.
- Answering brief on August 7, 2020.
- Reply brief, if any, on whatever schedule would allow the court to hold oral argument by videoconference on August 14 or 19, 2020, if the court holds argument.

CONCLUSION

This Court should stay the preliminary injunction pending appeal. If it does not do so, it should at least expedite the appeal to allow a ruling on the merits before the end of August.

Respectfully submitted,

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ATTACHMENTS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PEOPLE NOT POLITICIANS

OREGON, et al.,

Plaintiffs,

Civ. No. 6:20-cv-01053-MC

v.

OPINION AND ORDER

BEVERLY CLARNO, in her official
capacity as the Secretary of State of
Oregon, et al.,

Defendants.

MCSHANE, Judge:

INTRODUCTION

Plaintiffs are a group of organizations petitioning to place an initiative on the November 2020 ballot that would alter Oregon's redistricting process. But before a constitutional amendment is presented to the voters, petitioners must gather the requisite number of signatures from Oregon voters at least four months before the election. Plaintiffs argue that these requirements are unconstitutional as applied during the ongoing coronavirus pandemic and related government regulations that limit social interaction. Defendant Beverly Clarno, Oregon's Secretary of State, counters that the initiative requirements are constitutional and that pandemic-related regulations do not alter their constitutionality. Plaintiffs seek a preliminary injunction that would both lower the required signature threshold and postpone the deadline for when signatures must be filed.

The Court heard oral argument on Plaintiffs’ motion and granted the requested preliminary injunction. ECF No. 22. Defendant was given until July 13, 2020, at 5:00 p.m. P.S.T. to decide to either allow Plaintiffs initiative on the ballot as presented, or lower the required signature threshold to 58,789 and extend the submission deadline to August 17, 2020. This written order provides more detail behind the Court’s decision and, as stated on the record, controls.

BACKGROUND

As noted, Plaintiffs are a coalition of government reform organizations seeking to place an initiative before Oregon voters on the November 2020 ballot that would amend the state constitution to create an independent redistricting commission. Plaintiffs propose a commission that would diverge from the current redistricting scheme, a process routinely criticized on the grounds that it allows the political party in power to gerrymander districts into a remarkable jigsaw puzzle that best suits the party’s needs by disproportionately impacting the voting power of certain communities.¹ *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2512 (2019) (Kagan, J., dissenting) (“At its most extreme . . . the practice [of partisan gerrymandering] amounts to ‘rigging elections.’” (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring in judgment))). To qualify their initiative for the November ballot, Plaintiffs had to submit a certain number of signatures by July 2, 2020.

As described in the Secretary of State’s Initiative and Referendum Manual, “the initiative and referendum process is a method of direct democracy that allows people to propose laws or amendments to the Constitution or to adopt or reject a bill passed by the legislature.” OREGON ELECTIONS DIVISION, STATE INITIATIVE AND REFERENDUM MANUAL 3 (“INITIATIVE MANUAL”)

¹ The criticism is often from the minority party, despite their own history of similar behavior when they stood in the majority.

(2020), <https://sos.oregon.gov/elections/Documents/stateIR.pdf>. In many ways, this form of direct democracy was a model for other states when Oregon voters passed the initiative and referendum process in 1902, creating what become known as “The Oregon System.” *See generally* David Schuman, *The Origin of State Constitutional Direct Democracy: William Simon U’ren and “The Oregon System,”* 67 TEMP. L. REV. 947 (1994). Since that time, Oregonians have been active participants in a democratic process that touches every aspect of life within our state: women’s suffrage, prohibition, compulsory education, hunting, environmental protections, the death penalty, LGBTQ+ rights and discrimination, marijuana legalization, taxation, voter recall, eight-hour work day, freight rates, wages, women jurors, suffrage and housing rights for people of color, jury trials, victim rights, gambling, tobacco, timber, health and safety, transportation, daylight savings time, compulsory retirement for judges, housing, nuclear power, and physician assisted suicide. Indeed, much what makes Oregon unique, for better or for worse, is its robust relationship with direct democracy.

Direct democracy, of course, requires the participation of the electorate. Before a constitutional initiative can be placed on the ballot, its advocates must obtain and submit to the Secretary of State the signatures of voters who support the initiative four months before a general election in a number equal to eight percent of ballots cast in the most recent governor’s race. Or. Const. art. IV § 1(2)(c). But even before obtaining the required number of signatures to qualify for the ballot, petitioners must first file the petition with the Secretary of State with the language of the proposed amendment, submit at least 1,000 valid sponsorship signatures, receive a certified ballot title, and receive approval from Oregon’s Election Division for the cover and signature sheet to be used when gathering signatures. Decl. of Summer S. Davis (“Davis Decl.”) ¶ 4, ECF No. 16. This process may begin at the end of the last election cycle. *Id.* Once a

petitioner meets these requirements, the Election Division will approve their initiative for circulation. INITIATIVE MANUAL 5.

Plaintiffs filed their initiative with the Secretary of State in November 2019. Davis Decl. ¶ 12, Ex. B. Plaintiffs met all other requirements and the Attorney General then issued a ballot title a month later. *Id.* As soon as the ballot title was issued, Becca Uherbelau, *amici* here, appealed the Attorney General's ballot title. *Id.* The Oregon Supreme Court rejected this challenge and Plaintiffs initiative was approved for circulation.

By the time Plaintiffs could begin collecting signatures, a global pandemic had begun, upending all aspects of life. As of July 12, 2020, coronavirus has infected over 12.8 million people and killed over 560,000. *Coronavirus Resource Center*, JOHNS HOPKINS UNIV. & MED., <https://coronavirus.jhu.edu/> (last visited July 12, 2020 at 8:38 pm). On March 8, Oregon Governor Kate Brown declared a state of emergency, currently in effect until September 4. Executive Order 20-30 (June 30, 2020), https://www.oregon.gov/gov/Document/executive_orders/eo_20-30.pdf. Fifteen days after declaring a State of Emergency, Governor Brown mandated social distancing and banned all social gatherings “if a distance of at least six feet between individuals cannot be maintained.” Executive Order 20-12 (March 23, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf. While Executive Order 20-12 was eventually replaced by later Executive Orders and certain counties could partially reopen, Oregonians still had to maintain physical distance from each other. Executive Order 20-25 (May 14, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-25.pdf; Executive Order 20-27 (June 5, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-27.pdf.

Despite the state’s requirements to maintain social distancing, Plaintiffs began attempting to collect the necessary 149,360 signatures by the July 2, 2020 deadline. Quickly realizing that traditional methods of in-person signature gathering were no longer available, Plaintiffs instead tried alternative methods that would not violate the Governor’s Executive Orders. This included mailing out over 500,000 packets with the petition inside, to be mailed back after signing, and providing a link to voters where the petition could be printed out, signed, and returned. Decl. of C. Norman Turrill ¶ 25, ECF No. 5. Unsurprisingly, these methods produced a response rate far less than in-person solicitation. *Id.* Plaintiffs have informed the Court that they have collected 64,172 unverified signatures, well short of the required 149,360.

STANDARD OF LAW

A party seeking a preliminary injunction “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008). The mere possibility of irreparable harm is not enough. Rather, the plaintiff must establish that this harm is likely. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The standards for issuing a temporary restraining order are like those required for a preliminary injunction. *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Ca. 1995).

ANALYSIS

“A plaintiff seeking a preliminary injunction must establish that: 1) it is likely to succeed on the merits; 2) it is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance of equities tips in its favor; and 4) an injunction is in the public interest.” *Reclaim Idaho*

v. Little, No. 1:20-CV-00268-BLW, 2020 WL 3490216, at *5 (D. Idaho June 26, 2020) (citing *Winter*, 555 U.S. at 20). The Court analyzes the *Winter* factors in turn.

I. Likelihood of Success on the Merits

Plaintiffs bring an as-applied challenge to Oregon’s initiative requirements. They argue that the effect of COVID-19 and the Governor’s Executive Orders in response to slowing the spread of the virus has created a situation in which they cannot comply with the deadlines and requirements of the initiative process. The public forums at which they reasonably anticipated gathering signatures have for the most part disappeared; in part through the safety measures taken by the Governor and in part from the very real fear people have of the pandemic around them. As a result, they argue the signature requirements restrict their First Amendment right to petition the government when applied to Plaintiffs in this unique set of circumstances. They ask the Court to enjoin the Secretary of State from enforcing portions of the Oregon Constitution, laws, and administrative rules “requiring the submission of at least 149,360 signatures by July 2, 2020 in order to place Plaintiffs’ initiative on the 2020 general election ballot.” Pl.’s Mot. for Prelim. Inj. 2, ECF No. 2.

For their part, Defendant argues that the initiative requirements serve an important government interest, that the virus and not the government is responsible for what has occurred to Plaintiffs’ initiative efforts, and, in hindsight, that Plaintiffs should have anticipated for emergencies and started collecting signatures much earlier.² Perhaps more compelling, they argue that Plaintiffs, by not suing sooner, have placed an undue burden on the government regarding its ability to meet the timelines necessary to get the initiative properly verified, submitted to the voter’s pamphlet for comment, and placed on the November 2020 ballot.

² When considering whether Plaintiffs acted diligently, the Court considered evidence presented by *amici curiae* Becca Uherbelau and Our Oregon, which allegedly showed that even under the best of circumstances, Plaintiffs were never going to qualify their initiative for the November 2020 ballot.

A. Constitutional Framework

The right to petition the government is at the core of First Amendment protections and this includes the right to present initiatives. *City of Cuyahoga Falls Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196 (2003); *see also Meyer v. Grant*, 486 U.S. 414, 421–22 (1988) (explaining that the circulation of ballot petitions is “core political speech”). “Courts generally apply the framework established in *Anderson v. Celebrezze*, as later refined in *Burdick v. Takushi* (the *Anderson-Burdick* framework) when considering the constitutionality of ballot access restrictions.” *Reclaim Idaho*, 2020 WL 3490216, at *7 (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992)).

Plaintiffs argue that because they do not challenge the facial constitutionality of Oregon’s initiative requirements, but only challenge them as applied during these unprecedented times, that the Court should instead apply the framework from *Angle v. Miller*, 373 F.3d 1122 (9th Cir. 2012). The Court follows other district courts in the Ninth Circuit in finding that analysis under the *Angle* framework is proper. *Reclaim Idaho*, 2020 WL 3490216, at *7; *Fair Maps Nevada v. Cegavske*, No. 3:20-cv-00271-MMD-WGC, 2020 WL 2798018, at *11 (D. Nev. May 29, 2020). In *Angle*, the Ninth Circuit explained that restrictions on the initiative process will burden core political speech if: (1) the regulations restrict one-on-one communication between petition circulators and voters; or (2) the regulations make it less likely that proponents can obtain the necessary signatures to place the initiative on the ballot. 673 F.3d at 1132. The Court analyzes each category in turn.

Even though Defendant claims otherwise, it is unquestionable that *Angle*’s first category applies. Def.’s Resp. to Pl’s Mot. for Prelim. Inj. 19–20, ECF No. 18. The Governor’s Executive Orders, issued to diminish the spread of coronavirus, also prevented any one-on-one

communication between petition circulators and Oregon voters. Defendant asks the Court to suspend belief in finding that because the Executive Orders did not explicitly ban petition gathering, Plaintiffs could somehow continue to solicit in-person signatures. Plaintiffs, like all Oregon citizens, were told to stay home and physically distance from others. By continuing to require Plaintiffs to meet a strict threshold and deadline in the middle of a pandemic, Plaintiffs' circulators were prevented from engaging in one-on-one communication with Oregon voters.

The Court now considers the second category and must decide whether Defendant's insistence on strictly applying the initiative requirements made it less likely that Plaintiffs could obtain the necessary signatures. Plaintiffs faced pandemic-related regulations that severely diminished their chances of collecting the necessary signatures by July 2, 2020. Defendant, even when requested, refused to lower the threshold or alter the turn-in deadline.³ Pl.'s Mot. for Prelim. Inj. 14. "Therefore, the Court finds [that Defendant's] refusal to make reasonable accommodations during this time period made it less likely for [Plaintiffs] to get enough signatures to place [Plaintiffs'] initiative on the November 2020 ballot." *Reclaim Idaho*, 2020 WL 3490216, at *8. Plaintiffs, without an accommodation from Defendant, had an impossible task and can now only get their initiative on the November 2020 ballot with "an order of relief from this Court." *Id.*

Because the Court finds a burden on Plaintiffs core political speech, the Court must now decide what form of review to use when analyzing Defendant's conduct. *See Arizonans for Fair Elections v. Hobbs*, No. CV-20-00658-PHX-DWL, 2020 WL 1905747, at *8 (D. Ariz. Apr. 17, 2020). "Courts apply strict scrutiny when: (1) the proponents of the initiative have been

³ This is even though the Secretary of State, in recognizing Governor Brown's Executive Orders and the health risks posed by coronavirus, suspended all in-person services normally offered by the Secretary of State. *See* Press Release, Oregon Secretary of State, News from the Secretary of State (Apr. 15, 2020), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36377>.

‘reasonably diligent’ as compared to other initiative proponents; and (2) when the restrictions significantly inhibit the proponents' ability to place an initiative on the ballot.” *Reclaim Idaho*, 2020 WL 3490216, at *8 (quoting *Fair Maps Nevada*, 2020 WL 2798018, at *11). But if Plaintiffs cannot meet either prong, then the Court will apply a lesser form of scrutiny. *See Angle*, 673 F.3d at 1133.

1. Reasonable Diligence

Beginning with the first prong, the Court first determines whether Plaintiffs acted “reasonably diligent” as compared to other initiative proponents. *Id.* (“We have held that the burden on plaintiffs’ rights should be measured by whether, in light of the entire statutory scheme regulating ballot access, reasonably diligent candidates can normally gain a place on the ballot, or whether they will rarely succeed in doing so.” (quotations and citation omitted)). While Plaintiffs argue that they were reasonably diligent, Defendant and *amici curiae* disagree.

Defendant insists that Plaintiffs “bear the risk of their decision to wait to gather signatures.” Def.’s Resp. to Pl’s Mot. for Prelim. Inj. 19. Defendant notes that two measures qualified for the November 2020 ballot. Davis Decl. ¶ 6. Those two measures were approved for circulation in the fall of 2019, showing that they had begun the approval process earlier than Plaintiffs. *Id.* Defendants rely heavily on an Arizona District Court’s decision to support their argument that Plaintiffs lacked diligence.

But the decision in *Arizonans for Fair Elections* is distinguishable from the facts here. In *Arizonans for Fair Elections*, while the petitioners waited until late 2019 to file the requisite paperwork, they were able to collect signatures prior to the enactment of coronavirus related guidelines. 2020 WL 1905747, at *2. Plaintiffs here were not so lucky. Instead, they had to gather signatures while Executive Orders specifically prohibited their ability to connect with

voters in person. Further, like petitioners in *Fair Maps Nevada*, Plaintiffs were delayed in their attempt to collect signatures by litigation brought by a third party. 2020 WL 2798018, at *12. Defendant asks the Court to find that Plaintiffs lacked diligence because they forgot to consult their crystal ball and predict a court challenge, a pandemic, and unprecedented societal upheaval.

The Court instead finds that Plaintiffs submitted considerable evidence reflecting that but-for the pandemic-related restrictions, they would have gathered the required signatures by the July 2 deadline. *See* Pl.’s Reply in Supp. of its Mot. for Prelim. Inj. 11–13, ECF No. 21 (detailing the organizational efforts undertaken by Plaintiffs). Plaintiffs also displayed considerable resilience in pivoting their initiative campaign to a process that still yielded over 60,000 signatures while adhering to Governor Brown’s Executive Orders. This number carries additional significance because at oral argument Elizabeth Kauffman, campaign manager for one of the two qualified initiatives, testified that their campaign collected a similar number of signatures during the same time frame.⁴

To reiterate, Plaintiffs only needed to display reasonable diligence in comparison to other initiative proponents. *Angle*, 673 F.3d at 1133. The facts here indicate that Plaintiffs acted with reasonable diligence in their attempt to meet Oregon’s initiative requirements.

2. *Significantly Inhibit*

Admittedly, the Court made clear at oral argument that only the first prong, whether Plaintiffs were reasonably diligent, was at issue. As explained earlier, Plaintiffs faced many restrictions that, when combined with Defendant’s stringently applying the initiative requirements, “significantly inhibit[ed] [their] ability to place an initiative on the ballot.”

⁴ Ms. Kauffman’s initiative, IP 44, had a lower signature threshold than Plaintiffs initiative because it proposes a statutory change, not a constitutional amendment. *See Detailed Information for Initiative Number 44*, Oregon Secretary of State: Elections Division, http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200044.LSCYYY. (last visited July 13, 2020).

Reclaim Idaho, 2020 WL 3490216, at *8. The Court does not question the significant regulatory interest Defendant has in maintaining adherence to the initiative requirements laid out in Oregon’s constitution. *Id.* (citing *Angle*, 673 F.3d at 1135). But those interests must be considered against the First Amendment protections afforded to citizens petitioning their government. *City of Cuyahoga*, 538 U.S. at 196. “When an initiative fails to qualify for the ballot, it does not become ‘the focus of statewide discussion.’” *Angle*, 673 F.3d at 1133 (quoting *Meyer*, 486 U.S. at 423). The Court adopts the reasoning in *Reclaim Idaho* in finding that Defendant’s “refus[al] to make reasonable accommodation, during the unprecedented time of the pandemic, reduced the total quantum of speech on the public issue of [partisan gerrymandering].” 2020 WL 3490216, at *8 (quotation omitted).

B. Laches

Defendant also argues that Plaintiffs preliminary injunction request is barred by laches. Def.’s Resp. to Pl.’s Mot. for Prelim. Inj. 25–27. “Laches applies when there is both unreasonable delay and prejudice.” *Arizona Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922 (D. Ariz. 2016). “Laches . . . requires denial of injunctive relief, including preliminary relief.” *Id.*

But as noted by Plaintiffs, “it would have been difficult to file this as-applied constitutional challenge earlier and still met [their] burden of proof.” Pl.’s Reply in Supp. of its Mot. for Prelim. Inj. 16. The Court agrees with Plaintiffs and finds that Defendant has failed to “prove both an unreasonable delay by [Plaintiffs] and prejudice to itself.” *Evergreen Safety Council v. RSA Newtwork Inc.*, 697 F.3d 1221, 1226 (9th Cir. 2012) (quoting *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000)).

In sum, the Court finds that Plaintiffs are likely to succeed on the merits of their claim that Oregon's initiative requirements are unconstitutional as applied.

II. Irreparable Harm

Without a preliminary injunction, Plaintiffs' initiative will not appear on the November 2020 ballot. The Court therefore finds that Plaintiffs are likely to suffer irreparable harm in the absence of injunctive relief.

III. Balance of Equities

"The Court must also balance the relative hardships on the parties should it provide preliminary relief or decline the request." *Reclaim Idaho*, 2020 WL 3490216, at *10 (citing *Winter*, 555 U.S. at 20; *Univ. of Hawaii Prof. Asm. v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir. 1999)).

The Court recognizes Defendant's interest in "ensuring the efficient and orderly administration of its elections." Def.'s Resp. to Pl.'s Mot. for Prelim. Inj. 28. The Court also understands the strain that its decision may impose on Defendant's employees and staff as they verify additional signatures.⁵ But this consideration must be balanced against the constitutional harm Plaintiffs confront.

When weighing the hardships each party faces, the First Amendment rights trump any concerns about the administration of the relief requested. *See Meyer*, 486 U.S. at 421–22 ("The circulation of a petition involves the type of interactive communication concerning political change that is appropriately describe as 'core political speech.'"). As a result, the balance of equities leans in Plaintiffs favor.

⁵ Defendant also raised a concern that if the Court were to grant Plaintiffs' request, other initiatives would submit signatures in August. Def.'s Resp. to Pl.'s Mot. for Prelim. Inj. 30. For clarity, the Court's order today applies only to Plaintiffs' as-applied constitutional challenge. Further, the likely difference between Plaintiffs initiative campaign and others is the diligence showed by Plaintiffs here. If other initiatives seek to obtain similar relief, they will need to show the organizational wherewithal that Plaintiffs presented here.

IV. Public Interest

As explained above, the public interest leans in favor of granting injunctive relieve because such a remedy protects Plaintiffs' ability to place their initiative on the November 2020 ballot. The Court finds it worth noting that Oregon's voters will be the ones who ultimately decide whether Plaintiffs initiative will be enacted. Simply put, "issuing a preliminary injunction requiring [Defendant's] to make reasonable accommodation to protect [Plaintiffs'] core political speech rights in the initiative process is in the public's interest." *Reclaim Idaho v. Little*, 2020 WL 3490216, at *10.

V. Remedy

There are considerable concerns raised when a federal court instructs a state on how to run their election process. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) ("This Court has repeatedly emphasized that lower federal could should ordinarily not alter the election rules on the eve of an election." (citations omitted)). "However, as the analysis herein explains, the First and Fourteenth Amendments do place some restrictions on [Defendant's] authority through the preservation of constitutional rights." *Reclaim Idaho*, 2020 WL 3490216, at *11.

In recognizing the potential disruptions any remedy may pose, the Court offers two alternative remedies to Defendant. First, because Plaintiffs have shown a likelihood of success under normal circumstances, Defendant may simply allow Plaintiffs on the ballot. Alternatively, Defendant may choose to reduce the signature threshold by 50%, which would equal 58,789 signatures, and allow Plaintiffs an extension until August 17. Other courts have granted similar relief. *See SawariMedia LLC v. Whitmer*, No. 20-cv-11246, 2020 WL 3097266, at *12 (E.D. Mich. June 11, 2020) (finding that Michigan's signature threshold was not narrowly tailored to

the present circumstances); *Fair Maps Nevada*, 2020 WL 2798018, at *15–16 (finding that enforcement of Nevada’s signature deadline was not narrowly tailored to the present circumstances). As detailed in Plaintiffs motion, Plaintiffs’ requested accommodations rely on data from previous elections and considered logistical issues defendant could face. *See* Pl.’s Mot. for Prelim. Inj. 32–37.

At oral argument, the Court informed Defendant that they would have until 5:00 p.m. P.S.T. on July 13, 2020 to choose between the two alternative remedies.

CONCLUSION

The Secretary of State has a vital interest in regulating the petition processes. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). It is also important that the federal courts not take it upon themselves to rewrite state election rules, particularly on the eve of an election. *Republican Nat’l Comm.*, 140 S. Ct at 1207. But when these rules collide with unprecedented conditions that burden First Amendment access to the ballot box, their application must temper in favor of the Constitution. Because the right to petition the government is at the core of First Amendment protections, which includes the right of initiative, *City of Cuyahoga Falls*, 538 U.S. at 196, the current signature requirements in Oregon law are unconstitutional as applied to these specific Plaintiffs seeking to engage in direct democracy under these most unusual of times. The Court therefore GRANTS Plaintiffs’ motion for emergency injunctive relief.

IT IS SO ORDERED.

DATED this 13th day of June, 2020.

/s/ Michael McShane
Michael J. McShane
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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

Plaintiffs,

v.

BEVERLY CLARNO, OREGON
SECRETARY OF STATE,

Defendant.

Case No. 6:20-cv-01053-MC

DECLARATION OF SUMMER S. DAVIS IN
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

I, Summer S. Davis, declare under penalty of perjury:

Experience and Qualifications

1. I am a Compliance Specialist 3 with the Elections Division of the Oregon Secretary of State. I have been continuously employed by the Elections Division since April 24, 2000.

2. Some of my job responsibilities include overseeing the initiative and referendum petitions process, including conducting signature verification. During my employment with the Elections Division, I have participated in signature verification for at least 87 different initiative petitions. I am also the Elections Divisions lead on the Conduct of Elections, the State Voters' Pamphlet, and compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), among other functions. As Conduct of Elections lead, I provide assistance on using the Oregon Centralized Voter Registration (OCVR) database to administer an election, certifying the ballot, creating the official abstract of votes and official voter registration and participation statistics, and coordinating the post-election hand-count process. I am also familiar with other aspects of the administration of Oregon elections.
3. I make this declaration from personal knowledge, to the best of my recollection, and based on records regularly maintained by the Elections Division in the ordinary course of business.

Initiative Petition Process

4. Before an initiative petition is approved for circulation, chief petitioners must take several initial steps: submit form SEL 310 for a prospective initiative petition including the text of the proposed legislation or constitutional amendment, submit at least 1,000 valid sponsorship signatures, receive a certified ballot title (which sometimes requires a decision of the Oregon Supreme Court), receive cover and signature sheet templates and use the templates to prepare cover and signature sheets exactly as they intend to circulate. Prospective initiative petitions may be submitted, and these initial steps completed, for future election cycles at any time. For the 2020 election cycle, 68 petitions took the initial step of filing a prospective initiative petition, beginning with Initiative Petition ("IP") 1 (2020) filed on February 6, 2018. As of July 7, 2020, eight prospective petitions have

already been submitted for the 2022 ballot, beginning with IP 1 (2022) filed on March 1, 2019.

5. To ensure uniformity within a petition cycle and to avoid voter confusion, petitions may not be approved for circulation until after the deadline to submit signatures for the prior general election cycle. Initiative petitions that have completed the initial requirements listed in the paragraph above may be approved for circulation at any time after the prior cycle's petition deadline. For the 2020 general election, July 9, 2018, was the first day a petition could be approved for circulation. On October 17, 2018, IP 1 (2020) became the first petition approved for circulation for the 2020 cycle. For the 2022 general election, chief petitioners for IP 1 (2022) have already submitted 1,000 sponsorship signatures and received a certified ballot title. Beginning July 6, 2020, the IP 1 (2022) chief petitioners could seek approval to circulate their petition by completing the final pre-circulation step: submitting cover and signature sheets to the Elections Division for review and approval to circulate.
6. Two initiative petitions qualified for the 2020 general election ballot by submitting a sufficient number of valid signatures by the July 2, 2020 deadline: IP 34, which was approved for circulation on September 26, 2019, and IP 44, which was approved for circulation on November 26, 2019.
7. As of July 2, 2020, seven initiative petitions had not yet submitted signatures but remained eligible to do so. Three of those petitions were IP 57, IP 58, and IP 59; IP 58 and IP 59 proposed similar constitutional amendments to IP 57 and were submitted by the same chief petitioners. The other four initiative petitions (IP 1, IP 10, IP 46, and IP 60) were unrelated. All seven petitions are no longer eligible for certification for the 2020 ballot because a sufficient number of signatures was not submitted for verification by July 2 at 5 p.m.

8. Historically, multiple initiative petitions qualify for the ballot each election cycle, but typically fewer than half the number of initiative petitions that are approved for circulation ultimately qualify. The following table summarizes the number of initiative petitions filed with the Secretary of State, the number of initiative petitions approved for circulation, the number of initiative petitions that submitted sufficient valid signatures by the deadline to qualify for the ballot, the number of qualified petitions that proposed constitutional amendments, and the latest date a proposed constitutional amendment that qualified for the ballot was approved for circulation for each election cycle since 2010:

| Election Year | IPs Filed | IPs Approved To Circulate | IPs Qualified | Constitutional IPs Qualified | Latest Circulation Qualified Const. IP |
|----------------------|------------------|----------------------------------|----------------------|-------------------------------------|---|
| 2020 | 68 | 11 | 2 | 0 | n/a |
| 2018 | 45 | 12 | 4 | 3 | 3/7/2018 |
| 2016 | 82 | 16 | 4 | 0 | n/a |
| 2014 | 59 | 20 | 4 | 1 | 12/20/2013 |
| 2012 | 45 | 18 | 7 | 3 | 4/17/2012 |
| 2010 | 83 | 20 | 4 | 1 | 2/19/2010 |

9. Of the 30 initiative petitions proposing constitutional amendments that have qualified for the ballot from the 2000 election to present, all but two of the petitions were approved for circulation no later than March of the election year. The two exceptions were Measure 85 in 2012 (Protect Oregon's Priorities III, approved April 17, 2012) and Measure 36 in 2004 (Constitutional Definition of Marriage, approved May 21, 2004).

Initiative Petition 57

10. The Elections Division posts a record of administrative actions taken on initiative petitions in the Initiative, Referendum, and Referral database on the Secretary of State's public website.
11. A copy of the record of administrative actions for Initiative Petition 5 for the 2020 election, which proposed a constitutional amendment to change the redistricting process, is attached as Exhibit A to this declaration. That record shows that on June 19, 2018, chief petitioners for Initiative Petition 5 filed a prospective petition and withdrew it on October 31, 2019.
12. A copy of the record of administrative actions for Initiative Petition 57 ("IP 57") for the 2020 election is attached as Exhibit B to this declaration. That record shows that on November 12, 2019, chief petitioners for IP 57, C. Norman Turill and Sharon K. Waterman, filed a prospective petition. On December 5, 2019, the petitioners submitted sponsorship signatures submitted for verification, which were verified on December 20, 2019. The Attorney General filed a draft ballot title on December 30, 2019. After public comment, the Attorney General filed a certified ballot title on January 30, 2020. The ballot title was appealed to the Supreme Court on February 13, which approved the ballot title with no changes on March 27. IP 57 was approved for circulation on April 9.
13. The Initiative, Referendum, and Referral database also includes the complete text of IP 57, which is attached as Exhibit C to this declaration, and the ballot title, which is attached as Exhibit D to this declaration.
14. Individuals gathering signatures may be paid to do so, or may gather signatures as a volunteer. Any circulator who is being paid to gather signatures must register with the Elections Division. Only five people registered to gather the 1,000 sponsorship signatures for IP 57. No person has registered as a paid circulator for IP 57 since the petition was approved to circulate.

15. At approximately 4 p.m. on July 2, 2020, the chief petitioners for IP 57 submitted signature sheets to me at the Elections Division. According to the SEL 339 accompanying the submission, it included 64,172 signatures. I rejected the submission because it did not contain the number of signatures required to qualify for the ballot.

COVID-19

16. Beginning in March 2020, the Elections Division received numerous requests by phone and email to change the requirements for initiative petitions, including an extension of the submission deadline, a reduction in the number of signatures required, acceptance of digital signatures or non-original signature sheets, and amendment to the Elections Date specified by chief petitioners on the SEL 310. These petition requirements are established by the Oregon Constitution or by statute and the Secretary of State does not have the authority to make changes. Lacking any authority, the Elections Division did not make any changes to the petition requirements.
17. The most formal request for a change of the petition requirements was made by Rebecca Gladstone and Norman Turrill, which the Elections Division received on March 13, 2020. A copy of that request is attached as Exhibit E to this declaration. On June 9, 2020, the Elections Division formally responded to the request. A copy of that response is attached as Exhibit F to this declaration.
18. On May 7, 2020, I exchanged emails with Rebecca Tweed, an authorized agent of the chief petitioners for IP 57. A copy of those emails is attached as Exhibit G to this declaration.
19. The State Initiative and Referendum Manual provides guidelines for circulation of petitions, including statutory requirements, and the Elections Division may provide informal guidance to petitioners regarding these requirements. A different organization circulating initiative petitions informed me of its process to continue soliciting voter

signatures within the Governor's executive orders. I took no action to discourage that organization from going forward with its plans.

20. IP 34 submitted for verification 31,209 signature lines collected from May 22, 2020 to June 29, 2020. IP 44 submitted for verification 26,133 signature lines for verification collected from May 22, 2020 to June 30, 2020.

Petition Signature Verification Process

21. The signature verification process for initiative petitions is governed by statutes and administrative rules. Although there are various statutes and rules that apply, the key statute is ORS 250.105, and the key administrative rules are OAR 165-014-0030, OAR 165-014-0270, and OAR 165-014-0275, as well as the 2020 Initiative and Referendum Manual, which was adopted by OAR 165-014-0005.
22. After signatures are submitted to the Elections Division for verification, but before determining the validity of the signatures contained within the submittal, each signature sheet is reviewed for compliance with the requirements of statutes and administrative rules. This review determines if individual signature sheets will be "accepted for verification" and what signature lines will be included in the pool of signatures which the statistical sample will be drawn from. The sample is not generated until a sufficient number of signature lines have been accepted for verification for an initiative to qualify for the ballot.
23. Next, samples are drawn from the signature lines accepted for verification. If petitioners make multiple submissions, samples must be separately drawn from each complete submittal: (i) a sample of 5.01% of the primary signature submissions (which is divided between a sub-sample of 1,000 signatures and a sub-sample of the remaining signatures), and (ii) a sample of 5.01% of each subsequent submission of signatures accepted for verification or 250 signatures, whichever is greater.

24. For each signature line in the random sample, Elections Division staff must identify the person who signed the line, locate the signer's registration record in the OCVR database (sometimes after several searches), and compare the signature provided on the petition sheet to signatures contained in the voter's registration record. To be counted as valid, the signer must have been an active registered voter at the time they signed the petition and the Elections Division must be able to match the handwriting characteristics of the signature on the sampled signature line to the handwriting characteristics of the signatures contained in the voter's registration record.
25. A statistical sampling formula developed by a statistician and adopted by rule by the Secretary of State is used to determine if the petition contains the required number of signatures. The formula is applied to the number of signatures in a sample determined to be valid and is used to calculate an estimate for the number of duplicate or triplicate signatures in the petition. If the total number of valid signatures less the estimate for duplicate or triplicate signatures is equal to or greater than the number of signatures necessary, the Secretary of State certifies that the initiative petition has qualified for the ballot. The Elections Division first verifies the signatures in the 1,000-signature-line sub-sample. If, using the formula adopted by rule, the results of the initial sub-sample shows that the petition has sufficient signatures to qualify for the ballot with an assumed 8% duplication rate required by statute, and at a 95% or greater level of confidence, the petition is deemed qualified and the Division conducts no further verification of the signatures for that petition. Otherwise, the Elections Division verifies the remainder of the 5.01% sample to determine whether a sufficient number of valid signatures have been submitted to qualify for the ballot.
26. A video depicting the signature-verification process is available at <https://www.youtube.com/watch?v=qWdJ4TJEI5Q&feature=youtu.be>. It fairly and accurately describes the processes the Elections Division uses to verify signatures.

27. The percentage of initiative petition signatures submitted for verification that are determined to be valid varies widely from petition to petition. Under the current sampling formula adopted in 2007, the highest percentage of valid signatures was 86.22% (IP 22 in 2018) and the lowest percentage of valid signatures was 53.68% (IP 24 in 2012). The Elections Division has completed verifications for two initiative petition submissions in 2020. For IP 44, the Elections Division determined 74.75% of the signatures accepted for verification were valid. For IP 34, the Elections Division determined 82.30% of the signatures accepted for verification in its combined early and supplemental submittals were valid.
28. In 2018, all four initiative petitions that qualified for the ballot, including IP 31, were deemed qualified after verification of the 1,000 signature sub-sample. Verification of the 1,000 signature sub-sample for IP 31 was completed after work conducted on ten different days, including days in which sorting and data entry were conducted before the initial submission was complete.
29. I cannot reliably estimate the length of time for the Elections Division to determine whether a particular petition has submitted a sufficient number of signatures. The average time it takes to determine the validity each signature varies significantly from petition to petition. Factors affecting the average time to verify a signature on a given petition include but are not limited to: the legibility of the signature sheets, the percentage of signers who are not registered to vote, and the percentage of signers who signed more than once. The more signatures petitioners submit for verification, the longer the verification reviewing a 5.01% sample of the signatures submitted will take, other things equal.
30. The Elections Division has adapted its signature review operations to allow appropriate social distancing between employees to minimize the risk of exposure to COVID-19. In addition to the risk COVID-19 poses to the health of individual workers, if the illness

were to spread among the Elections Division's small staff it could make it exceedingly difficult to meet our obligations to administer the 2020 General Election. To ensure the physical security of the petitions and facilitate public observation, the review of petition signatures is conducted in a single room. Only four employees, including me, can simultaneously work safely in that space. In past years, up to eight employees worked simultaneously to verify petition signatures.

31. Three verifications of initiative petitions have been conducted under these conditions. It took 12 days of work, dedicated almost entirely to signature verification, to verify IP 44's initial submission of 163,473 signatures. The verification of IP 34's initial submission of 135,573 signatures took 21 days of work, again dedicated almost entirely to signature verification despite the other business needs of the Elections Division. The verification of IP 34's supplemental submission of 31,209 signatures took 6 days of work, again focused almost entirely on signature verification. Dedicating staff time nearly entirely to signature verification during the work day presents challenges to completing the other work of the Elections Division. This is particularly true when trying to meet statutory or other legal deadlines that co-exist or come due at the same time.

Ballot Design, Printing, and Mailing

32. Under ORS 254.085, the Elections Division issues a directive no later than 61 days before a general election (this year, September 3) that includes the Official Ballot Statements, and provides instructions county officials must use to design and print ballots. The Official Ballot Statement for candidates lists the federal and state contests to appear on the ballot, including the exact language to be printed on the ballot for each contest and the order in which contests and candidates must be listed. For state ballot measures, the Official Ballot Statement specifies the ballot title and financial estimate language to be printed on the ballot. Attached as Exhibit H to this declaration is a copy of the Secretary of State's directive issued for the 2018 general election, which follows the

same form as prior years. I expect the Secretary of State's directive for the 2020 general election will follow a similar form.

33. After receiving the directive, each county must then design the ballots for the election, combining the federal and state contests with contests for counties, special districts, and other localities. Page 25 of the Secretary of State's Vote By Mail Procedures Manual provides guidance to county officials to encourage design choices to minimize voter confusion. County officials must design multiple unique ballot styles so each voter receives a ballot listing only the local races in which he or she is eligible to vote based on district and precinct boundaries. I expect there to be more than 2,500 ballot styles across the state for the 2020 general election. I expect Clackamas, Multnomah and Washington Counties to have the most ballot styles (approximately 275 ballot styles in each county), and Harney, Jefferson and Malheur Counties to have the fewest ballot styles (approximately 6 ballot styles in each county).
34. After designing ballots, county officials must print the ballots and assemble the initial mailing. Although I have never served as a county official, I am generally familiar with the manner in which county officials direct the printing of ballots. The counties' methods of printing ballots vary, but many counties contract with private vendors to print ballots. Based on my experience with vendors that print election related materials during the COVID-19 emergency, vendors now have less capacity and longer turnaround times than in past years.
35. Counties also vary in their approach to mailing ballots, with some counties relying on vendors while others directly employ permanent and temporary workers to assemble the mailing. County officials have modified and are expected to continue to modify their mailing processes to ensure their staff and vendors take appropriate precautions against COVID-19.

36. Under federal law, county election officials must send general election ballots to military and overseas voters by September 19, 2020. A military or overseas voter could be sent any one of the ballot styles available, because the ballot style sent to a military or overseas voter depends on the Oregon address where the voter is registered. I believe the time allowed between the directive and the military and overseas mailing deadline is necessary to give the counties time to design, print, assemble, and mail these ballots. Based on my experience the 16 days provided between September 3 and September 19 is sufficient for this purpose.
37. Based on the information provided to the public by the U.S. Postal Service, international mail delivery has slowed due to COVID-19. The Elections Division intends to encourage county election officials to mail military and overseas ballots as soon as they are able to do so, including mailing ballots before the September 19 federal deadline, so military and overseas voters receive their ballots as soon as possible. In the 2018 general election, 77 military and overseas ballots were rejected because they were returned to county elections offices after the return deadline.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July 9, 2020.





Oregon Secretary of State

Elections Division

Initiative, Referendum, and Referral Search

Detailed Display: 1 records

Search Date: Sunday 07/05/2020

| Election Year | Keyword | Active | Qualified | Rejected | Withdrawn | Approved to Circulate | Will Pay Circulators | Statutory | Constitutional |
|---------------|---------|--------|-----------|----------|-----------|-----------------------|----------------------|-----------|----------------|
| 2020 | .. | .. | .. | .. | .. | .. | .. | Y | Y |

Detailed Information For : 5/2020

| Initiative Number | Date Filed | Will Pay Petitioners | Statutory/ Constitutional | Signatures Required | Approved For Circulation | Current Status | Ballot Measure Number |
|-------------------|------------|----------------------|---------------------------|---------------------|--------------------------|----------------|-----------------------|
| 5 | 06/19/2018 | Yes | Constitutional | 149,360 | | Active | Not Certified |

Chief Petitioner Details

| | | | | | |
|----------------------------|-----------------------------------|----------------------------|-------------------------------------|----------------------------|-------------------------------------|
| Name | Kevin Mannix | Name | Michele Fletchall | Name | Charles Lee |
| Address | 2007 State St. Salem, OR 97301 | Address | 4262 Bison Ct NE Salem, OR 97305 | Address | 6316 Hogan Dr N Keizer, OR 97303 |
| Contact Information | Phone: (503)364-1913 Fax:()- | Contact Information | Phone: ()- Fax:()- | Contact Information | Phone: ()- Fax:()- |

Ballot Titles

| |
|--|
| Subject (Provided by chief petitioners) (view complete text of Initiative) |
| Establish Citizen Commission for Legislature Redistricting |
| Draft Ballot Title (view complete title received: 12/05/2018, or comments deadline: 12/19/2018) |
| Amends Constitution: Creates commission for legislative redistricting, changes redistricting requirements; commissioners represent areas with very unequal populations |
| Certified Ballot Title (view complete title and AG letter received: 01/07/2019) (appeal deadline: 01/22/2019) |
| Amends Constitution: Transfers legislative redistricting to commission; commission over-represents rural areas; changes redistricting requirements; limits judicial review |

Amended Ballot Title (view [complete title](#) received: 09/04/2019) or ([supreme court opinion](#) received: 06/06/2019)

Amends Constitution: Repeals redistricting process performed by legislature; creates new redistricting commission; membership weighted toward rural areas

Notes

06/19/2018 Prospective petition filed. To begin the ballot title drafting process, chief petitioners must submit 1,000 sponsorship signatures.

11/09/2018 Sponsorship signatures submitted for verification.

11/27/2018 Signature verification of sponsorship signatures completed. Petition contains 1,294 signatures.

01/22/2019 Appealed to Supreme Court.

09/04/2019 Judgement Received. Certified Ballot Title modified by Attorney General.

10/31/2019 Withdrawn by Chief Petitioners.

END OF SEARCH

[Elections Division Home Page](#)

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Oregon Secretary of State

Elections Division

Initiative, Referendum, and Referral Search

Detailed Display: 1 records

Search Date: Sunday 07/05/2020

| | | | | | | | | | |
|----------------------|----------------|---------------|------------------|-----------------|------------------|------------------------------|-----------------------------|------------------|-----------------------|
| Election Year | Keyword | Active | Qualified | Rejected | Withdrawn | Approved to Circulate | Will Pay Circulators | Statutory | Constitutional |
| 2020 | .. | .. | .. | .. | .. | .. | .. | Y | Y |

Detailed Information For : 57/2020

| Initiative Number | Date Filed | Will Pay Petitioners | Statutory/Constitutional | Signatures Required | Approved For Circulation | Current Status | Ballot Measure Number |
|-------------------|------------|----------------------|--------------------------|---------------------|--------------------------|----------------|-----------------------|
| 57 | 11/12/2019 | Yes | Constitutional | 149,360 | 04/09/2020 | Active | Not Certified |

Chief Petitioner Details

| | | | | | |
|----------------------------|--|----------------------------|---|--|--|
| Name | C. Norman Turrill | Name | Sharon K. Waterman | | |
| Address | 3483 SW Patton Rd. Portland, OR 97201 | Address | 87518 Davis Creek Ln. Bandon, OR 97411 | | |
| Contact Information | Phone: (503)807-4863 Fax:()- | Contact Information | Phone: (541)347-3453 Fax:()- | | |

Ballot Titles

| |
|--|
| Subject (Provided by chief petitioners) (view complete text of Initiative) |
| People Not Politicians |
| Draft Ballot Title (view complete title received: 12/30/2019, or comments deadline: 01/14/2020) |
| Amends Constitution: Repeals legislative redistricting process; creates congressional/state redistricting commission; equal representation of Democrats, Republicans, others |
| Certified Ballot Title (view complete title and AG letter received: 01/30/2020) (appeal deadline: 02/13/2020) |
| Amends Constitution: Repeals legislative redistricting process; creates congressional/state redistricting commission; equal number of Democrats, Republicans, others |
| Amended Ballot Title (supreme court opinion received: 03/26/2020) |
| Certified Ballot Title approved without changes |

Notes

| |
|--|
| 11/12/2019 Prospective petition filed. To begin the ballot title drafting process, chief petitioners must submit 1,000 sponsorship signatures. |
| 12/05/2019 Sponsorship signatures submitted for verification. |
| 12/20/2019 Signature verification of sponsorship signatures completed. Petition contains 1,656 signatures. |
| 12/30/2019 Revised text submitted. |
| 02/13/2020 Appealed to Supreme Court |
| 03/27/2020 Judgement Received from Supreme Court. Ballot Title approved with no changes. |
| 03/30/2020 Official templates issued. |
| 04/09/2020 Approved to circulate on canary paper stock for any petition sheet that will be circulated by paid circulators. |
| 04/09/2020 Approved to circulate on white paper stock for any petition sheet that will be circulated by volunteer circulators. |

END OF SEARCH[Elections Division Home Page](#)

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OREGON REDISTRICTING BALLOT MEASURE
LEGISLATIVE AND CONGRESSIONAL FINDINGS

Whereas Election Day is when Oregonians exercise their right to vote and make their voice heard, and the people of Oregon need an independent commission to draw fair and impartial districts so that every vote matters; and

Whereas under current law, Oregon politicians draw the boundaries for their own state and congressional districts, a serious conflict of interest that harms voters; and

Whereas state and national level districting and redistricting rules should be determined by a politically neutral entity; and

Whereas Oregon state legislators draw district boundary maps every 10 years based on national census data; and

Whereas in the 2020 census, Oregon is projected to gain another U.S. congressional seat due to population growth, making fair districts more important than ever; and

Whereas 96.3% percent of incumbent politicians were re-elected in the districts they had drawn for themselves year after year; and

Whereas current law allows politicians to draw districts to serve their interests, not those of our communities, dividing places like Clackamas, Salem and Eugene into multiple oddly shaped districts to protect incumbent legislators; and

Whereas the people of Oregon in many communities have no political voice because they have been split into as many as four different districts to protect incumbent legislators; and

Whereas the people of Oregon believe in fairness, accountability and transparency in political processes; and

Whereas fully one in three Oregonians are not registered as either Democrats or Republicans, and have no representation in the Oregon State Assembly or United States Congress; and

Whereas Oregon legislative and congressional districts should be drawn to represent voters from all party affiliations, income levels, backgrounds, identities, and all corners of Oregon; and

Whereas voters across the country – from Arizona to California to Colorado to Michigan – have been moving to reject partisan gerrymandering, adopting reforms to make the redistricting process open and impartial so it is controlled by people, not partisan politicians; and

Whereas an independent Oregon Citizens Redistricting Commission provides a greater opportunity for under-represented communities like low-income Oregonians, persons of color, rural Oregonians and seniors to have a voice in their representation; and

Whereas the people of Oregon, find it necessary to create an independent Citizens Redistricting Commission to draw the state legislative and congressional districts in an impartial and fully transparent manner, that will promote inclusion and representation of all Oregonians; and

Whereas the people of Oregon find it necessary to reform Oregon's congressional redistricting process to account for the projected addition of a new sixth congressional seat with a fair, open, multi-partisan commission to draw districts that represent all voters; and

Whereas the people of Oregon, find it necessary to give otherwise-affiliated voters—whose voices are under-represented in the Oregon State Assembly and the United States Congress—an equal voice and vote on the commission alongside Democrats and Republicans; and

Whereas the people of Oregon, find it necessary to require the independent Citizens Redistricting Commission to draw state legislative and congressional districts based on strict, nonpartisan rules designed to ensure fair representation, and to propose reform that will take redistricting out of the partisan battles of the Oregon Legislative Assembly and guarantees redistricting will be carried out by a group of impartial Oregonians, in open public meetings, without favor to incumbents or parties, and for every aspect of this process to be open to scrutiny by the public and the press; and

Whereas the people of Oregon, find it necessary to create an independent Citizens Redistricting Commission because we believe Oregon voters should choose their representatives—representatives should not choose their voters; and now, therefore,

POLICY AND PURPOSES

PARAGRAPH 1. The Constitution of the State of Oregon is amended by repealing sections 6 and 7, Article IV, and by adopting the following new sections 6 and 7 in lieu thereof, such sections to read:

Sec. 6. (1) The Citizens Redistricting Commission is established. The commission shall consist of twelve commissioners and be created no later than March 15, 2021, and thereafter no later than December 31 in each year ending in the number zero.

(2) The Secretary of State shall adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of subsections (3) and (5) of this section by the Office of the Secretary of State.

QUALIFICATIONS, DISQUALIFICATIONS

(3)(a) By December 3, 2020, and thereafter August 15 in each year ending in the number nine, the secretary shall initiate a process for individuals to apply for membership on the commission. The process must promote a diverse and qualified applicant pool.

Qualifications

(b) An individual may serve on the commission if the individual:

(A) Is registered to vote in this state;

(B) For the three years preceding the initiation of the application process has been registered in Oregon with the same political party or unaffiliated with a political party; and

(C) Voted in at least two of the three most recent general elections or has been a resident of Oregon for at least the previous three years.

Disqualifications

(c) Notwithstanding paragraph (b) of this subsection, an individual may not serve on the commission if the individual is or, within four years of the initiation of the application process, was:

(A) A holder of or candidate for federal, state, county or other elective office for which the holder receives compensation other than for expenses;

(B) An officer, employee or paid consultant of a political party;

(C)(i) An officer, director or employee of a campaign committee of a candidate for or holder of a federal or state office; or

(ii) A paid contractor or member of the staff of a paid contractor of a campaign committee of a candidate for or holder of a federal or state office.

(D) A member of a political party central committee;

(E) A registered federal, state or local lobbyist;

(F) A paid congressional or legislative employee;

(G) A member of the staff of a holder of a federal or state office;

(H) A legislative or campaign contractor, or staff of the contractor, to a holder of a federal or state office;

(I) An individual who has contributed \$2,700 or more in a calendar year to any single candidate for federal or state office; or

(J) A spouse, parent, child, sibling, in-law or cohabitating member of a household of an individual described in subparagraphs (A) to (I) of this paragraph;

(d) For purposes of this subsection, “state office” means the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, state Senator, state Representative, judge or district attorney.

REVIEW PANEL

(4)(a) No later than December 3, 2020, and thereafter January 5 of the year ending in zero, the Chief Administrative Law Judge of the Office of Administrative Hearings or its successor agency, shall designate a Review Panel composed of three administrative law judges to review the applications identified in subsection (5)(a) of this section. Notwithstanding any state law, the chief administrative law judge shall appoint individuals who are reflective of the diversity of this state, including but not limited to racial, ethnic, geographic, and gender diversity, and who possess the most relevant qualifications, including, but not limited to, relevant legal knowledge and decision-making experience, an appreciation for the diversity of the state and an ability to be impartial and promote consensus on the review panel.

(b) The review panel shall include only administrative law judges who have been registered to vote in Oregon and continuously employed by the office of administrative hearings for at least the two years prior to their appointment, who shall be appointed as follows:

(A) One administrative law judge must have been registered for at least the previous two years with the political party with the largest registration in this state.

(B) One administrative law judge must have been registered for at least the previous two years with the political party with the second largest registration in this state;

(C) One administrative law judge must not have been registered for at least the previous two years with either of the two largest political parties in this state.

(c) An administrative law judge may not serve on the review panel if the administrative law judge is an individual described in subsection (3)(c) of this section.

APPLICANT POOL

(5)(a) No later than January 1, 2021, and thereafter March 15 in each year ending with the number zero, after removing applicants with conflicts of interest from the applicant pool as described in subsection (3)(c) of this section, the secretary shall publicize the names of the individuals in the applicant pool in a manner that ensures widespread public access and provide the applications to the review panel.

(b) If the pool of qualified applicants is greater than or equal to 900, the review panel shall randomly select by lot from all of the eligible applicants the names of 300 applicants affiliated with the largest party, 300 applicants affiliated with the second largest party and 300 applicants affiliated with neither of the two largest parties. If any individual sub-pool of eligible applicants contains fewer than 300 applicants, no random selection shall occur for that sub-pool.

(c) No later than February 8, 2021, and thereafter May 15 in each year ending in the number zero, the review panel shall present to the secretary the names of 150 individuals from the applicant pool who possess the most relevant analytical skills, have the ability to be impartial and promote consensus on the commission and demonstrate an appreciation for and are reasonably reflective of the diversity of this state, including but not limited to racial, ethnic, geographic and gender diversity.

(d) The review panel shall choose the individuals for the applicant pool by unanimous vote, with three sub-pools of applicants chosen as follows:

(A) Fifty individuals must be registered with the largest political party in this state;

(B) Fifty individuals must be registered with the second largest political party in this state; and

(C) Fifty individuals must be registered with neither of the two largest political parties in this state.

(e) If fewer than fifty qualified individuals within each sub-pool have applied, the Review Panel shall choose all of the qualified individuals within such sub-pool.

(f) The members of the review panel may not communicate with a member of the Legislative Assembly or the United States Congress, or their agents, about any matter related to the selection of commissioners prior to the presentation of the 150-member applicant pool to the secretary.

RANDOMLY-SELECTED COMMISSIONERS

(6) No later than February 15, 2021, and thereafter July 5 in each year ending in the number zero, at a time and place accessible to members of the public, the secretary shall randomly select by lot six individuals to serve on the commission from the individuals presented under subsections (5)(c) to (e) of this section as follows:

(a) Two individuals must be from the sub-pool of individuals registered with the largest political party in this state;

(b) Two individuals must be from the sub-pool of individuals registered with the second largest political party in this state; and

(c) Two individuals must be from the sub-pool of individuals who are registered with neither of the two largest political parties in this state.

COMMISSIONER-SELECTED COMMISSIONERS

(7)(a) No later than March 15, 2021, and thereafter August 15 in each year ending in the number zero, the six commissioners under subsection (6) of this section shall review the remaining names in the sub-pools and select six additional commissioners. The commissioners shall, without the use of specific ratios or formulas, select additional commissioners who possess the most relevant analytical skills, have the ability to be impartial and promote consensus on the commission and demonstrate an appreciation for and are reasonably reflective of the diversity of this state, including but not limited to racial, ethnic, geographic and gender diversity. When selecting the six additional commissioners, the commissioners may take into account the additional commissioners' experience in organizing, representing, advocating for, adjudicating the interest of or actively participating in groups, organizations or associations in Oregon. The selection shall occur as follows:

(A) Two individuals must be from the sub-pool of individuals registered with the largest political party in this state;

(B) Two individuals must be from the sub-pool of individuals registered with the second largest political party in this state; and

(C) Two individuals must be from the sub-pool of individuals who are registered with neither of the two largest political parties in this state.

(b) Approval of the six additional commissioners requires four affirmative votes of the six initial commissioners, including at least one vote cast by a commission member registered with the largest political party in this state, one vote cast by a commission member registered with the second largest political party in this state and one cast by a commission member who is registered with neither of the two largest political parties in this state.

REMOVAL

(8) The Governor may remove a member of the commission in the event of a substantial neglect of duty or gross misconduct in office, or if a commission member is unable to discharge the duties of the office.

(a) To remove a member, the Governor must:

- (A) Serve the member with written notice;
- (B) Provide the member with an opportunity to respond; and
- (C) Obtain concurring votes from two-thirds of the members of the Senate, which shall convene in special session if necessary.

(b) The member may contest the removal by means of an evidentiary hearing in circuit court in an action in the manner of an action for a declaratory judgment. The circuit court's determination shall take precedence over other matters before the circuit court. Any party may appeal the decision of the circuit court directly to the Supreme Court, which shall accord the highest priority to the matter.

(c) The removal, if contested by the member, shall not be effective until judicial review is concluded.

VACANCY

(9)(a) If a position among the first six randomly selected commissioners on the commission becomes vacant, the commission shall fill the vacancy within 30 days by randomly selecting an appointee from the same sub-pool from which the vacating member was selected. If a position among the final six appointed commissioners becomes vacant, the commission shall fill the vacancy within 30 days by a vote of a simple majority of the remaining commissioners, with at least one commissioner affiliated with each of the two largest political parties in this state and one cast by a commissioner who is registered with neither of the two largest political parties in this state.

(b) If no individual in the applicable sub-pool is available to serve, the review panel shall establish a new sub-pool as provided in subsection (5)(d) of this section, and the commission shall fill the vacancy from the new sub-pool.

HIRING; COMPENSATION; REIMBURSEMENT

(10)(a) The commission shall make all purchasing and hiring decisions and shall hire commission staff, legal counsel and consultants as needed. The commission shall establish clear criteria for the hiring and removal of individuals, conflicts of interest, communication protocols and a code of conduct. A member of the staff or a contractor of the commission or the secretary may not serve the commission or the review panel designated under subsection (4) of this section if the staff member or contractor is an individual described in subsection (3)(c) of this section other than by virtue of the individual being an employee or contractor of the secretary.

(b) The secretary shall provide staff and office support to the commission and the commission staff as needed.

(c)(A) For each day a member is engaged in the business of the commission, the member shall be compensated at a rate equivalent to the amount fixed for per diem allowance that is authorized by the United States Internal Revenue Service to be excluded from gross income without itemization.

(B) For each day a member of the review panel or a member of the commission is engaged in the business of the commission, the member shall receive mileage and reimbursement for other reasonable travel expenses.

(d)(A) An employer may not discharge, threaten to discharge, intimidate, coerce or retaliate against any employee by reason of the employee's service as a commissioner or staff of commission.

(B) If the employment of a member of the commission is interrupted because of the performance of official duties as a member of the commission, the member's employer shall restore the member to the employment status the member would have enjoyed if the member had continued in employment during the performance of the official duties.

(C) Subparagraph (B) of this paragraph does not apply if the employer is a small business. As used in this subparagraph, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for nonconstruction firms. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of \$1 million for construction firms or \$300,000 for nonconstruction firms over the last three years.

(D) Prior to the initiation of the process for individuals to apply for membership on the commission in each year ending with the number nine, the dollar amounts specified in subparagraph (C) of this paragraph shall be increased or decreased by the secretary based upon any increase or decrease in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding 10-year period. The amount determined under this subparagraph shall be rounded to the nearest \$1,000.

TERM OF SERVICE

(11)(a) Commissioners shall serve a term of office that expires upon the appointment of the first member of the succeeding commission. Other than activities expressly authorized by this section and section 7 of this Article, the commission shall only expend funds if there is active litigation or other ongoing commission business.

(b) During the term of office of the commissioners or for a period of three years after resignation or removal, a member of the commission may not:

(A) Hold, or be a candidate for, federal, state, county or other elective office for which the holder receives compensation other than expenses;

(B) Serve in an office for which the holder is appointed or selected by the Legislative Assembly or Congress or a member, committee or house of the Legislative Assembly or Congress;

(C) Receive compensation for serving as a consultant or advisor to a candidate for the Legislative Assembly or Congress or to a member, or committee or house of the Legislative Assembly or Congress; or

(D) Receive compensation for lobbying the Legislative Assembly or Congress.

BUDGET; DATABASE

(12) The Legislative Assembly shall:

(a) Appropriate the funds necessary to permit the commission to fulfill the commission's obligations. For the first year of the redistricting process, the Legislative Assembly shall dedicate funds

for the commission from general tax revenues otherwise available for the operation of the Legislative Assembly. For the first year of the redistricting process, the Legislative Assembly shall appropriate or allocate funds to the commission in an amount not less than the Legislative Assembly appropriates or allocates to the legislative branch for redistricting in the 2019 – 21 biennium. In all future redistricting cycles, the appropriation may not be less than the amount appropriated in the previous redistricting cycle. If new expenditures are required, the dedicated funding source for the commission shall be the income tax. If, after the conclusion of any litigation involving the redistricting, the appropriations to the commission exceed the expenses of the commission, the commission shall return the excess to the General Fund.

(b) Make available a complete and accurate computerized database and precinct shapefiles, for redistricting to the commission.

(13) Except for an Act appropriating monies in a manner described in subsection (12) of this section, the Legislative Assembly may enact an Act that directly impacts the functioning of the commission only when:

(a) The commission recommends by a vote meeting the requirements set forth in paragraph (c) of subsection (2) of section 7 of this Article that the Legislative Assembly enact an Act in order to enhance the ability of the commission to carry out the purposes of the commission;

(b) The commission provides language for the Act to the Legislative Assembly; and

(c) The Legislative Assembly enacts the exact language provided under paragraph (b) of this subsection.

Sec. 7. (1) The Citizens Redistricting Commission shall:

(a) Conduct an open and transparent process enabling full public participation, including public consideration of and comment on the drawing of state legislative and congressional district lines.

(b) Draw district lines according to the redistricting criteria specified in this section.

(c) Conduct all business of the commission with integrity, impartiality and fairness in a manner that reinforces public confidence in the integrity of the redistricting process, including adopting rules that further these purposes.

QUORUM; CHAIR; VOTING

(2)(a) Seven commissioners constitutes a quorum for the conduct of business.

(b) The commission shall select, by a majority vote, one member to serve as chair and one member to serve as vice chair. The chair and vice chair may not be of the same political affiliation.

(c) Official action by the commission requires an affirmative vote by seven or more commissioners.

(d) Approval of the final redistricting maps described in subsection (6) of this section requires seven or more affirmative votes, including at least one vote cast by a commission member registered with the largest political party in this state, one vote cast by a commission member registered with the second

largest political party in this state and one cast by a member who is registered with neither of the two largest political parties in this state.

(e) No more than three commissioners may discuss the business of the commission other than in a public meeting.

TRANSPARENCY; PUBLIC INPUT

(3)(a) The commission shall provide at least 14 days' public notice for each meeting or hearing, except that meetings held within 15 days of August 15, in the year ending in the number one may be held with three days' notice. In the event that the commission must re-convene following a court order according to subsection (7)(d) of this section, meetings and hearings may be held with three days' notice.

(b)(A) The records of the commission pertaining to redistricting and all data considered by the commission in redistricting are public records.

(B) The commission must post records and data in a manner that ensures immediate and widespread public access.

(c) A member of the commission or commission staff or commission consultant may not communicate with an individual who is not a member of the commission or commission staff or commission consultant about redistricting other than in a public hearing. Any written communications regarding redistricting received by a member of the commission or commission staff or a commission consultant shall be considered a public record and shall be made available in a manner that ensures widespread public access.

MAPPING CRITERIA

(4)(a) The commission shall use a mapping process to establish districts for the state Senate and House of Representatives and congressional districts, using the following criteria, to:

(A) Comply with provisions of the United States Constitution and the federal Voting Rights Act (42 U.S.C. 1971 et seq.) or its successor law.

(B) Achieve population equality as nearly as practicable using the total population of Oregon as determined by the decennial census preceding the redistricting process.

(C) Be geographically contiguous.

(D) To the extent practicable, and if possible without conflicting with the criteria set forth in subparagraphs (A), (B) and (C) of this paragraph, respect the geographic integrity and minimize the division of a city, county, local neighborhood, government jurisdiction or community of interest or other contiguous population that shares common social and economic interests and is cohesive for purposes of its effective and fair representation.

(E) To the extent practicable, and if possible without conflicting with the criteria set forth in subparagraphs (A), (B) and (C) of this paragraph, achieve competitiveness.

(b) The commission shall determine and adopt a measure or measures of competitiveness, as defined in paragraph (d) of this subsection, prior to any vote or discussion regarding any legislative or

congressional district plans or proposals. The commission shall then apply such measure or measures when adopting legislative or congressional district plans or proposals.

(c) When establishing districts under this subsection, the commission may not:

(A) Consider the place of residence of a holder of or candidate for public office;

(B) Favor or discriminate against a holder of or candidate for public office or a political party; or

(C) Create a district for the purpose of or with the effect of diluting the voting strength of any language or ethnic identity group.

(d) As used in this subsection:

(A) Common social and economic interests are those common to an urban area, a rural area, an industrial area or an agricultural area and those common to areas in which individuals share similar living standards, use the same transportation facilities, reside in the same watershed, have similar work opportunities or have access to the same media of communication relevant to the election process. Common social and economic interests do not include relationships with political parties, incumbents or political candidates.

(B) Competitiveness means that voting blocs, including partisan and non-affiliated voters, must be substantially and similarly able to translate their popular support into representation in an elected body and that such representation is substantially and similarly reflective of shifts in the electorate's preferences.

HEARINGS

(5)(a) The commission shall hold at least 10 public hearings at locations throughout the state prior to proposing a redistricting plan.

(b) In addition to the hearings required under paragraph (a) of this subsection, the commission shall:

(A) Hold at least five public hearings after a redistricting plan is proposed, but before the plan is adopted; and

(B) Conduct the hearings required under this subsection in each congressional district of this state, specifically at least one hearing in each of Oregon's regions, including coastal, Portland, Willamette Valley, southern, central, and east of the Cascades.

(c) The adoption of a redistricting plan may not be delayed by the impracticability of holding one or more of the hearings required under this subsection.

(d) In holding the hearings required under paragraphs (a) and (b) of this subsection, the commission must:

(A) Provide appropriate public notice of the time and location of each hearing in a manner that ensures widespread public access;

(B) Hold at least one hearing required under paragraph (a) of this subsection and one hearing required under paragraph (b) of this subsection in areas that have experienced the largest shifts in population since the previous redistricting and prioritize holding additional public hearings in these areas; and

(C) Permit and make provision for individuals at remote sites throughout the state to provide public testimony at the hearings through the use of video technology.

ADOPTION OF FINAL MAPS – TIMING, REPORT

(6)(a) No later than August 15 in each year ending in the number one, the commission shall approve final maps that separately set forth the district boundary lines for congressional districts and district boundary lines for the Senate and the House of Representatives.

(b) The commission shall issue, with the final maps, a report that includes an explanation of the basis on which the commission established the districts, responded to public input, and achieved compliance with the criteria listed in subsection (4) of this section and definitions of the terms and standards used in drawing each final map.

(c) If the commission does not approve a final map under subsection (2) of this section, any group of four or more commissioners including at least one commissioner from each sub-pool may submit a map to the Supreme Court by August 29.

COURT REVIEW

(7)(a) The Supreme Court shall adopt rules of procedure for review of redistricting maps. The Supreme Court's review shall take precedence over other matters before the Supreme Court.

(b) Any voter registered in this state may file with the Supreme Court a petition for review of final maps approved by the commission. The petition must be filed on or before September 1.

(c) If the Supreme Court determines that a map approved by the commission under subsection (6)(a) of this section substantially complies with the criteria set forth in subsection (4) of this section, the Supreme Court shall approve the map, which shall go into effect.

(d) If the Supreme Court determines a map approved by the commission under subsection (6)(a) of this section does not substantially comply with the criteria set forth in subsection (4) of this section, the Supreme Court shall remand the map to the commission for correction. The commission shall submit a corrected map within 14 days of the issuance of the remand. If the Supreme Court approves the corrected map, the corrected map shall go into effect. If the Supreme Court does not approve the corrected map, the Supreme Court shall remand the map to the commission for correction. The process of correction and approval or remand shall repeat until the Supreme Court approves a corrected map.

(e) To assist the Supreme Court in reviewing maps, the Supreme Court may appoint a special master and vest the special master with the powers needed to assist the Supreme Court. The powers of the special master shall not include the development of alternative maps.

(f) If one or more maps are submitted under subsection (6)(c) of this section, the Supreme Court shall:

(A) Establish a process for interested persons to become parties;

(B) Review all submitted maps for compliance with the criteria set forth in subsection (4) of this section; and

(C) Select the submitted map that best complies with the criteria set forth in subsection (4) of this section.

(g) The map selected by the Supreme Court shall go into effect without any further action by the commission.

(h) The Supreme Court must complete review or selection of redistricting maps by December 31 of the year in which the maps are due to be certified by the commission under subsection (6) of this section.

(i) Notwithstanding any other law, the Supreme Court has original and exclusive jurisdiction in all proceedings in which a certified final map is challenged.

SUPERSEDENCE, SEVERABILITY

(8) The provisions of this amendment supersede any section of this Constitution with which the provision may conflict. If any provision of this amendment is held to be invalid, the court shall sever the provision and the remaining provisions shall remain in full force and effect.



Certified by Attorney General on January 30, 2020.

/s/ Benjamin Gutman
Solicitor General

BALLOT TITLE

Amends Constitution: Repeals legislative redistricting process; creates congressional/state redistricting commission; equal number of Democrats, Republicans, others

Result of “Yes” Vote: “Yes” vote repeals constitutional provisions requiring state legislative redistricting by legislature; creates commission to draw congressional/state legislative districts; equal number of Democrats, Republicans, others.

Result of “No” Vote: “No” vote retains the current redistricting process, in which the elected legislature draws the boundaries of congressional and state legislative districts.

Summary: Amends Constitution. Oregon Constitution requires legislature to reapportion state legislative districts every ten years. Legislature also draws congressional districts. Measure repeals current state constitutional/legislative processes; creates twelve-member commission to draw both congressional and state legislative districts. Commission membership restricted based on length of residence/party affiliation, recent political work, political contributions, or family members who engaged in certain political activity. Secretary of State randomly selects first six members from applicant group; other members chosen by first six. Four members must be registered with each of largest two political parties, four unaffiliated or from other parties. At least one member from each group must agree for commission to approve map or take other action. Changes redistricting criteria. Other provisions.



Secretary of State
Of the State of Oregon

In the Matter of the Requested Promulgation)
of a Rule Relating to the Implementation Of) Petition for Rulemaking
Amended ORS 250.052(6)(c) Concerning the) (per ORS 183.390; OAR 137-
Use of Electronic Signature Sheets for Initiative) 001-0070)
Petitions)

1. Petitioners' names and addresses are Rebecca Gladstone, 2713 Fairmount Blvd., Eugene, OR 97403, and Norman Turrill, 3483 SW Patton Road, Portland, OR 97201.
2. Petitioners are the President and Governance Coordinator respectively of the League of Women Voters of Oregon. To comply with the requirements of ORS 250.052(6)(c), as amended by SB 761 (Chapter 681), of the 2019 Regular Session of the Oregon General Assembly, electors may believe they have certain duties suggested by the language of the statute.
3. Under ORS 250.052(6)(c), prospective signers of petitions to qualify an initiative for the 2020 general election ballot who wish to sign electronically as permitted by ORS 250.052(6) may be required to print out, or request that another person print out for them, dozens of pieces of paper containing the proposed text of the initiatives, as opposed to having the opportunity to simply view the text in an online version and, if so desired, download and print only the signature page. Petitioners contend that without specificity, the most recent amendments to ORS 250.052 could be interpreted to require that an elector signing an electronic template would be required for either option, by the elector or someone else, to print out and return many pages of text for the initiatives.
4. Proponents for many initiatives proposed for the 2020 general election are currently circulating petitions to gather, by the July deadline, the required 149,360 or 112,020 valid signatures of Oregon registered voters to qualify their measures for the ballot. Petitioners assert that the ambiguities created for the effective use of electronic petitions will discourage supporters of many possible ballot measures, from using electronic petitions effectively in the signature-gathering process.
5. Petitioners propose that an Oregon Administrative Rule be adopted to clarify and make certain that ORS 250.052(6)(c)(B) not be interpreted to require that any voter

signing an electronic signature sheet must physically print and return the electronic signature page with the full text of the proposed initiative.

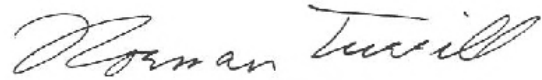
6. Therefore, petitioners recommend that a rule be considered and adopted providing the following:
An elector may sign and return an electronic signature sheet if the elector has personally printed, or requested that a separate person print a copy of the electronic signature sheet specifically for the requesting elector, even if the elector, or person of whom the elector made the request, does not print, give, or return a full and correct copy of the text of the proposed initiative with the electronic signature sheet.
7. Persons who may have a particular interest in a proposed rule would be those legislators who voted for or against passage of SB 761, and those witnesses who spoke in favor of or against the bill at public hearings considering SB 761, as well as Chief Petitioners of initiatives in circulation for signatures who would like to use electronic signature sheets.
8. The proposed rule is not unusually or unnecessarily complex, but the requirements added to 250.052(6) could be construed as creating duties and obligations of electors that are not, in fact, part of the language of the bill.
9. The rule does not overlap, duplicate, or conflict with any state, federal, or local regulation that petitioners have identified.
10. The Secretary of State's office confirmed in written testimony opposing SB 761 during the Legislative Assembly's 2019 consideration of the bill that, in 2016 and 2018, their data showed that electronic initiative signatures had rates of validity at least ten percent higher than signatures gathered by paid or unpaid circulators.
11. There is a need for this rule in order to implement fairly the Legislative Assembly's past efforts to implement contemporary technology allowing Oregon electors without easy and prompt access to physical petition circulators to participate in the initiative qualifying process by enabling electronic access to the process. Improved electronic access to this process would reduce costs to campaigns and enhance the opportunity for more Oregonians to express their feelings on proposed public policies.
12. Furthermore, in the context of the current global pandemic, petition signature gathers and voters who would want to sign petitions, would not want to come into close contact, therefore inhibiting the right of voters to petition their government. This makes the usage of downloadable electronic signature sheets even more important for the health of Oregon citizens.

Wherefore, petitioners request the Secretary of State to promulgate the proposed rule and expedite the rule as an emergency temporary administrative rule to be followed by a permanent administrative rule.

Dated: March 16, 2020.



Rebecca Gladstone
President
League of Women Voters of Oregon



Norman Turrill
Governance Coordinator
League of Women Voters of Oregon

A. T. T. - 47

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

June 9, 2020

Sent via USPS and by email to: lwvor@lwvor.org

Rebecca Gladstone
2713 Fairmount Blvd.
Eugene, OR 97403

Norman Turrill
3483 SW Patton Rd.
Portland, OR 97201

Dear Ms. Gladstone and Mr. Turrill:

This is in response to the Petition for Rulemaking you submitted on March 13, 2020.

The Elections Division declines to initiate rulemaking because a new rule is not necessary, and no apparent ambiguity exists that must be remedied by an administrative rule.

Thank you for your interest in Oregon elections.

Sincerely,

Stephen N. Trout
Director

From: DAVIS Summer S * SOS
Sent: Thursday, May 7, 2020 2:06 PM
To: Rebecca Tweed <Rebecca@groworegon.com>
Subject: RE: Stay-at-home, signature gathering

Rebecca

I don't think that would have come from anyone at our office. We don't have the authority to say whether any activity is permissible or not allowed under the Governor's order. Only she can do that.

Out of curiosity I just read Executive Order 20-12 and would be interested in knowing under what provision, or what under what previous executive order, would prohibit signature gathering. She didn't shutter businesses, just restaurants and bars. She mandated we stay home to the maximum extent possible, but I don't see any definition of what maximum extent possible means. To be very, very clear, I am not saying go out and circulate and you'll be fine. I'm merely curious to know what led people to believe they can't circulate in person.

Summer

From: Rebecca Tweed [<mailto:Rebecca@groworegon.com>]
Sent: Thursday, May 7, 2020 1:48 PM
To: DAVIS Summer S * SOS <Summer.S.DAVIS@oregon.gov>
Subject: RE: Stay-at-home, signature gathering

Hi Summer,

Sorry, a very important clarification needed in my earlier response – not that signature gathering is prohibited, but that in-person signature gathering would be.

Thank you,

Rebecca Tweed
Grow Oregon | Executive Director
1100 SW Sixth Avenue, Suite 1608
Portland, OR 97204
Mobile 503.860.6033
rebecca@groworegon.com

From: DAVIS Summer S * SOS <Summer.S.DAVIS@oregon.gov>
Sent: Thursday, May 07, 2020 1:41 PM

To: Rebecca Tweed <Rebecca@groworegon.com>

Subject: RE: Stay-at-home, signature gathering

Rebecca,

I have gotten this question once or twice.

The majority of initiative petition requirements are in the Oregon Constitution and ORS. Those laws haven't changed and we can't override them by adopting rules.

So from our perspective the signature gathering process has not changed. You can rely on the information in the State Initiative and Referendum Manual (rev. 3/2020) posted on the website.

If you decide to solicit signatures using a method of distribution not outlined in the manual we would be happy to review the proposal to ensure the method complies with the requirements in ORS chapters 246 through 260. Whether the method would comply with the Governor's order is not something we would be able to answer with any authority.

Summer

From: Rebecca Tweed [<mailto:Rebecca@groworegon.com>]

Sent: Thursday, May 7, 2020 9:27 AM

To: DAVIS Summer S * SOS <Summer.S.DAVIS@oregon.gov>

Subject: Stay-at-home, signature gathering

Hi Summer,

I know this is likely out of both our realms since it's an Executive Order of the Governor, but I'm sure the conversation has come up once or twice on your end like it has on mine. I'm curious if there have been any discussions about scenarios related to signature gathering efforts and how they may or may not change with the every changing environment.

The very obvious stipulation to my inquiry is that we'd have to be aware of what those measures may be and any specifics to signature gathering that would relate, as well as where any may be lifted, none of which we know at the moment. I know there's a press conference today on this at 11am so we may get an answer.

I'm just curious what, if anything, you could share up to this point.

Thanks,

Rebecca Tweed
Grow Oregon | Executive Director
1100 SW Sixth Avenue, Suite 1608
Portland, OR 97204
Mobile 503.860.6033
rebecca@groworegon.com

OFFICE OF THE SECRETARY OF STATE

DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS, PhD
DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310 0722

(503) 986-1518

M E M O R A N D U M

To: All County Elections Officials
FROM: Eric Jorgensen, Deputy Director of Elections *EJ*
DATE: September 6, 2018
SUBJECT: 2018 General Election Directive 2018-3

Attached is a copy of Directive 2018-3 for the 2018 General Election. Please review this Directive carefully. Please use the attached ballot statements to proof ballots. Thoroughly review the statements to ensure you include on your ballot all offices that apply to your county and that they are in the correct order.
Feel free to contact us if you have any questions or concerns.



OFFICE OF THE SECRETARY OF STATE

DEPELECTIONS DIVISION

| | | | | |
|--|--|--|-----------------------------------|--------------------------|
| Directive of the Secretary of State | Subject: Official Ballot Statements, General Election November 6, 2018 | Directive Issued at the Request of: Secretary of State | Date: September 6, 2018 | Number: 2018-3 |
|--|--|--|-----------------------------------|--------------------------|

The Secretary of State in carrying out the duties of the office shall issue detailed directives necessary to maintain uniformity in the application, operation and interpretation of Oregon election laws. (ORS 246.110 & 120). The information provided here is an official directive of the Secretary of State.

This directive incorporates the attached instructions for processing the official Ballot Statements issued for the 2018 General Election.

The instructions provide information regarding:

- Ballot Label Style
- Color of Ballots
- Ballot Arrangement
- Numbering System for Candidates and Measures
- Random Ordering of Candidate Names
- Printing Candidate Names
- Multiple Party Nominations
- Judicial Candidates "Incumbent" Designation
- County Nonpartisan Candidates
- Lines for Candidate Write-In Votes
- Ballot Measure Formatting

The provisions of ORS 254.108, 254.125, 254.135, 254.145, 254.155 and ORS 260.675 should be reviewed prior to preparing the official ballot.

DENNIS RICHARDSON
Secretary of State

By:
Eric Jorgensen
Deputy Director of Elections

OFFICE OF THE SECRETARY OF STATE

DENNIS RICHARDSON

SECRETARY OF STATE

LESLIE CUMMINGS, PhD

DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT

DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

DATE: September 6, 2018

TO: ALL COUNTY ELECTION OFFICIALS

FROM: Stephen N. Trout, Director of Elections

SUBJECT: Official Ballot Statements for the General Election on November 6, 2018,
Directive 2018-3

Included with this directive are the Official Ballot Statements for the 2018 General Election. We have also included a list of open offices for the 2018 General Election. Study this list to ensure you have every office on your ballot that applies to your county. These Statements will serve as a guide in preparing your county's ballot. The state Official Ballot Statements consist of:

1. Partisan Candidates
2. Nonpartisan Candidates
3. Measures

The Secretary of State directs the following:

BALLOT LABEL STYLE

The official General Election Ballot shall be styled as:

"Official Ballot", name of county and date of the election.

See ORS 254.135 for further requirements.

COLOR OF BALLOTS

Pursuant to ORS 254.195(1), all Official General Election ballots shall be printed in black ink on good quality white paper.

BALLOT ARRANGEMENT

The offices must be arranged in the following order.

1. Federal
2. Statewide partisan
3. State Senate
4. State Representative
5. County - if partisan
6. City - if partisan
7. Nonpartisan
 - a. State judicial offices are listed on the Nonpartisan Candidate Ballot Statement in the following sequence:
 - i. Contested Supreme Court, Pos. ;
 - ii. Contested Court of Appeals, Pos. ;
 - iii. Tax Court;
 - iv. Contested Circuit Court positions; and
 - v. Uncontested Circuit Court positions
 - b. District Attorney
 - c. County Judge
 - d. Nonpartisan County Candidates (*such as County Clerk, County Assessor, County Surveyor, County Treasurer, Sheriff and Justice of the Peace*)
 - e. Nonpartisan City Candidates
 - f. Special District Candidates - if any
8. Measures
 - a. State
 - b. County
 - c. City
 - d. Multi-County Special District
 - e. Single County Special District

If this ballot arrangement will cause you undue administrative or printing problems, please contact Eric Jorgensen for further advice.

RANDOM ORDERING OF CANDIDATE NAMES

The names of the candidates shall be ordered as provided for in ORS 254.155. On August 29, 2018, this office sent a memo to all County Election Officials giving the random ordering of the letters of the alphabet for candidates on the ballot for the November 6, 2018, General Election. The Ballot Statement for state candidates has been prepared by the Secretary of State using the random sequence.

The random ordering of the letters of the alphabet for which candidate's names will be placed on the ballot for the November 6, 2018, General Election is as follows:

| | | | | | |
|------|-------|-------|-------|-------|-------|
| 1. Z | 6. Q | 11. K | 16. F | 21. X | 26. H |
| 2. R | 7. L | 12. E | 17. B | 22. N | |
| 3. J | 8. A | 13. T | 18. U | 23. V | |
| 4. O | 9. W | 14. P | 19. S | 24. I | |
| 5. Y | 10. G | 15. C | 20. D | 25. M | |

For candidates whose last names begin with the same letter(s) of the alphabet, or whose names are identical etc., follow the procedure contained in OAR 165-010-0090.

ORS 254.135(3)(e) requires if two or more candidates for the same office have the same or similar surnames, the location of their places of residence shall be printed with their names to distinguish one from another.

CANDIDATE NAMES

The names of candidates shall be printed on the official ballot as indicated in the Ballot Statement. Office titles, candidate names and political parties must be printed in **bold face, mixed case type** rather than in all upper case, for the purpose of better readability. Mixed case means the first letters of these names shall be upper case with the rest lower case (unless within the name an upper case letter is specified by the candidate, such as McVan).

Candidate names must not contain any periods, even after a Jr or Sr. For example, a candidate name should be formatted as Jonathan J Smith, Jr – with **no periods** (commas are allowable).

ORS 249.031(1)(a) allows for a candidate to use a nickname in parentheses. ORS 254.145(2) provides that no title or designation may be included in the candidate's name (such as Dr, Mr, PhD, Senior Vice President, etc.). Designations such as Jr, Sr, III, IV, etc. are allowable if it is actually part of the name by which the candidate is commonly known.

Note: If no candidate has filed for an office, the ballot must include "No Candidate Filed."

MULTIPLE PARTY NOMINATIONS

ORS 254.135(3)(a) allows for candidates nominated by multiple political parties to have up to three parties printed with their name. If the candidate was nominated by the party they are a member of, list that party first, followed by no more than two other parties in the order specified by the candidate. If the candidate failed to specify which parties and in which order those parties should appear on the ballot, print in alphabetical order, the first three parties the candidate filed a certificate of nomination for. The correct party order for state candidates is included in the Partisan Candidate Ballot Statement.

JUDICIAL CANDIDATES "INCUMBENT" DESIGNATION

ORS 254.135(3)(c) requires the word "Incumbent" to be printed with the name of each candidate designated by the Secretary of State under ORS 254.085(2), for the offices of Supreme Court, Court of Appeals, Tax Court and Circuit Court. The Nonpartisan Candidate Ballot Statement includes this designation.

Note: Do not print the word "Incumbent" with the names of candidates for the offices of justice of the peace, county judge and municipal court.

COUNTY NONPARTISAN CANDIDATES

Review ORS 249.091 to determine if county nonpartisan candidates (sheriff, county treasurer or county clerk, or candidates to fill a vacancy in a nonpartisan office) are required to be listed on the general election ballot.

WRITE-IN CANDIDATE VOTE LINES

As required by ORS 254.145(3), one blank line must be included for each position on the ballot to allow for write-in votes. An office with multiple positions that are not listed separately, e.g. "Vote for Three," must have one blank line for each available position. In this case, you would provide three blank lines following the list of candidates for that office. Blank lines shall not be numbered.

Offices that have been certified as "No Candidate Filed" must still appear on the ballot with the appropriate number of write-in lines. "No Candidate Filed" may be shown on what would have been the candidate name line.

BALLOT MEASURE NUMBERING

The number assigned to each local (county, city and district) measure must be preceded by a unique county prefix number (*i.e.*, Baker County is number 1, Benton is number 2, and so forth, numbered consecutively in alphabetical order until Yamhill County, which is number 36).

If a district or city is located in more than one county, the county elections officer who is the filing officer shall immediately certify the district or city measure and number to the county clerk of any other county in which the district or city is located. The same measure number shall be used in all counties in which the election is conducted for that measure.

BALLOT MEASURE FORMATTING

State ballot measures must be formatted as shown on the attached Ballot Measure Statement. The state ballot measure headers and the ballot title captions must be printed in **bold face, mixed case type** rather than in all upper case, for the purpose of better readability. Mixed case means the first letters of a phrase or sentence and only certain words within a sentence may be upper case with the rest lower case.

This directive applies to state ballot measures and does not require you to use the same formatting for local measures. However, we encourage consistent formatting, as this would ensure better readability for the voters.

If you have any questions, please contact our office.

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

US Representative, 1st District

Vote for one

| | |
|-------------------------|----------------------------|
| Drew A Layda | Libertarian, Pacific Green |
| Suzanne Bonamici | Democrat, Independent |
| John Verbeek | Republican |

US Representative, 2nd District

Vote for one

| | |
|-----------------------------|----------------------------|
| Mark R Roberts | Independent |
| Greg Walden | Republican |
| Jamie McLeod-Skinner | Democrat, Working Families |

US Representative, 3rd District

Vote for one

| | |
|------------------------|---|
| Marc W Koller | Independent, Pacific Green, Progressive |
| Earl Blumenauer | Democrat |
| Gary Lyndon Dye | Libertarian |
| Michael Marsh | Constitution |
| Tom Harrison | Republican |

US Representative, 4th District

Vote for one

| | |
|---------------------------|---|
| Art Robinson | Republican, Constitution |
| Richard R Jacobson | Libertarian |
| Mike Beilstein | Pacific Green |
| Peter DeFazio | Democrat, Independent, Working Families |

US Representative, 5th District

Vote for one

| | |
|-----------------------|-----------------------|
| Mark Callahan | Republican |
| Dan Souza | Libertarian |
| Marvin Sandnes | Pacific Green |
| Kurt Schrader | Democrat, Independent |

Secretary of State Elections Division
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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|--|---|
| Governor | Vote for one |
| Aaron Auer | Constitution |
| Nick Chen | Libertarian |
| Kate Brown | Democrat, Working Families |
| Knute Buehler | Republican |
| Patrick Starnes | Independent |
| Chris Henry | Progressive |
| State Senator, 1st District (2 Year Unexpired Term) | Vote for one |
| Shannon Souza | Democrat, Working Families |
| Dallas Heard | Republican |
| State Senator, 3rd District | Vote for one |
| Jeff Golden | Democrat, Working Families, Progressive |
| Jessica Gomez | Republican, Independent |
| State Senator, 4th District | Vote for one |
| Scott Rohter | Republican, Constitution |
| Frank L Lengele Jr | Libertarian |
| Floyd Prozanski | Democrat, Independent, Working Families |
| State Senator, 6th District | Vote for one |
| Lee L Beyer | Democrat |
| Robert Schwartz | Republican |
| State Senator, 7th District | Vote for one |
| James I Manning Jr | Democrat, Working Families, Independent |
| State Senator, 8th District | Vote for one |
| Sara A Gelser | Democrat, Working Families, Independent |
| Bryan Eggiman | Libertarian |
| Erik S Parks | Republican |

Secretary of State Elections Division
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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|-------------------------------------|--------------------------------------|
| State Senator, 10th District | Vote for one |
| Jackie F Winters | Republican, Independent |
| Deb Patterson | Democrat, Working Families |
| State Senator, 11th District | Vote for one |
| Greg Warnock | Republican, Independent |
| Peter Courtney | Democrat, Working Families |
| State Senator, 13th District | Vote for one |
| Sarah Grider | Democrat, Working Families |
| Kim Thatcher | Republican, Independent, Libertarian |
| State Senator, 15th District | Vote for one |
| Chuck Riley | Democrat, Working Families |
| Alexander Flores | Republican, Independent |
| State Senator, 16th District | Vote for one |
| Betsy Johnson | Democrat, Independent, Republican |
| Ray Biggs | Constitution |
| State Senator, 17th District | Vote for one |
| Elizabeth Steiner Hayward | Democrat, Independent, Republican |
| State Senator, 19th District | Vote for one |
| Rob Wagner | Democrat, Working Families |
| David C Poulson | Republican, Independent |
| State Senator, 20th District | Vote for one |
| Alan R Olsen | Republican, Independent |
| Charles Gallia | Democrat, Working Families |
| Kenny Sernach | Libertarian |

Secretary of State Elections Division
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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|---|---|
| State Senator, 24th District | Vote for one |
| Shemia Fagan | Democrat, Independent, Working Families |
| State Senator, 26th District | Vote for one |
| Chrissy Reitz | Democrat, Working Families |
| Chuck Thomsen | Republican, Independent |
| State Senator, 30th District (2 Year Unexpired Term) | Vote for one |
| Solea Kabakov | Democrat |
| Cliff Bentz | Republican |
| State Representative, 1st District | Vote for one |
| Eldon Rollins | Democrat |
| David Brock Smith | Republican, Independent |
| State Representative, 2nd District | Vote for one |
| Gary Leif | Republican |
| Megan Salter | Democrat |
| State Representative, 3rd District | Vote for one |
| Carl Wilson | Republican, Independent |
| Jerry Morgan | Democrat |
| State Representative, 4th District | Vote for one |
| Duane A Stark | Republican, Democrat, Independent |
| State Representative, 5th District | Vote for one |
| Sandra A Abercrombie | Republican |
| Pam Marsh | Democrat, Independent, Working Families |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | | |
|--|--|---|
| State Representative, 6th District | | Vote for one |
| Kim Wallan | | Republican, Independent |
| Michelle Blum Atkinson | | Democrat, Working Families |
| State Representative, 7th District | | Vote for one |
| Christy Inskip | | Democrat, Working Families |
| Cedric Hayden | | Republican, Independent |
| State Representative, 8th District | | Vote for one |
| Martha Sherwood | | Libertarian |
| Paul R Holvey | | Democrat, Working Families |
| State Representative, 9th District | | Vote for one |
| Teri Grier | | Republican, Independent, Libertarian |
| Caddy McKeown | | Democrat |
| State Representative, 10th District | | Vote for one |
| David Gomberg | | Democrat, Independent, Working Families |
| Thomas M Donohue | | Republican |
| State Representative, 11th District | | Vote for one |
| Marty Wilde | | Democrat, Working Families, Progressive |
| Mark F Herbert | | Republican, Independent |
| State Representative, 12th District | | Vote for one |
| John Lively | | Democrat, Working Families, Independent |
| State Representative, 13th District | | Vote for one |
| Nancy Nathanson | | Democrat, Independent, Working Families |

Secretary of State Elections Division
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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | | |
|--|--|---|
| State Representative, 14th District | | Vote for one |
| Rich Cunningham | | Republican |
| Julie Fahey | | Democrat, Independent, Working Families |
| State Representative, 15th District | | Vote for one |
| Jerred Taylor | | Democrat, Working Families |
| Shelly Boshart Davis | | Republican |
| Cynthia Hyatt | | Independent, Progressive |
| State Representative, 16th District | | Vote for one |
| Dan Rayfield | | Democrat, Working Families, Independent |
| State Representative, 17th District | | Vote for one |
| Renee Windsor-White | | Democrat, Progressive, Working Families |
| Sherrie Sprenger | | Republican, Independent |
| State Representative, 18th District | | Vote for one |
| Rick Lewis | | Republican, Independent |
| Barry Shapiro | | Democrat |
| State Representative, 19th District | | Vote for one |
| Mike Ellison | | Democrat, Working Families, Progressive |
| Denyc Nicole Boles | | Republican, Independent |
| State Representative, 20th District | | Vote for one |
| Paul Evans | | Democrat, Working Families |
| Selma Pierce | | Republican, Independent |
| State Representative, 21st District | | Vote for one |
| Jack L Esp | | Republican |
| Brian Clem | | Democrat, Independent, Libertarian |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|--|--------------------------------------|
| State Representative, 22nd District | Vote for one |
| Teresa Alonso Leon | Democrat, Working Families |
| Marty Heyen | Republican, Independent |
| State Representative, 23rd District | Vote for one |
| Danny Jaffer | Democrat, Pacific Green, Independent |
| Mark Karnowski | Libertarian |
| Mike Nearman | Republican |
| State Representative, 24th District | Vote for one |
| Ron Noble | Republican, Independent |
| Ken Moore | Democrat, Working Families |
| State Representative, 25th District | Vote for one |
| Bill Post | Republican, Independent, Libertarian |
| Dave McCall | Democrat |
| State Representative, 26th District | Vote for one |
| Courtney Neron | Democrat |
| Tim E Nelson | Libertarian |
| Rich Vial | Republican, Independent |
| State Representative, 27th District | Vote for one |
| Brian Pierson | Independent, Republican |
| Katy Brumbelow | Libertarian |
| Sheri Malstrom | Democrat, Working Families |
| State Representative, 28th District | Vote for one |
| Jeff Barker | Democrat, Independent, Republican |
| Lars D H Hedbor | Libertarian |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | | |
|--|--|---|
| State Representative, 29th District | | Vote for one |
| William A Namestnik | | Libertarian |
| David Molina | | Republican, Independent |
| Susan McLain | | Democrat, Working Families |
| State Representative, 30th District | | Vote for one |
| Janeen Sollman | | Democrat, Independent, Working Families |
| Kyle Markley | | Libertarian |
| Dorothy Merritt | | Republican |
| State Representative, 31st District | | Vote for one |
| Brad Witt | | Democrat |
| Brian G Stout | | Republican, Independent |
| State Representative, 32nd District | | Vote for one |
| Vineeta Lower | | Republican |
| Randell Carlson | | Libertarian |
| Tiffany K Mitchell | | Democrat, Working Families |
| Brian P Halvorsen | | Independent, Progressive |
| State Representative, 33rd District | | Vote for one |
| Elizabeth Reye | | Republican, Libertarian |
| Mitch Greenlick | | Democrat, Independent |
| State Representative, 34th District | | Vote for one |
| Joshua Ryan Johnston | | Libertarian |
| Michael Ngo | | Republican |
| Ken Helm | | Democrat, Independent |
| State Representative, 35th District | | Vote for one |
| Margaret Doherty | | Democrat, Working Families |
| Bob Niemeyer | | Republican, Independent |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|--|---|
| State Representative, 36th District | Vote for one |
| Jennifer Williamson | Democrat, Working Families |
| State Representative, 37th District | Vote for one |
| Rachel Prusak | Democrat, Working Families |
| Julie Parrish | Republican, Independent |
| State Representative, 38th District | Vote for one |
| Andrea Salinas | Democrat, Independent, Republican |
| State Representative, 39th District | Vote for one |
| Elizabeth Graser-Lindsey | Democrat, Independent |
| Christine Drazan | Republican, Libertarian |
| State Representative, 40th District | Vote for one |
| Mark Meek | Democrat, Working Families |
| Josh Hill | Republican |
| State Representative, 41st District | Vote for one |
| Karin Power | Democrat, Independent, Republican |
| State Representative, 42nd District | Vote for one |
| Bruce Alexander Knight | Libertarian |
| Rob Nosse | Democrat, Working Families, Independent |
| State Representative, 43rd District | Vote for one |
| Tawna Sanchez | Democrat, Independent, Working Families |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|--|---|
| State Representative, 44th District | Vote for one |
| Manny Guerra | Libertarian |
| Tina Kotek | Democrat, Working Families |
| State Representative, 45th District | Vote for one |
| Barbara Smith Warner | Democrat, Working Families |
| State Representative, 46th District | Vote for one |
| Alissa Keny-Guyer | Democrat, Working Families, Independent |
| State Representative, 47th District | Vote for one |
| Diego Hernandez | Democrat, Independent, Working Families |
| State Representative, 48th District | Vote for one |
| Jeff Reardon | Democrat |
| Sonny Yellott | Republican |
| State Representative, 49th District | Vote for one |
| Heather Ricks | Libertarian |
| Chris Gorsek | Democrat, Working Families |
| Justin Hwang | Republican, Independent |
| State Representative, 50th District | Vote for one |
| Carla C Piluso | Democrat, Working Families, Independent |
| State Representative, 51st District | Vote for one |
| Lori Chavez-DeRemer | Republican, Independent, Libertarian |
| Janelle S Bynum | Democrat, Working Families |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|--|--------------------------------------|
| State Representative, 52nd District | Vote for one |
| Anna Williams | Democrat, Working Families |
| Jeff Helfrich | Republican, Independent |
| State Representative, 53rd District | Vote for one |
| Jack Zika | Republican, Independent |
| Eileen Kiely | Democrat |
| State Representative, 54th District | Vote for one |
| Amanda La Bell | Working Families, Progressive |
| Nathan K Boddie | Democrat |
| Cheri Helt | Republican, Independent |
| State Representative, 55th District | Vote for one |
| Karen Rippberger | Democrat, Working Families |
| Mike McLane | Republican, Independent |
| State Representative, 56th District | Vote for one |
| E Werner Reschke | Republican, Libertarian, Independent |
| Taylor Tupper | Democrat |
| State Representative, 57th District | Vote for one |
| Greg Smith | Republican, Democrat, Independent |
| State Representative, 58th District | Vote for one |
| Skye Farnam | Independent |
| Greg Barreto | Republican, Democrat |
| State Representative, 59th District | Vote for one |
| Darcy Long-Curtiss | Democrat, Working Families |
| Daniel G Bonham | Republican, Independent |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | |
|--|-----------------------------------|
| State Representative, 60th District | Vote for one |
| Lynn P Findley | Republican, Democrat, Independent |

| | |
|---|------------------|
| Judge of the Supreme Court, Position 5 | Vote for one |
| Adrienne Nelson | Incumbent |

| | |
|--|------------------|
| Judge of the Court of Appeals, Position 2 | Vote for one |
| Bronson D James | Incumbent |

| | |
|--|------------------|
| Judge of the Court of Appeals, Position 4 | Vote for one |
| Robyn Ridler Aoyagi | Incumbent |

| | |
|--|------------------|
| Judge of the Court of Appeals, Position 7 | Vote for one |
| Steven R Powers | Incumbent |

| | |
|--------------------------------------|------------------|
| Judge of the Oregon Tax Court | Vote for one |
| Robert Manicke | Incumbent |

| | |
|---|------------------|
| Judge of the Circuit Court, 1st District, Position 4 | Vote for one |
| Charles Kochlacs | |
| Laura Cromwell | Incumbent |

| | |
|---|--------------|
| Judge of the Circuit Court, 1st District, Position 9 | Vote for one |
| David J Orr | |
| Joe Davis | |

| | |
|---|--------------|
| Judge of the Circuit Court, 3rd District, Position 5 | Vote for one |
| Daniel Wren | |
| Anthony (the Bear) Behrens | |

Secretary of State Elections Division
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Candidate Ballot Statement
2018 General Election

September 06, 2018

Judge of the Circuit Court, 4th District, Position 30 Vote for one

Bob Callahan
Benjamin N Souede **Incumbent**

Judge of the Circuit Court, 10th District, Position 2 Vote for one

Wes Williams (La Grande)
Mona K Williams (Joseph) **Incumbent**

Judge of the Circuit Court, 14th District, Position 5 Vote for one

Matthew G Galli
Matt Corey

Judge of the Circuit Court, 23rd District, Position 1 Vote for one

Michael Wynhausen
Fay Stetz-Waters **Incumbent**

Judge of the Circuit Court, 23rd District, Position 3 Vote for one

Rachel Kittson-MaQatish
Teri L Plagmann

Judge of the Circuit Court, 25th District, Position 2 Vote for one

Jennifer Chapman
Lisl Miller

Judge of the Circuit Court, 2nd District, Position 1 Vote for one

Debra E Velure **Incumbent**

Judge of the Circuit Court, 4th District, Position 10 Vote for one

Katharine von Ter Stegge **Incumbent**

Secretary of State Elections Division
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Candidate Ballot Statement
2018 General Election

September 06, 2018

| | | |
|---|------------------|--------------|
| Judge of the Circuit Court, 4th District, Position 15 | | Vote for one |
| Christopher A Ramras | Incumbent | |
| Judge of the Circuit Court, 4th District, Position 27 | | Vote for one |
| Patricia L McGuire | Incumbent | |
| Judge of the Circuit Court, 5th District, Position 2 | | Vote for one |
| Ann Lininger | Incumbent | |
| Judge of the Circuit Court, 5th District, Position 7 | | Vote for one |
| Todd L Van Rysselberghe | Incumbent | |
| Judge of the Circuit Court, 5th District, Position 9 | | Vote for one |
| Ulanda L Watkins | Incumbent | |
| Judge of the Circuit Court, 14th District, Position 3 | | Vote for one |
| Robert S Bain | Incumbent | |
| Judge of the Circuit Court, 15th District, Position 2 | | Vote for one |
| Andrew E Combs | Incumbent | |
| Judge of the Circuit Court, 20th District, Position 10 | | Vote for one |
| Danielle J Hunsaker | Incumbent | |
| Judge of the Circuit Court, 22nd District, Position 3 | | Vote for one |
| Daina A Vitolins | Incumbent | |
| District Attorney, Crook County | | Vote for one |
| Wade L Whiting | | |

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Candidate Ballot Statement
2018 General Election

September 06, 2018

District Attorney, Malheur County Vote for one

David M Goldthorpe

County Judge, Gilliam County Vote for one

Elizabeth A Farrar

Steven Shaffer

County Judge, Sherman County Vote for one

Mike Smith

Joe Dabulskis

Secretary of State Elections Division
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Ballot Measure Statement
2018 General Election

September 06, 2018

**Referred to the People by the
Legislative Assembly**

Measure 102

Amends Constitution: Allows local bonds for financing affordable housing with nongovernmental entities. Requires voter approval, annual audits

Result of “Yes” Vote: “Yes” vote allows local governments to issue bonds to finance affordable housing with nongovernmental entities. Requires local voters’ approval of bonds, annual audits, public reporting. **Yes**

Result of “No” Vote: “No” vote retains constitutional prohibition on local governments raising money for/ loaning credit to nongovernmental entities; no exception for bonds to pay for affordable housing. **No**

Summary: Amends Constitution. The constitution currently prohibits most local governments from raising money for, or loaning credit to, or in aid of, any private entity. Measure allows local governments to issue general obligation bonds to finance the cost of constructing affordable housing including when the funds go to a nongovernmental entity. Measure requires that local authorizing bonds be approved by local voters and describe affordable housing to be financed. The jurisdiction authorizing bonds must provide annual audits and public reporting on bond expenditures. Measure limits jurisdiction’s bonded indebtedness for capital costs of affordable housing to one-half of one percent of the value of all property in the jurisdiction.

Estimate of Financial Impact: This measure amends Article XI, section 9 of the Oregon Constitution to allow local governments to issue general obligation bonds to finance the cost of constructing affordable housing when partnering with a nongovernmental entity. The measure also requires that proposed bonds be approved by local voters and the jurisdiction authorizing the bonds must provide annual audits and public reporting on bond expenditures.

There is no financial impact to state revenue or expenditures.

There is no financial impact on local government revenue or expenditures required by the measure. The revenue and expenditure impact on local governments is dependent on decisions by local governments to propose bonding for affordable housing and voter approval of the proposed bonds.

Secretary of State Elections Division
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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 103

Amends Constitution: Prohibits taxes/fees based on transactions for “groceries” (defined) enacted or amended after September 2017

Result of “Yes” Vote: “Yes” vote amends Constitution; prohibits state/local taxes/fees based on transactions for “groceries” (defined), including those on sellers/distributors, enacted/amended after September 2017. **Yes**

Result of “No” Vote: “No” vote retains state/local government authority to enact/amend taxes (includes corporate minimum tax), fees, on transactions for “groceries” (defined), including on sellers/distributors. **No**

Summary: Amends Constitution. Currently, state/local governments may enact/amend taxes/fees on grocery sales, including state corporate minimum tax, local taxes. Measure prohibits state/local governments from adopting, approving or enacting, on or after October 1, 2017, any “tax, fee, or other assessment” on sale/distribution/purchase/receipt of, or for privilege of selling/distributing, “groceries”, by individuals/entities regulated by designated food safety agencies, including restaurants, or operating as farm stand/farmers market/food bank. Measure prohibits “sales tax, gross receipts tax, commercial activity tax, value-added tax, excise tax, privilege tax, and any other similar tax on sale of groceries.” “Groceries” defined as “any raw or processed food or beverage intended for human consumption.” Alcoholic beverages, marijuana products, tobacco products exempted. Other provisions.

Estimate of Financial Impact: The financial impact is indeterminate.

Secretary of State Elections Division
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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 104

Amends Constitution: Expands (beyond taxes) application of requirement that three-fifths legislative majority approve bills raising revenue

Result of “Yes” Vote: “Yes” vote expands “bills for raising revenue,” which require three-fifths legislative majority, to include (beyond taxes) fees and changes to tax exemptions, deductions, credits. **Yes**

Result of “No” Vote: “No” vote retains current law that bills for raising revenue, which require three-fifths legislative majority, are limited to bills that levy/increase taxes. **No**

Summary: The Oregon Constitution provides that “bills for raising revenue” require the approval of three-fifths of each house of the legislature. The constitution does not currently define “raising revenue.” Oregon courts have interpreted that term to include bills that bring money into the state treasury by levying or increasing a tax. Under that interpretation, a bill imposing a fee for a specific purpose or in exchange for some benefit or service is not included. Nor is a bill that reduces or eliminates tax exemptions. Proposed measure amends constitution and defines “raising revenue” to include any tax or fee increase, including changes to tax exemptions, deductions, or credits. Measure expands three-fifths legislative majority requirement to also apply to such bills.

Estimate of Financial Impact: *State Government:* The financial impact to state revenue and expenditures is indeterminate.

Local Government: The financial impact to local government revenue and expenditures is indeterminate.

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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 105

Repeals law limiting use of state/local law enforcement resources to enforce federal immigration laws

Result of “Yes” Vote: “Yes” vote repeals law limiting (with exceptions) use of state/local law enforcement resources for detecting/apprehending persons suspected only of violating federal immigration laws. **Yes**

Result of “No” Vote: “No” vote retains law limiting (with exceptions) use of state /local law enforcement resources for detecting/apprehending persons suspected only of violating federal immigration laws. **No**

Summary: Measure repeals ORS 181A.820, which limits (with exceptions) the use of state and local law enforcement money, equipment and personnel for “detecting or apprehending persons whose only violation of law” pertains to their immigration status. Current exceptions allow using law enforcement resources to:

- Detect or apprehend persons accused of violating federal immigration laws who are also accused of other violations of law;
- Arrest persons “charged by the United States with a criminal violation of federal immigration laws” who are “subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate”;
- Communicate with federal immigration authorities to verify immigration status of arrested persons or “request criminal investigation information with reference to persons named in records of” federal immigration officials.

Estimate of Financial Impact: The financial impact is indeterminate.

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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 106

Amends Constitution: Prohibits spending “public funds” (defined) directly/indirectly for “abortion” (defined); exceptions; reduces abortion access

Result of “Yes” Vote: “Yes” vote amends constitution, prohibits spending “public funds” (defined) directly/indirectly for any “abortion” (defined), health plans/insurance covering “abortion”; limited exceptions; reduces abortion access. **Yes**

Result of “No” Vote: “No” vote retains current law that places no restrictions on spending public funds for abortion or health plans covering abortion when approved by medical professional. **No**

Summary: Amends Constitution. Under current law, abortions may be obtained, when approved by medical professional, under state-funded health plans or under health insurance procured by or through public employer or other public service. Measure amends constitution to prohibit spending “public funds” (defined) for “abortion” (defined) or health benefit plans that cover “abortion.” Measure defines “abortion,” in part, as “purposeful termination of a clinically diagnosed pregnancy.” Exception for ectopic pregnancy and for pregnant woman in danger of death due to her physical condition. Exception for spending required by federal law, if requirement is “found to be constitutional.” No exception for pregnancies resulting from rape/incest unless federal law requires. Effect on spending by public entities other than state unclear. Measure reduces access to abortion. Other provisions

Measure 106 (cont. next page)

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Ballot Measure Statement
2018 General Election

September 06, 2018

Measure 106 (cont.)

Estimate of Financial Impact: Ballot Measure 106 amends the Oregon Constitution by prohibiting the expenditure of public funds on abortions, except for those deemed to be medically necessary, required by the federal government, or to terminate a clinically diagnosed ectopic pregnancy.

The financial impact of the measure is anticipated to result in a net annual expenditure increase of \$19.3 million in public funds administered by state government. This increase is based on two factors: 1) an estimated decrease in state government expenditures of \$2.9 million resulting from the prohibition on spending public funds for abortions not exempted under the measure; and 2) an estimated increase of \$22.2 million in state government expenditures resulting from an estimated increase in births and corresponding utilization of health care, food, and nutrition services provided by state government programs. The net expenditure increase of \$19.3 million represents the estimated impact for the first year of the measure and would be a recurring expense each year thereafter at a level dependent on program caseloads and cost of providing services.

The net financial impact on state funds is expected to be a cost of \$4.8 million in the first year and will compound in future years. The future compounded costs are indeterminate.

The measure is also expected to increase annual federal matching funds received by state government by an estimated \$14.5 million to support the additional health care, food, and nutrition services. As with the estimated net increase in state government expenditures, the increase in federal revenue represents the estimated impact during the first year of the measure and would recur each year thereafter at a level dependent on program caseloads and cost of providing state government services.

The financial impact on local government is indeterminate.

Lohman Jason

From: info@ord.uscourts.gov
Sent: Thursday, July 9, 2020 1:05 PM
To: nobody@ord.uscourts.gov
Subject: Activity in Case 6:20-cv-01053-MC People Not Politicians Oregon et al v. Clarno Declaration

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U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered by Beatty-Walters, Christina on 7/9/2020 at 1:04 PM PDT and filed on 7/9/2020

Case Name: People Not Politicians Oregon et al v. Clarno

Case Number: [6:20-cv-01053-MC](#)

Filer: Beverly Clarno

Document Number: [16](#)

Docket Text:

[Declaration of Summer S. Davis in Opposition to Motion for Preliminary Injunction. Filed by Beverly Clarno. \(Related document\(s\): Motion for Preliminary Injunction\[2\].\) \(Attachments: # \(1\) Exhibit A, # \(2\) Exhibit B, # \(3\) Exhibit C, # \(4\) Exhibit D, # \(5\) Exhibit E, # \(6\) Exhibit F, # \(7\) Exhibit G, # \(8\) Exhibit H\) \(Beatty-Walters, Christina\)](#)

6:20-cv-01053-MC Notice has been electronically mailed to:

Brian Simmonds Marshall brian.s.marshall@doj.state.or.us, Dorisdae.Belford@doj.state.or.us

Christina L. Beatty-Walters tina.beattywalters@doj.state.or.us, jason.lohman@doj.state.or.us, marianna.almasi@doj.state.or.us

Stephen Elzinga steve@shermlaw.com, michael@shermlaw.com, sbragg@shermlaw.com

6:20-cv-01053-MC Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=7/9/2020] [FileNumber=7053342-0] [1
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Document description:Exhibit A

Original filename:Not Available

Electronic document Stamp:

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Document description:Exhibit B

Original filename:Not Available

Electronic document Stamp:

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Document description:Exhibit C

Original filename:Not Available

Electronic document Stamp:

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Document description:Exhibit D

Original filename:Not Available

Electronic document Stamp:

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Document description:Exhibit E

Original filename:Not Available

Electronic document Stamp:

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Document description:Exhibit F

Original filename:Not Available

Electronic document Stamp:

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Document description:Exhibit G

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=7/9/2020] [FileNumber=7053342-7] [7
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Document description:Exhibit H

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=7/9/2020] [FileNumber=7053342-8] [a

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6b8b3433693fcf7ff46d224339d870f50478aa37a5e9b2c69a036dd51]]

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7), Federal Rules of Appellate Procedure, I certify that the Appellant's Emergency Motion Under Circuit Rule 27-3 For a Stay Pending Appeal – Ruling Requested by July 22, 2020 is proportionately spaced, has a typeface of 14 points or more and contains 4,996 words, which meets the requirements of Circuit Rules 27-1(1)(d) and 32-3(2).

DATED: July 15, 2020

/s/ Benjamin Gutman

BENJAMIN GUTMAN #160599
Solicitor General
benjamin.gutman@doj.state.or.us

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2020, I directed the Appellant's Emergency Motion Under Circuit Rule 27-3 For a Stay Pending Appeal – Ruling Requested by July 22, 2020 to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

BENJAMIN GUTMAN #160599

Solicitor General

benjamin.gutman@doj.state.or.us

Attorney for Defendant-Appellant