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4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
5 **FOR THE COUNTY OF MARION**

6 **BEVERLY CLARNO, GARY**  
7 **WILHELMS, JAMES L. WILCOX, and**  
8 **LARRY CAMPBELL,**

9 Petitioners,

v.

10 **SHEMIA FAGAN, in her official capacity as**  
11 **Secretary of State of Oregon,**

12 Respondent.

Case No.

**PETITION**

(Violation of Oregon Revised Statutes § 188.010,  
Violation of Article I, Sections 8, 20, and 26 and  
Article II, Section 1 of the Oregon Constitution)

**CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION**

Prayer: Declaratory and Injunctive Relief  
Fee Authority: ORS §§ 21.135(1), (2)(f)

13 **INTRODUCTION**

14 1.

15 Oregon prohibits partisan gerrymandering, both by statute and by its Constitution,  
16 consistent with U.S. Supreme Court’s recognition that States may “actively address[ ] the issue”  
17 of partisan gerrymandering as a matter of state law. *Rucho v. Common Cause*, 139 S. Ct. 2484,  
18 2507 (2019).

19 2.

20 Oregon banned partisan gerrymandering in the clearest possible terms by statute: “[n]o  
21 district shall be drawn for the purpose of favoring any political party, incumbent legislator or other  
22 person.” ORS § 188.010(2).

23 3.

24 The Oregon Constitution also prohibits partisan gerrymandering through its multiple  
25 provisions protecting voters’ rights to participate in the political process, express political views,  
26 affiliate or support a political party, and cast a vote. Or. Const. art. I, §§ 8, 20, 26, art. II, § 1.

1 4.

2 The Democrat members of the Oregon Legislative Assembly at first appeared to recognize  
3 these statutory and constitutional mandates, creating a co-equal House Redistricting Committee  
4 with three Republican and three Democrat members, so as to overcome the commonly understood  
5 tendency for a single party's politicians to favor their own party when drawing redistricting maps.

6 5.

7 Yet, under heavy pressure from national Democrats and Democrat Party aligned special-  
8 interest groups, Oregon's Democrat leadership broke their bipartisanship promise.

9 6.

10 The Democrat members of the House and Senate Redistricting Committees never  
11 negotiated proposed congressional maps with their Republican committee-member counterparts.

12 7.

13 Instead, House Democrat leaders created a new House Redistricting Committee with two  
14 Democrat members and only one Republican member, in order to ensure that the Democrats'  
15 gerrymandered congressional map was voted out of committee.

16 8.

17 Predictably, the now-Democrat-controlled House Redistricting Committee approved the  
18 proposed gerrymandered map on a party-line vote, including without holding any meetings where  
19 the public could participate, and then sending the map to the House, which then held its own party-  
20 line vote on the map, after making only a few minor adjustments.

21 9.

22 The result of this highly partisan process is a clear, egregious partisan gerrymander, as has  
23 been widely acknowledged both in Oregon and across the country.

24 10.

25 Under the Democrats' gerrymandered map, enacted as SB 881-A, the Democrats are  
26 projected to win five of the six congressional seats in Oregon in a typical year.

1 11.

2 If SB 881-A stands, Oregon’s Constitutional and statutory prohibitions against partisan  
3 gerrymandering are effectively meaningless.

4 12.

5 Further, SB 881-A also violates Oregon law by unnecessarily splitting counties and  
6 communities of common interest, while ignoring political and geographic boundaries in such an  
7 egregious way that no reasonable Legislative Assembly would do.

8 **PARTIES**

9 13.

10 Petitioner Beverly Clarno is a United States Citizen and resident of the State of Oregon.  
11 Ms. Clarno resides at 4019 SW Tommy Armour Lane, Redmond, OR 97756, located in the 5th  
12 Congressional District at issue in this case, and is registered to vote in the State of Oregon.

13 14.

14 Petitioner Gary Wilhelms is a United States Citizen and resident of the State of Oregon.  
15 Mr. Wilhelms resides at 4353 NW Tamoshanter Way, Portland, OR 97229, located in the 1st  
16 Congressional District at issue in this case, and is registered to vote in the State of Oregon.

17 15.

18 Petitioner James L. Wilcox is a United States Citizen and resident of the State of Oregon.  
19 Mr. Wilcox resides at 416 W 7th Street, The Dalles, OR 97058, located in the 2nd Congressional  
20 District at issue in this case, and is registered to vote in the State of Oregon.

21 16.

22 Petitioner Larry Campbell is a United States Citizen and resident of the State of Oregon.  
23 Mr. Campbell resides at 2435 Wilson Drive, Eugene, OR 97405, located in the 4th Congressional  
24 District at issue in this case, and is registered to vote in the State of Oregon.

1 17.

2 Respondent Shemia Fagan is the Secretary of State for the State of Oregon, and is sued in  
3 her official capacity only, and named as Respondent as required by SB 259-B § 1(3).

4 **JURISDICTION AND VENUE**

5 18.

6 This Court has jurisdiction over this Petition pursuant to SB 259-B § 1(1), (7), ORCP 4,  
7 ORS § 14.030, ORS § 28.010, and ORS § 28.020.

8 19.

9 Venue is proper in Marion County pursuant to Senate Bill 259-B § 1(2) and ORS §§ 14.050,  
10 14.060, and 14.080(1).

11 **BACKGROUND FACTS**

12 20.

13 Due to the COVID-19 pandemic, the Oregon Legislative Assembly extended the deadlines  
14 to complete the decennial redistricting process for the upcoming decade. SB 259-B.

15 21.

16 In April 2021, in advance of the U.S. Census Bureau's release of the 2020 Census  
17 population counts, Oregon House Speaker Tina Kotek (D-Portland) promised Republican  
18 legislative members to split evenly membership of the House Redistricting Committee between  
19 Republicans and Democrats, with each party receiving three seats on the committee.

20 22.

21 The House Redistricting Committee has the responsibility for drafting redistricting maps  
22 for Oregon's state legislative and congressional district boundaries, and then to propose those draft  
23 maps to the full House for its vote.

24 23.

25 Speaker Kotek's co-equal power-sharing agreement infuriated Democrats and Democratic  
26 aligned special-interest groups, both from Oregon and nationally.

1 24.

2 Oregon Democratic Congressman Kurt Schrader (District 5) lashed out against Speaker  
3 Kotek in an interview with Politico, saying the agreement was like “shooting yourself in the head.”

4 25.

5 Oregon Democratic Congressman Peter DeFazio (District 4) called Speaker Kotek’s  
6 agreement “an abysmally stupid move on her part.”

7 26.

8 On information and belief, Democratic Party strategists worried that a fair congressional  
9 map for Oregon could cost Democrats the majority in the U.S. House of Representatives after the  
10 2022 elections, and sought to convince Speaker Kotek to renege her promise.

11 27.

12 In late April 2021, the U.S. Census Bureau released the population counts from the 2020  
13 Census, showing that Oregon’s resident population increased by more than 10.6%, from 3,831,074  
14 a decade ago to 4,237,256.

15 28.

16 As a result of that significant increase, Oregon gained a sixth congressional seat in the  
17 United States House of Representatives. *See* U.S. Const. art. I, § 2.

18 29.

19 Despite their co-equal, power-sharing promise to House Republicans, the Democrat House  
20 Redistricting Committee members began drafting highly gerrymandered redistricting maps on  
21 their own, neither seeking nor accepting input from their Republican colleagues.

22 30.

23 On August 12, 2021, the U.S. Census Bureau delivered census-block results of the 2020  
24 Census, which showed that Oregon’s existing congressional districts are now malapportioned  
25 requiring the Oregon Legislative Assembly to adopt new maps.

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31.

On September 3, 2021, the Democrat committee members released their proposed map.

32.

The Democrats’ committee members did not allow for discussion on their proposed map and did not attempt to negotiate with Republicans.

33.

The Democrats’ proposed map, which the full Oregon State Legislature ultimately adopted on a party line vote with only superficial changes as SB 881-A, is an obvious, extreme partisan gerrymander.

34.

On information and belief, the Democrats’ proposed map was drawn by Democrat-aligned special interest groups, with input from members of the Democratic Party.

35.

On information and belief, Oregon Democrats in the Legislative Assembly knew and privately discussed with members of their own party on the House Redistricting Committee that the proposed map was obviously politically gerrymandered in the Democrats’ favor and would never withstand a court challenge.

36.

On September 20, 2021, Speaker Kotek broke her promise to have equal representation in the House Redistricting Committee between Democrats and Republicans, so that Democrats could enact the map without Republican input.

37.

Speaker Kotek dissolved the evenly split, six-member House Redistricting Committee, so that the committee tasked with drafting congressional maps was comprised of two Democrats (Rep. Andrea Salinas and Rep. Wlnsvey Campos) and one Republican (Rep. Boshart Davis).

1 38.

2 Speaker Kotek created the new three-person, Democrat majority committee to ensure that  
3 the gerrymandered redistricting map that the Democratic Party and Democrat-aligned special  
4 interest groups had pressured Oregon Democrats to create made it out of committee and to the full  
5 House for a vote.

6 39.

7 On September 24, 2021, mere days after Speaker Kotek had reneged on her promise for  
8 equal representation in the redistricting committee, the new congressional redistricting committee  
9 voted out of committee the Democrats' gerrymandered map on a party line vote, sending the  
10 proposal to the full House.

11 40.

12 Upon information and belief, the congressional redistricting committee never sought, nor  
13 accepted, any input from their sole Republican colleague on the committee with regard to the  
14 Democrats' gerrymandered congressional map.

15 41.

16 On September 27, 2021, the Oregon House passed the Democrats' gerrymandered map on  
17 a straight party-line vote after making insubstantial adjustments that did not change its 5-1 nature  
18 in favor of Democrats in a typical year.

19 42.

20 Governor Kate Brown signed SB 881-A into law the same day.

21 43.

22 Under SB 881-A, Democrats are projected to win five of the six of Oregon's congressional  
23 seats in a typical year, results that are not even arguably justified by the Democrats' overall  
24 political support in this State or the political geography of the State.

1 44.

2 SB 881-A accomplishes this gerrymandering by also failing to comply with ORS  
3 § 188.010, which requires eight criteria be considered and implemented in redistricting.

4 45.

5 SB 881-A does not utilize existing geographic or political boundaries.

6 46.

7 It splits 13 counties into two or more congressional districts, while the 2011 congressional  
8 map split only 4 counties into two or more congressional districts.

9 47.

10 SB 881-A splits 83 Census Tracts among two or more Districts, while the 2011 Map split  
11 only 31 Census Tracts among two or more Districts, representing an increase in splitting Census  
12 Tracts by 268%.

13 48.

14 SB 881-A also splits 121 Census Block Groups among two or more Districts, while the  
15 2011 Map split only 45 Census Block Groups among two or more Districts, representing an  
16 increase in splitting Census Block Groups by 269%.

17 49.

18 SB 881-A splits Portland and the Greater Portland Area across four different districts  
19 (Districts 1, 3, 5, and 6), thus adding Democrat voters into Districts 1, 5, and 6.

20 50.

21 SB 881-A adds Democrat voters into District 5 from Portland and Bend.

22 51.

23 Additionally, Representative Andrea Salinas, a member of the House Redistricting  
24 Committee and a Democrat leader in the Legislative Assembly, has already announced her intent  
25 to run in District 6, which is a clear Democratic District under SB 881-A.  
26



1 52.

2 SB 881-A does not comply with ORS § 188.010(e) because districts are not “connected by  
3 transportation links,” including by stretching District 5 across mountains that can be impassible  
4 during winter conditions.

5 **PETITIONERS’ INJURIES**

6 53.

7 All Petitioners are registered members of the Republican Party, support and vote for the  
8 Republican Party in both congressional and state-wide races, and engage in campaign activities on  
9 behalf of those candidates.

10 54.

11 The gerrymandered map challenged here harms Petitioners by frustrating their ability to  
12 vote for and campaign for congressional candidates who share their values, and who share their  
13 views on issues such as gun rights, transportation, and water rights.

14 55.

15 The gerrymandered map relegates Petitioners’ votes, issues and favored congressional  
16 candidates to obscurity in many parts of the State.

17 56.

18 The gerrymandered map challenged here also harms Petitioners by targeting them based  
19 on their political views and their voluntary association with Republican Party candidates, and  
20 dilutes their votes for this same reason.

21 57.

22 SB 881-A harms Petitioners because it discriminates against Oregon voters who associate  
23 with the Republican Party, like Petitioners, by diluting their votes for the purpose of creating a 5-  
24 1 Democrat advantage in congressional seats in a typical year.

1 **FIRST CLAIM FOR RELIEF**

2 **(Oregon Revised Statutes § 188.010(2))**

3 58.

4 Petitioners incorporate Paragraphs 1 to 57 above as if they were set forth fully herein.

5 59.

6 ORS § 188.010(2) provides that “[n]o district shall be drawn for the purpose of favoring  
7 any political party, incumbent legislator or other person.”

8 60.

9 SB 881-A violates ORS § 188.010(2) because Democrats in the Legislative Assembly have  
10 “drawn” the congressional district map embodied by SB 881-A “for the purpose of favoring” the  
11 Democrat “political party,” as well as Democrat “incumbent legislator[s]” and “other person[s]”  
12 affiliated with the Democrat Party.

13 61.

14 Redistricting with partisan intent is sufficient in and of itself to violate ORS § 188.010(2),  
15 and the Democrats’ impermissible intent to draw SB 881-A to favor Democrats, in violation of  
16 ORS § 188.010(2), is clear both from SB 881-A itself and the process of passing SB 881-A.

17 62.

18 SB 881-A provides a 5-1 Democrat advantage for Oregon’s congressional seats in a typical  
19 year.

20 63.

21 Oregon’s political landscape could not possibly justify such a stark difference in Democrat  
22 and Republican congressional outcomes.

23 64.

24 SB 881-A casts Oregon’s political geography aside for the benefit of Democrats.  
25  
26

1 65.

2 Further, SB 881-A pulls Democrat voters from Portland and the Greater Portland Area in  
3 District 3 and adds them into District 5 and District 6, for partisan purposes.

4 66.

5 District 3, and especially Multnomah County, is heavily Democrat.

6 67.

7 Rather than keep Portland undivided, SB 881-A adds District 3 Democrat voters into  
8 District 5 and District 6, which encompass areas that are not as Democrat as District 3.

9 68.

10 SB 881-A cuts across the Cascade Range to move Bend—a rapidly growing and Democrat-  
11 leaning area—from District 2 to District 5 for partisan purposes, adding Democrat voters from  
12 District 2, which generally votes Republican, to District 5 to help the Democratic Party.

13 69.

14 On information and belief, the Democrats also gerrymandered the map to permit  
15 Representative Andrea Salinas, a member of the House Redistricting Committee and a Democrat  
16 leader in the Legislative Assembly, to run for election in District 6, which is a clear Democratic  
17 District under SB 881-A.

18 70.

19 The Democrats enacted these and other components of SB 881-A with partisan intent and  
20 for partisan purposes: to provide a more favorable Oregon congressional map for Democrats.

21 71.

22 Numerous parts of the process to enact SB 881-A demonstrate the Democrats'  
23 impermissible partisan intent in enacting SB 881-A, in violation of ORS § 188.010(2).

24 72.

25 The Democrats adopted SB 881-A on a strict party-line vote.  
26

1 73.

2 SB 881-A also proceeded out of committee in the House on a party-line vote.

3 74.

4 Speaker Kotek and House Democrats reneged on their promise to have a co-equal power-  
5 sharing arrangement for redistricting with Republicans and cut out Republicans from the  
6 congressional redistricting process, so that the House Redistricting Committee could and would  
7 approve of the Democrats' proposed, gerrymandered map that ultimately became SB 881-A.

8 75.

9 On information and belief, Speaker Kotek and House Democrats took these actions after  
10 receiving heavy pressure from Democrat politicians and Democrat aligned special-interest groups.

11 76.

12 These and other parts of the process to enact SB 881-A demonstrate that the Democrats  
13 enacted SB 881-A with partisan intent and for partisan purposes: to provide a more favorable  
14 Oregon congressional map for Democrats, which violates ORS § 188.010(2).

15 **SECOND CLAIM FOR RELIEF**

16 **(Article I, Sections 8 and 26 of the Oregon Constitution)**

17 77.

18 Petitioners incorporate Paragraphs 1 to 76 above as if they were set forth fully herein.

19 78.

20 Article I, Section 8 of the Oregon Constitution states that “[n]o law shall be passed  
21 restraining the free expression of opinion, or restricting the right to speak, write, or print freely on  
22 any subject whatever; but every person shall be responsible for the abuse of this right.”

23 79.

24 Article I, Section 26 of the Oregon Constitution states that “[n]o law shall be passed  
25 restraining any of the inhabitants of the State from assembling together in a peaceable manner to  
26

1 consult for their common good; nor from instructing their Representatives; nor from applying to  
2 the Legislature for redress of grievances.”

3 80.

4 Article I, Section 8 and Article I, Section 26 together protect the rights of Oregon voters to  
5 participate in the political process, to express political views, to affiliate or support a political party,  
6 and to cast a vote.

7 81.

8 Article I, Section 8 and Article I, Section 26 together prohibit the Oregon Legislative  
9 Assembly from drawing and adopting a partisan gerrymandered redistricting map.

10 82.

11 Under Article I, Section 8 and 26, an unconstitutional partisan gerrymandered redistricting  
12 map is one that the Oregon Legislative Assembly drew with the intent to favor one political party  
13 over another *and* that has the effect of so favoring that political party.

14 83.

15 SB 881-A is an unconstitutional partisan gerrymandered redistricting map, as the  
16 Democrats drew the map with impermissible partisan intent to favor the Democratic Party, and SB  
17 881-A will have impermissible partisan effects.

18 84.

19 Impermissible partisan intent. As alleged above and already incorporated herein, the  
20 Democrats enacted SB 881-A with impermissible partisan intent, as evidenced from SB 881-A  
21 itself and the process that the Democrats used to enact SB 881-A.

22 85.

23 Impermissible partisan effect. SB 881-A will also have an impermissible partisan effect in  
24 favor of the Democratic Party and at the expense of the Republican Party.

1 86.

2 SB 881-A provides a 5-1 Democrat advantage for Oregon’s congressional seats in a typical  
3 year.

4 87.

5 Because the Democrats enacted SB 881-A with an impermissible partisan intent, and  
6 because SB 881-A will have impermissible partisan effect, it is an unconstitutional partisan  
7 gerrymandered redistricting map under Article I, Section 8 and Article I, Section 26.

8 **THIRD CLAIM FOR RELIEF**

9 **(Article I, Section 20 and Article II, Section 1 of the Oregon Constitution)**

10 88.

11 Petitioners incorporate Paragraphs 1 to 87 above as if they were set forth fully herein.

12 89.

13 Article I, Section 20 of the Oregon Constitution provides that “[n]o law shall be passed  
14 granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms,  
15 shall not equally belong to all citizens.”

16 90.

17 Article II, Section 1 of the Oregon Constitution states that “[a]ll elections shall be free and  
18 equal.”

19 91.

20 Article I, Section 20 and Article II, Section 1 both prohibit the Oregon State Legislature  
21 from drawing and adopting a partisan gerrymandered redistricting map.

22 92.

23 Under Article I, Section 20 and Article II, Section 1, an unconstitutional partisan  
24 gerrymandered map is one that the Oregon Legislative Assembly drew with the intent to favor one  
25 political party over another and that actually has the effect of so favoring that political party.

1 93.

2 SB 881-A is an unconstitutional partisan gerrymandered redistricting map, as the  
3 Democrats drew the map with impermissible partisan intent to favor the Democratic Party and  
4 Democrat Party politicians, and SB 881-A will have impermissible partisan effects, as alleged  
5 above and already incorporated herein.

6 94.

7 Because the Democrats enacted SB 881-A with an impermissible partisan intent, and  
8 because SB 881-A will have impermissible partisan effect, it is an unconstitutional partisan  
9 gerrymandered redistricting map under both Article I, Section 20 and Article II, Section 1.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Oregon Revised Statutes § 188.010(1))**

12 95.

13 Petitioners incorporate Paragraphs 1 to 94 above as if they were set forth fully herein.

14 96.

15 ORS § 188.010(1) requires the Legislative Assembly to “consider” certain neutral,  
16 traditional redistricting criteria “as nearly as practicable” when completing the redistricting process  
17 and heed such criteria in a manner that a reasonable legislature would do, including “[u]tiliz[ing]  
18 existing geographic or political boundaries,” “[n]ot dividing communities of common interest,”  
19 and be drawing districts that are “connected by transportation links.” ORS § 188.010(1)(c)–(d).

20 97.

21 SB 881-A violates ORS § 188.010(1) because the Legislative Assembly did not consider  
22 several of the enumerated criteria and/or did not heed such criteria in a manner that a reasonable  
23 legislature would do, or both.

1 98.

2 SB 881-A needlessly splits counties; needlessly splits communities of interest; needlessly  
3 ignores other political and geographic boundaries; and needlessly draws districts not connected by  
4 transportation links. *See* ¶¶ 46–48, *supra*.

5 99.

6 SB 881-A violates Oregon Revised Statutes § 188.010(1)(c) because the map does not  
7 “[u]tilize existing geographic or political boundaries.” *See* ¶¶ 49–50, *supra*.

8 100.

9 District 5 of SB 881-A also ignores the “existing geographic boundar[y],” § 188.010(1)(c),  
10 of the Cascade mountain range, crossing the mountain range to include Bend to ensure enough  
11 Democrat votes in the District. *See* ¶ 68, *supra*.

12 101.

13 SB 881-A violates ORS § 188.010(e) because districts are not “connected by transportation  
14 links,” including by stretching District 5 across mountains that can be impassible during winter  
15 conditions. *See* ¶ 52, *supra*.

16 102.

17 The changes in SB 881-A, individually and collectively, reflect a choice in redistricting by  
18 the Legislative Assembly that no reasonable Legislative Assembly would have made.

19 103.

20 The redistricting changes in SB 881-A have no neutral explanation, such as population  
21 growth, a shift in demographics, or the need to consider and heed other traditional redistricting  
22 criteria in ORS § 188.010.

23 104.

24 It is practicable to draw an alternative redistricting map that complies with ORS  
25 § 188.010(1) in which congressional districts are contiguous and of equal population, are  
26



1 apporportioned to utilize existing geographic or political boundaries, do not divide communities of  
2 common interest, and are connected by transportation links.

3 **PRAYER FOR RELIEF**

4 105.

5 Wherefore, Petitioners pray that the Court award them the following relief:

- 6 a. A declaration that SB 881-A is unlawful and unconstitutional because it violates  
7 the rights of Petitioners under Oregon Revised Statutes § 188.010, as well as, under  
8 Article I, §§ 8, 20, 26 and Article II, § 1 of the Oregon Constitution.
- 9 b. A preliminary and permanent injunction enjoining Respondent from administering,  
10 preparing for, or moving forward with any future elections of Oregon’s  
11 congressional members using SB 881-A.
- 12 c. Adopt a congressional district plan that complies with the Oregon Constitution and  
13 Statutes. SB 259-B § 1(8)(a).
- 14 d. Award Petitioners their costs and reasonable attorneys’ fees in bringing this action.
- 15 e. Any other relief that this Panel deems just and proper.

16 DATED October 11, 2021.

17 Respectfully submitted,

18 **TROUTMAN PEPPER HAMILTON  
19 SANDERS LLP**

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