

Case No. 20-35630

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

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-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of State,

Defendant-Appellant.

On Appeal from the United States District Court for the District of
Oregon, No. 6:20-cv-01053-MC, Hon. Michael J. McShane

**PLAINTIFFS-APPELLEES' OPPOSITION TO
MOTION FOR EMERGENCY STAY**

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INTRODUCTION¹

The COVID-19 Pandemic (“the Pandemic”) has changed countless aspects of our lives. This case concerns Oregon’s refusal to make modest changes to its initiative-qualification requirements as applied to Plaintiff-Appellee People Not Politicians Oregon (“PNP”) during the Pandemic, denying PNP the right to meaningfully participate in the initiative process.

Citizens seeking to qualify initiatives for the Oregon ballot typically do so through in-person signature gathering campaigns. PNP, through no fault of its own, was legally permitted to collect signatures for its initiative only *after* Pandemic-related public health restrictions effectively barred the personal contact and social gatherings on which the process depends. PNP responded to this sudden change in circumstances by diligently gathering signatures through alternative and safer, albeit less efficient, means—obtaining more than 64,000 signatures. Having demonstrated significant public support for its

¹ Unless otherwise stated, emphases were added to quotations, and internal alterations and citations were omitted from them. “PI Order” refers to the District Court’s order granting a preliminary injunction (Dkt. 2, spanning A.T.T.-1–14), and “Ex. __” refers to exhibits attached to this opposition.

initiative despite the challenges created by the Pandemic, PNP sought relief from the Oregon Secretary of State's enforcement of the pre-Pandemic signature count requirement and collection deadline. The Secretary of State refused, and PNP sought a preliminary injunction. Last week, the District Court for the District of Oregon granted PNP sensible relief from Oregon's pre-Pandemic initiative requirements, recognizing that "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." PI Order at 14.

The state now seeks an emergency stay of the District Court's well-reasoned order. But neither the state's claims of irreparable injury nor any merits arguments justify such extraordinary relief. First, the state's claim of irreparable injury is entirely undercut by the fact that the District Court's order simply requires the state to review and validate signatures before the next steps in the initiative process—the same actions the Secretary of State would have undertaken had PNP met pre-Pandemic signature requirements, and which she does not oppose doing now. Second, the state argues that PNP's inability to meaningful participate in the initiative process during the Pandemic

somehow does not implicate PNP's First Amendment right to petition the government. This is plainly wrong, as recognized recently by other courts considering challenges to initiative requirements during the Pandemic. Just a week ago, this Court rejected an emergency stay motion in one of those cases, *Reclaim Idaho v. Little*, No. 20-35584, which sought to stop more aggressive changes to initiative requirements than PNP obtained. The Court properly denied the *Reclaim Idaho* stay motion, and there is no reason to vary from that decision here. Finally, issuing a stay would greatly harm PNP—effectively ending its once-in-a-decade opportunity to implement a new redistricting procedure—and the disenfranchisement that would flow from such a decision in no way benefits the public interest.

BACKGROUND

Plaintiff-Appellee People Not Politicians is a nonpartisan coalition of good government and civic participation groups, which includes Plaintiff-Appellees Common Cause Oregon, League of Women Voters of Oregon, NAACP of Eugene/Springfield, Independent Party of Oregon, and C. Norman Turrill (former president of the League of Women Voters of Oregon and current PNP coalition chair), and others. PNP

seeks to qualify an initiative for the November 2020 ballot that would reform Oregon's redistricting process by creating a citizens' redistricting commission to draw congressional and state district lines. Ex. A (Declaration of C. Norman Turrill in Support of Plaintiffs' Motion for a Temporary Restraining Order ("Turrill Decl.")), ¶2. The November 2020 ballot will be the last chance to implement this process before new census numbers are released in 2021 and new district lines are drawn for the decade.

On November 12, 2019, PNP submitted a timely filing for Initiative Petition 57 ("Initiative"). Ex. A (Turrill Decl.), ¶ 2. PNP demonstrated its initial diligence by collecting the requisite signatures for the initial submission quickly over the Thanksgiving weekend in 2019. *Id.*, ¶ 3. Although the state implies that PNP was somehow late in seeking to qualify the Initiative, nine of the 65 other initiatives this cycle were filed at later dates. Ex. B (PNP TRO) at 23. After PNP submitted its initial set of signatures, Initiative opponents immediately launched a legal challenge to the Initiative's draft ballot title. *See Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020). Under Oregon law, petitioners cannot collect more than the first 2,000

signatures until the ballot title is finalized. *See* Or. Rev. Stat.

§§ 250.045(1)(b)(B), 250.052(2)-(4).

Due to the (ultimately unsuccessful) legal challenge, the Oregon Supreme Court did not certify the Initiative’s final ballot title until March 27, 2020, and the Secretary of State did not clear PNP to gather signatures until April 9, 2020. Ex. B (PNP TRO) at 24–25. This includes over one-third of *all* qualified initiatives this decade. *Id.* In a typical election cycle, PNP would have had ample time to collect the required number of signatures. The District Court considered—and rejected—evidence by the Initiative’s opponents suggesting it could not have qualified for the ballot under normal circumstances. PI Order at 6 n.2. In every election cycle this decade, initiatives that have received final ballot title approval to begin circulating around the same time, or even much later, have qualified for the ballot. Ex. B (PNP TRO) at 24. This election cycle, however, has been far from typical. By the time PNP received legal authorization to begin signature collection, the Pandemic had reached the United States. *See* PI Order at 4.

PNP is the only Oregon group to conduct its entire signature-gathering campaign under the shadow of the Pandemic. Ex. B (PNP

TRO) at 17. The signature-gathering process has long been based on in-person collection methods, and the signature-count requirements and deadlines rest on the assumption that such methods will be available. *Id.* at 25-26. The Pandemic upended normal practice by prompting executive orders that imposed strict social distancing requirements, leaving PNP in the unique and unfortunate position of attempting to gather virtually all of its signatures without the option of in-person collection. PI Order at 4–5.

Although unable to use traditional signature-collection methods, PNP quickly pivoted to safer, albeit less efficient, alternative strategies for obtaining the signatures needed to qualify for the ballot. Ex. A (Turrill Decl.), ¶ 25. PNP’s efforts proved fruitful—generating over 64,000 signatures, around the same number as a campaign that PNP’s opponents characterized as “diligent”—but not enough to meet the state’s pre-Pandemic signature count requirement by the July 2, 2020 deadline. *See* PI Order at 10. PNP sought relief from Oregon’s Secretary of State given the unique and exceptional circumstances it faced in qualifying for the November 2020 ballot. The Secretary of State refused. Left with no alternative other than to be functionally barred from the

ballot given the inability to engage in in-person signature gathering, PNP filed this action and sought injunctive relief to protect its First Amendment rights.

The District Court granted PNP's request for a preliminary injunction, properly finding that it was likely to prevail on the merits. First, the District Court—like numerous other courts considering initiative-qualification issues during the Pandemic—analyzed PNP's as-applied challenge to the Secretary of State's initiative regulations under the framework provided by this court in *Angle v. Miller*, 673 F.3d 1122 (9th Cir. 2012). *See* PI Order at 7-8. The District Court, based on declarations and testimonial evidence provided during a three-hour hearing, rightfully concluded that the Secretary of State's initiative regulations as applied to PNP's unique circumstances restricted one-on-one communication between petition circulators and voters because they failed to account for the fact that such activity could no longer practically occur. *Id.* “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.” *Id.* at 8. Similarly, the District Court found that

PNP demonstrated the second type of burden recognized by *Angle*: “Plaintiffs, without an accommodation from Defendant, had an impossible task” when it came to obtaining the necessary signatures to place the Initiative on the ballot. *Id.* at 8.

The District Court next properly applied strict scrutiny to analyze the Secretary of State’s refusal to vary from its pre-Pandemic requirements when considering PNP’s signature-gathering efforts. *See* PI Order at 8-10. The District Court held, based on “considerable evidence,” that “but-for the pandemic-related restrictions, [PNP] would have gathered the required signatures by the July 2 deadline.” *Id.* at 10 (recognizing PNP’s “considerable resilience”). The District Court also easily found that the Secretary’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].” PI Order at 11 (alterations in original).

Finally, finding the other requirements for a preliminary injunction satisfied, the District Court carefully crafted a remedy that balanced the injury to PNP’s First Amendment rights with the Secretary of State’s interest in an orderly election. The District Court

provided the Secretary of State the option of simply placing the Initiative on the ballot or, alternatively, allowing PNP the opportunity to meet a lower signature threshold—the state’s constitutional referendum threshold from the 2018 election cycle—by a date which would still allow for a timely review prior to other election-related deadlines. Choosing the latter option, on July 14, the Secretary issued a press release stating that she planned to review and certify signatures for the Initiative “through [her office’s] normal process” with “a reduced signature threshold and an extension until August 17,” and that she was “not requesting an appeal to [the District Court’s order] at this time.” Oregon Secretary of State, *Secretary of State Bev Clarno Announces Extension of Signature Gathering for Initiative Petition 57*, July 14, 2020, <https://bit.ly/3fCoxXF>. Despite the Secretary’s indication that there was no emergency necessitating an appeal and her readiness to carry out the District Court’s order, on July 15, the Oregon’s Attorney General appealed and filed this emergency motion.

LEGAL STANDARD

A request for a stay pending appeal is “an intrusion into the ordinary processes of administration and judicial review” and “is not a

matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 427 (2009). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion,” an analysis that is guided by four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Id. at 433–434.

“The first two factors of the traditional standard are the most critical.” *Id.* As to the first factor, the Court “exercise[s] a restrained approach to assessing the merits” because “the question whether the injunction should be overturned—the merits of the ultimate appeal—is not before th[e] motions panel.” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1015 (9th Cir. 2020). As to the second factor, “if the petition has not made a certain threshold showing regarding irreparable harm . . . then a stay may not issue, regardless of the petitioner’s proof regarding the other stay factors.” *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020).

ARGUMENT

I. The state will not suffer an irreparable injury absent a stay.

The state has not demonstrated that the burdens it will face absent a stay are onerous. Indeed, the state does not even appear to argue that the task required of it—review and validation of signatures that it would have had to undertake had PNP met pre-Pandemic signature requirements—poses any burden at all. In contrast, the state’s list of tasks that third parties will perform—for example, the preparation, printing, and mailing of ballots—are not just irrelevant to whether the *state* will suffer harm, but part and parcel of the ballot-initiative process. Mot. at 25–26; *Doe #1*, 957 F.3d at 1060 (“irreparable harm standard is whether the *applicant* will be irreparably injured absent a stay”) (emphasis in original). That administrative inconvenience falls far short of the extraordinary circumstances that warrant a stay. They certainly fall short of the allegations of disruption to the electoral process that this Court considered, and rejected, in *Reclaim Idaho*. See Emergency Motion Under Circuit Rule 27-3 for a Stay Pending Appeal at 17–18 (challenging order mandating process for acceptance of electronic signatures), *Reclaim Idaho v. Little*, No. 20-

35584 (9th Cir.). The state here concedes as much, admitting that the real danger is “that effort will be wasted” if it prevails on appeal. Mot. at 26.

For proof of the lack of irreparable harm, the Court need look no further than the nominal defendant in this case: the Oregon Secretary of State, who is the state’s “chief elections officer,” Or. Rev. Stat. § 246.110, and has “a vital interest in regulating the petition process,” PI Order at 14. Just a day after the District Court’s order, the Secretary announced that she would comply with it and was “not requesting an appeal to the ruling at this time.” Oregon Secretary of State, *Secretary of State Bev Clarno Announces Extension of Signature Gathering for Initiative Petition 57*, July 14, 2020, <https://bit.ly/3fCoxXF>. The Secretary obviously viewed the decision not to appeal as consistent with her commitment “to . . . ensuring the integrity of Oregon’s elections.” *Id.* That considered judgment puts the lie to the claims of injury proffered by the state’s attorney general, who presses this appeal even though the Secretary “did not request it.” Hillary Borud, *Oregon secretary of state, attorney general clash on lowering bar to ballot measure*, The Oregonian/Oregon Live, July 15, 2020, <https://bit.ly/2WoNpdW>.

Beyond claims of burden based on routine election-related tasks, the state’s primary injury argument simply conflates the irreparable-harm requirement with the state’s likelihood of success on the merits. Mot. at 24 (“Oregonians will be asked to vote on a proposed constitutional amendment that should not be on the ballot.”). Even if that argument were relevant to the question of irreparable harm—it is not—it would not matter because, as discussed below, the state is not likely to prevail.

II. The state is unlikely to prevail on the merits.

The state must demonstrate that it is likely to succeed on the merits, which requires a showing that this Court will likely conclude that the District Court abused its discretion. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (applying the abuse of discretion standard when reviewing preliminary injunction relief). The Court’s review of preliminary injunctive relief is limited and deferential. *Id.* In reviewing the preliminary injunction, this Court applies a two-part test, first to determine “whether the trial court identified the correct legal rule to apply to the relief requested,” and second, whether “the district court’s application of the correct legal

standard was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record.” *California v. Azar*, 911 F.3d 558, 568 (9th Cir. 2018).

Here, the state has not shown that the District Court abused its discretion. The District Court correctly identified the legal standard set forth by this Court in *Angle*², and, as other courts in this Circuit have done, reasonably applied that standard in view of the effects of the Pandemic.

A. The District Court did not abuse its discretion by recognizing that restrictions on the initiative process can burden core political speech.

In *Angle*, the Ninth Circuit explained that there are at least two ways in which restrictions on the initiative process can severely burden

² *Angle* itself was applying *Meyer v. Grant*, 486 U.S. 414 (1988), which strongly supports PNP. *Meyer* determined that the “prohibition of paid petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication.” *Id.* at 424. Leaving open “more burdensome’ avenues of communication[] does not relieve its burden on First Amendment expression.” *Id.* Rather, the “First Amendment protects appellees’ right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.” *Id.* Here, the state’s signature thresholds and turn-in deadlines, in the context of Pandemic-related orders restricting both paid **and** volunteer in-person circulation, create an overall regulatory scheme that is even more restrictive than the unconstitutional restrictions in *Meyer*.

core political speech: (1) by “restrict[ing] one-on-one communication between petition circulators and voters,” and (2) by “mak[ing] it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.” 673 F.3d at 1132. The burden of the regulation should be measured in view of whether the proponent has been “reasonably diligent” in attempting to comply with the statutory scheme. *See id.* at 1133, 1134.

The District Court applied the *Angle* framework in finding that the state’s regulations burdened PNP’s core political speech in the unique circumstances of the COVID-19 epidemic. According to the state, the District Court’s reliance on *Angle* must be incorrect because “the First Amendment simply is not implicated by signature and deadline requirements for placing an initiative on the ballot.” Mot. at 14. But the Ninth Circuit recognizes no such categorical exception to the protections afforded by the First Amendment.

The state wrongly suggests that the weight of authority in the Ninth Circuit and elsewhere conflicts with the District Court’s approach. PNP is aware of only a few other cases (including two in this

Circuit) in which federal courts addressed the specific question answered by the District Court below—*i.e.*, whether proponents of ballot initiatives who were reasonably diligent in collecting signatures were entitled to relief from statutory requirements in light of burdens associated with Pandemic-related regulations. In at least three cases, the court ordered injunctive relief to prevent a violation of the proponents’ First Amendment rights.³

In May, the District of Nevada applied the *Angle* framework in holding that the proponents’ core political speech was unconstitutionally impinged by Nevada’s enforcement of its statutory deadline to submit signatures in support of a ballot initiative. *Fair Maps Nevada v. Cegavske*, No. 3:20-CV-00271-MMD-WGC, 2020 WL 2798018, at *18 (D. Nev. May 29, 2020). The statute in question was nondiscriminatory, but the court found that its application during the “unique factual circumstances” of the Pandemic violated the First Amendment. *Id.* The court accordingly granted the plaintiffs’ motion

³ The other district court case was factually distinguishable from this case, PI Order at 9–10, and ultimately decided on the basis of mootness, *see Arizonans for Fair Elections v. Hobbs*, No. CV-20-00658-PHX-DWL, 2020 WL 1905747, at *2, 4–6 (D. Ariz. Apr. 17, 2020)).

for a preliminary injunction to extend the deadline for proponents of initiatives to file signatures. *Id.*

One month later, the District of Idaho similarly applied the *Angle* framework to decide whether Idaho’s enforcement of its ballot-access statute during the Pandemic amounted to a violation of proponents’ First Amendment rights. *Reclaim Idaho v. Little*, No. 1:20-cv-00268-BLW, 2020 WL 3490216, at *7–9 (D. Idaho Jun. 26, 2020). The court found that the state’s “refusal to make reasonable accommodations during this time period . . . made it impossible for [the proponents] to get the initiative on the ballot absent an order of relief.” *Id.* at *8. In ordering an injunction, the court held that the state’s strict application of its statute to the plaintiffs was “a severe burden on core political speech.” *Id.* at 10.

In response, Idaho filed an emergency motion to stay pending appeal, just as Oregon did here. This Court denied the motion.

Reclaim Idaho v. Little, No. 20-35584 (9th Cir. Jul. 9, 2020).⁴

⁴ In dissent, Judge Callahan concluded that Idaho “made a substantial showing that the appellees failed to act with diligence to trigger the heightened standard of review applied by the district court.” *Id.* at 3 (citing *Angle*, 673 F.3d at 1133–34). Here, by contrast, the state’s emergency motion does not address the District Court’s finding that

Similarly, the Sixth Circuit recently denied a motion filed by the state of Michigan seeking a stay of a district court's order that enjoined the state's strict enforcement of signature requirements. *SawariMedia, LLC v. Whitmer*, No. 20-1594, 2020 WL 3603684, at *1 (6th Cir. July 2, 2020). In the district court, an organization working to place an initiative on the ballot had alleged that Michigan's "strict enforcement" of its filing deadline and the requirement that the organization "collect 340,047 signatures" violated the First Amendment. *SawariMedia LLC v. Whitmer*, No. 20-cv-11246, 2020 WL 3447694, at *2 (E.D. Mich. June 24, 2020). The court agreed, holding that "Michigan's signature requirement and filing deadline for ballot initiative petitions, in combination with Governor Whitmer's Stay-at-Home Order, severely burdened Plaintiffs' constitutional right to the ballot." *Id.* at 3.

The state cites a single case in which a court rejected a plaintiff's motion to enjoin a state from enforcing its ballot-signature-collection requirements in light of the Pandemic. Mot. at 17 (citing *Morgan v.*

PNP had been "reasonably diligent" in its efforts to comply with the statutory signature and deadline requirements.

White, No. 20-1801, 2020 WL 3818059, *2 (7th Cir. July 8, 2020)). But as the Seventh Circuit explained, the district court in that case denied relief on the basis that the plaintiff was not diligent:

District judges have discretion when weighing the considerations relevant to requests for preliminary relief. One important question, when a plaintiff seeks emergency relief, is whether the plaintiff has brought the emergency on himself. The district judge concluded that Morgan had done so. During most of the time available to seek signatures, Morgan did absolutely nothing. He did not evince any interest in the subject until early April 2020, several weeks after the Governor began to issue orders requiring social distancing. . . . That’s a good reason to conclude that [he is] not entitled to emergency relief.

Morgan, 2020 WL 3818059, at *1.⁵

⁵ The state ignores the Seventh Circuit’s discussion of diligence, instead focusing on dicta in which the panel hypothesizes that if one were to interpret the Governor’s orders “as equivalent to a decision to skip all referenda for the 2020 election cycle, there is no federal problem.” *Id.* at *2. Even if the panel’s thought experiment were somehow binding on this Court, it wouldn’t help resolve any of the issues on appeal. *See SawariMedia LLC*, No. 20-cv-11246, 2020 WL 3097266, at *5 (“[A]lthough the Constitution does not require a state to create an initiative procedure, if it creates such a procedure, the state cannot place restrictions on its use that violate the federal Constitution[.]”). The state here has not argued that it seeks to abandon all referenda or initiatives for the present election cycle.

The plaintiff's inaction in *Morgan* stands in stark contrast to PNP's conduct here, which the district court properly found was diligent based on significant record evidence. *See supra* at 6, 8.

B. The district court did not abuse its discretion in finding that the state's enforcement of its regulations burdened PNP's core political speech.

In its motion, the state misleadingly suggests that the District Court improperly found a burden on PNP's core political speech based only on the ordinary effects of the state's enforcement of its ballot-signature requirements. Any signature requirement beyond zero, the state wryly observes, places an obstacle to getting an initiative on the ballot. *See Mot.* at 23–24. But the state ignores in its motion what the District Court in its order did not—that “pandemic-related regulations [] severely diminished [PNP's] chances of collecting the necessary signatures by July 2.” *Op.* at 8. As discussed at length above, several courts have found that a state's strict enforcement of its ballot-signature regulations during the Pandemic severely burdened proponents' core political speech. The District Court's similar findings here were well within its discretion.

III. The issuance of the stay would substantially injure interested parties.

The third factor relevant to a request for a stay is “whether issuance of the stay will substantially injure the other parties interested in the proceeding.” *Nken*, 556 U.S. at 434. As discussed above, the injuries the state complains of are largely irrelevant and unconvincing on their own terms. *See supra* at 11–13. More importantly, the state ignores the corresponding harms that would result should a stay be granted. For example, while the state complains of potential wasted efforts of Oregonians in voting on the initiative, *Mot.* at 24, it ignores the substantial injury that would inure to Oregonians should they be barred from voting on the initiative that should rightly be on the ballot. The District Court found that it was the state’s refusal to make reasonable accommodation during the unprecedented time of the Pandemic that restricted speech on the public issue of partisan gerrymandering. *PI Order* at 11.

The District Court also rejected the state’s laches argument, making a factual finding that PNP demonstrated “diligence” and “organizational wherewithal” in collecting signatures for the Initiative. *PI Order* at 10, 12, n. 5. PNP was diligent early in the process, filing the

Initiative with the Secretary of State in November 2019 and receiving a ballot title a month later. *Id.* at 4. By the time the Oregon Supreme Court rejected a challenge to the ballot title and the Initiative was approved for circulation, the Pandemic was underway. *Id.* In the face of these circumstances, PNP went to extraordinary measures to collect signatures in a way that would not violate public health orders, including mailing out over 500,000 packets containing the petition and providing a link to voters to print out, sign, and return the petition. *Id.* at 5. Despite these trying circumstances, PNP collected 64,172 unverified signatures at the time of the District Court’s issuance of the preliminary injunction, demonstrating broad public support for the measure. *Id.*

PNP faces an injury to its First Amendment rights should a stay be granted. PI Order at 12 (citing *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988) (“The circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech.”)). In contrast, the District Court found that the burden to the state could be fairly characterized as the additional strain on the state’s “employees and staff as they verify

additional signatures.” *Id.* The harm to PNP in exclusion of the Initiative from the November 2020 ballot is especially egregious here, where PNP would have to wait ten years to once again try to reform Oregon’s once-a-decade redistricting process. *See* Dkt. 2 at A.T.T-31 (Oregon Redistricting Ballot Measure Legislative and Congressional Findings). An additional administrative burden, to the extent any exists at all, is insufficient to tip the balance of hardships when measured against the constitutional harm confronting PNP—especially when the state does not cite its own administrative burden as an injury that warrants a stay. *See supra* at 11.

IV. The public interest weighs against a stay.

It is in the public’s interest to preserve PNP’s right to place the Initiative on the November 2020 ballot. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”). In addition to protecting PNP’s First Amendment rights, the public interest weighs in favor of protecting the rights of Oregon residents to vote on an initiative with broad public support. The District Court found “it worth noting that Oregon’s voters will be the ones who ultimately decide whether

[the Initiative] will be enacted.” PI Order at 13. Here, relief that preserves PNP’s rights to put the Initiative on the ballot also preserves the rights of Oregonians to continue to engage in direct democracy.

Moreover, a stay and the expedited briefing schedule advocated by the state would confound the state’s goals of efficient and orderly administration. Should the Court grant a stay, the state will not include the Initiative in the normal process it describes as currently underway. As a result, a decision in autumn in favor of PNP will leave the state scrambling to pursue a one-off process to fast-track the Initiative to be ballot-ready by election day. Or worse, a decision after November 2020 in favor of PNP will offer no remedy for violations of its First Amendment constitutional rights. The public interest weighs against an irreparable First Amendment injury. *Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) (“[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

Finally, the state’s complaints against “last-minute” injunctions to election laws are divorced from the record. Mot. at 28. The injunction issued here is not “last-minute”—it was issued months before the

election, with ample time to implement the modest relief it ordered. In contrast, the cases cited by the state involved real risk of “voter confusion and consequent incentive to remain away from the polls,” either because they were exceedingly close to the election itself or because they would require the state to create what was essentially an entirely new voting system. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006); *see also id.* at 3 (order issued less than a month before election); *Lair v. Bullock*, 697 F.3d 1200, 1202 (9th Cir. 2012) (order issued “less than five weeks before the general election and after absentee voting in Montana began”); *Short v. Brown*, 893 F.3d 671, 680 (9th Cir. 2018) (undisputed that relief sought by plaintiffs would disrupt election by “revers[ing] . . . extensive efforts already undertaken to implement [a] new election system” in particular counties and that “changing the voting system between the primary and general elections would result in voter confusion and disenfranchisement”).

CONCLUSION

For these reasons, the state’s motion should be denied.

Dated: July 17, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a)(7), the Plaintiffs-Appellees' Opposition to Motion for Emergency Stay is proportionately spaced, has a typeface of 14 points or more and contains 5,014 words, which meets the requirements of Circuit Rules 27-1(1)(d) and 32-3(2).

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

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,

Defendants.

Case No. 20-01053-MC

**DECLARATION OF C. NORMAN
TURRILL IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER**

I, C. NORMAN TURRILL, declare that:

1. I am a Chief Petitioner for Initiative Petitions (IPs) 57, 58, and 59. I have been a resident of the State of Oregon since 2001. I have been a member of the League of Women Voters (LWV) since the 1970s. I have been engaged in ballot measure signature-gathering campaigns for decades. Normally, such campaigns gather signatures by passing around clipboards, sheets, and pens on the streets in high-traffic public locations, such as outside grocery stores, in shopping malls, parks, public transit stations, farmers markets, and at large public gatherings, such as parades, concerts, fairs, and rallies. LWV members have been active volunteers in ballot measure campaigns, both in registering voters, and also in seeking signatures for those ballot measures endorsed by the League.

2. On November 12, 2019, we filed with the Oregon Secretary of State the prospective petitions for what were later designated Initiative Petition (IP) 57 and, on November 13, IPs 58 and 59 (collectively, “People Not Politicians” [“PNP”]). The intention of the PNP IPs was to amend the Oregon Constitution to create an independent redistricting commission to draw Oregon’s electoral maps for the State Senate, State House, and U.S. House of Representatives.

3. Under Oregon law, we were then required to submit 1,000 valid sponsorship signatures to qualify the IPs for ballot title drafting. Over the course of 10 days, from November 25 through December 4, 2019, which included the Thanksgiving holiday, we gathered signatures by live, on-the-street signature solicitations by paid signature gatherers. On or about December

5, 2019 for each of the three IPs, we submitted in excess of 2,200 signatures to meet the 1,000-valid-signature requirement.

4. Beginning no later than January 2020, the PNP Executive Committee (EC), of which I am the Chair, and whose meetings I attended, focused on efforts for outreach, including presentations to local entities throughout the state, and participating in community meetings, to bring attention to the PNP campaign. It was the consensus of the EC that we would rely principally on paid signature circulators, supplemented by volunteer circulators, to gather the required 149,360 valid signatures to qualify the IPs for the November 2020 general election ballot. Before the end of January 2020, the EC was considering proposals for multiple spring public events.

5. The EC members were aware that this was our last once-in-a-decade opportunity to create a redistricting commission in time for the 2021 redistricting process.

6. On January 30, 2020, the ballot titles for IPs 57, 58, and 59 were certified by the Oregon Attorney General.

7. The EC continued to discuss planning of in-person events at its February meetings. In the first half of February, EC member Rebecca Tweed had three presentations scheduled on the PNP campaign. At the February 11 EC meeting, signature-gathering was discussed, as were more presentations by Tweed to civic, business, and education groups about PNP. As many as five events a week were scheduled in February. The February 18 EC meeting heard of six upcoming events at which I, Tweed, or both of us were scheduled to present.

Common Cause discussed its plans to bring three to four California Citizens Redistricting Commissioners to travel throughout Oregon for a series of voter education events in April.

8. On February 13, 2020, the certified IP 57 ballot title was appealed to the Oregon Supreme Court.

9. At the March 3 EC meeting, we discussed the impact of legal challenges to the ballot title as it affected signature gathering. I told the EC that we should start preparing for signature gathering now, so that the campaign is ready to hit the streets once the legal challenges have concluded. EC member Kate Titus, executive director of Common Cause Oregon, stressed at the meeting that signature gathering is a great way to engage the public, who suggested that Common Cause and the League of Women Voters develop a campaign piece. I stated at the meeting that the campaign's finances would improve once we hit the streets (began public signature-gathering), and by doing so, create a sense of urgency about the campaign. The meeting included the possible initial screening of the movie "Slay The Dragon" (concerning gerrymandering reform) at a movie theater at Portland State University (PSU). A staff organizer reported that the campaign was working to organize events across the state. A plan was in development to meet with state legislators at the state Capitol to present the PNP campaign, and answer their questions. A Portland City Commissioner was to host a panel on the campaign at PSU. The EC was informed of at least four presentations and forums about the campaign already scheduled for March.

10. I and other members of the EC became aware that on March 8, 2020, Governor Brown issued Executive Order 20-03 (“EO”), which declared a public health emergency for 60 days from the verbal proclamation on March 7. EO 20-03 noted that the virus:

... **spreads person-to-person** through coughing and sneezing, **close personal contact**, such as touching or **shaking hands**, or **touching an object or surface with the virus on it**, and then touching your mouth, nose, or eyes.

(EO 20-03, p. 1; boldfacing added.) This Order was followed on March 12 by EO 20-05 (no gatherings of 250 people or more; three feet of social distancing), on March 17 by EO 20-07 (no gatherings of 25 or more people; businesses and services “encouraged to implement social distancing protocols”), EO 20-08 (school closures; child care), and EO 20-09 (live higher education instruction suspended).

11. At the March 10 EC meeting, the COVID-19 virus was discussed for the first time. One EC member was concerned that, in PNP’s process to select a campaign consulting firm, one of the firms relied heavily on a single individual, and the member expressed concern about his services to PNP if he were infected by the virus. I mentioned that the virus would reduce the grassroots efforts of the LWV, because I knew from my more than four decades of membership in the LWV that most LWV members were seniors -- that part of the population is unusually vulnerable to the virus. I am 76 years old. I am part of the population that is most vulnerable to the virus. In previous signature-gathering campaigns, I had personally gathered thousands of signatures. In March 2020, I became afraid that I could not gather signatures for the PNP campaign because of the risks to my health from the virus. We learned that the signature-gathering organization was “ready to go.” One EC member characterized the virus as an interruption, in response to which the campaign needed to “expedite” its efforts, as parts of

Oregon could be completely shut down. An EC member asked why the campaign was not considering activating online petitions. An EC member said that the campaign would be making e-petitions available, but that the petitions aren't printed, and there is uncertainty as to whether signers would have to print out the full text of the measure and submit it with their signature sheet. The screening of the gerrymandering movie "Slay The Dragon" was moved to April. The planning of the Salem event at the state capitol continued. Four upcoming presentations about the campaign were announced.

12. At its March 17 meeting, the EC discussed signature gathering on all three IPs with the virus in force. An EC member stated that PNP was looking at the first week in April, and needed to make a decision this week on how to move forward with the firm. There was a discussion on the use of electronic petitions ("e-sheets"). The EC discussed the impact of the crash of the stock market and business closures on donations to the campaign.

13. The EC established a COVID-19 "Contingency Subcommittee" which met on March 20, which I attended. The single meeting of the subcommittee heard that general public signature solicitation has not been prohibited, but is slowing, and that door-to-door solicitations are being attempted. I explained the ongoing ambiguity from the Secretary of State's office on the issue of whether a signer of an e-sheet must return the full text of the proposal with the signature. The need was expressed to monitor the situation daily as to how the government and virus restrictions will impact the campaign. A partner in the PNP campaign reported that, last week, it suspended recruitment emails for signature gathering. The question before the EC was how we could move the campaign forward under these extremely fluid circumstances. There was discussion of what video platforms the campaign would use going forward.

14. On March 23, Governor Brown issued the unprecedented and sweeping EO 20-12 (Stay Home, Save Lives [“SHSL Order”]) which, among other prohibitions, required individuals “to the maximum extent possible” “stay at home or at their place of residence”, and prohibited any gatherings “if a distance of at least six feet between individuals cannot be maintained.” The order had no ending date, and so would stay in effect until terminated by the Governor.

15. At its March 24 meeting, the EC convened in awareness of the SHSL Order of the day before. An EC member noted that the campaign cannot now collect signatures in person, no signature-gathering campaign in Oregon has experienced this situation before, even if the ten-signature petitions are mailed to supporting persons, they can’t canvass themselves, and that no campaign has ever tried a statewide mail-only signature-gathering effort. I knew that if the PNP campaign was now going to rely exclusively on downloadable and mail petition signature-gathering methods, it would have to build that operation from scratch, with only about 13 weeks left to gather and submit signatures. Mail solicitation would be a far more complicated process than street solicitation, because most homes do not have the capacity to print documents, double-sided where necessary, on the required 20-pound paper, and any printed petition would still need to be addressed and mailed by the signing party, creating additional barriers to participation. Another EC participant commented that an all-mail signature-gathering drive is “uncharted territory.” Donors will be skeptical about supporting PNP. I noted that it was still unclear as to whether the Secretary of State would require that every submitted signature be accompanied by a complete copy of the IP.

16. On March 27, the Secretary of State posted the state Supreme Court’s March 26 ruling that the appeal of the ballot title was “not well-taken,” and that the Court certified to the Secretary of State the Attorney General’s certified ballot title.

17. At its March 31 meeting, an EC member told the EC that the campaign would need about 213,000 signatures to meet the required number of valid signatures (149,360). Even by mailing to one million voters, to achieve that number of signatures would require a 25 percent response rate to the mailing. An EC member told the EC if the campaign were lucky, the restrictions would be lifted in mid-May or in June, and the circulators could hit the streets.

18. At the April 3 EC meeting, one member commented that the campaign is looking at maybe three weeks in June to do normal petitioning if the campaign was lucky.

19. It was not until April 9—less than 90 days before the July 2 submission deadline—that the Secretary of State’s office approved the petition sheet templates with the color based on whether the circulator was paid or a volunteer, thus clearing the PNP campaign to begin collecting the necessary 149,360 signatures.

20. At the May 1 EC meeting, an EC member noted that the campaign strategy assumed a month of on-the-ground signature gathering.

21. At the May 5 EC meeting, the EC heard that Governor Brown may be lifting restrictions in some Oregon counties, enabling in-person signature gathering.

22. On or about May 11, 2020, PNP launched an online portal for Oregonians to view, download and print the IP 57 petition and signature page. PNP built this portal from

scratch, highlighting the rules for signing downloaded petitions as best as we could ascertain in the uncertain environment under Stay Home restrictions. EC member Common Cause immediately emailed approximately 30,000 Oregon members. The first day response caused the site to crash and require capacity upgrades. Many people asked how to obtain a petition if they could not print at home.

23. The uncertainty of access to traditional street signature-gathering for ballot measures during this period adversely affected decisions of major donors to support the campaign. At the May 12 EC meeting, the campaign learned that a major prospective donor that had been considering a substantial six-figure donation to PNP had decided not to do so. Other potential donors declined, because the conditions did not exist to mount a reliably successful signature-gathering campaign. Serious concerns were expressed about whether the campaign would be able to gather the required signatures. The EC decided to proceed with a half-million-piece mailing to reach over one million voters. The new strategy targeted mailings to high propensity voters, buoyed by calculations that the signatures returned would have high validity rates.

24. At the May 19 EC meeting, street signature gathering was discussed. Some anticipated that stay-at-home restrictions would be relaxed in early June. Others were not positive about being perhaps the only public signature gatherers out on the streets.

25. We designed the 500,000-piece mailing plan and set up all of this without any clear sense of how long the stay-home orders would stay in place. I learned that a PNP coalition

member, Common Cause, organized an effort to send texts to 25,220 Oregon voters with a link allowing them to print a petition, which they could sign and mail back.

26. As the shelter-in-place (SIP) aspects of the Governor's orders remained in force into the spring, the EC realized that, because of the economic toll imposed by the reducing or shuttering of businesses, planned and anticipated contributions to support PNP either failed to materialize, or were greatly reduced from contributions promised or expected.

27. The ongoing uncertainty of the Stay Home Order made planning a signature-gathering strategy for PNP difficult. Only on June 12 was the uncertainty over the legality of Governor Brown's SHSL and associated orders relating to the pandemic resolved by the Oregon Supreme Court in its decision in *Elkhorn Baptist Church v. Brown*, 366 Or. 506, 543 (2020).

28. Unlike other campaigns that had been cleared for signature gathering before the Governor's March and April 2020 Executive Orders were issued, the PNP campaign was directly impacted by the orders, and the evolving government response to the pandemic.

29. Beginning the week of May 25 -- little more than a month before the submission deadline of July 2 -- PNP's retained mail house began mailing petitions to 500,000 Oregonian voter households, which included over 1.1 million voters. These petition packets contained the text of the petition, signature page, detailed instructions, and a postage-prepaid preaddressed return envelope that would allow every eligible person in the household to sign a petition and mail it back.

30. The PNP campaign has been receiving approximately 1,000 to 4,000 petition sheets a day from the half-million-piece mailing and online efforts, which is, by any measure, a

tremendous public response. To date, I understand the PNP campaign has collected over 60,000 signatures and counting under truly extraordinary and enormously constrictive circumstances. However, because state and local regulations effectively barred the PNP campaign from using traditional methods of signature-gathering, the campaign has only collected that number of signatures.

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

Dated: June 30, 2020

s/ C. Norman Turrill

C. NORMAN TURRILL

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TURRILL

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

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,

Defendants.

Case No. 20-01053-MC

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER
AND MEMORANDUM IN SUPPORT**

MOTION

Plaintiffs move for a Temporary Restraining Order enjoining Defendant from enforcing those portions of Art. IV §§ 1(2)(c), 1(2)(e), and 1(4)(a) of the Oregon Constitution, Oregon Revised Statutes §§ 250.105(3)-(4), and all associated laws, administrative rules, and policies 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 in Oregon.

Plaintiffs request an expedited hearing and relief on or before July 2, 2020.¹

¹ Should the state agree that Plaintiffs are not waiving any rights or arguments if signatures are not filed/accepted on July 2, then a hearing the week of July 6 would be agreeable to Plaintiffs.

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I. INTRODUCTION

The COVID-19 Pandemic (“the Pandemic”) and responsive “Stay Home, Save Lives” government orders upended normal life. The mundane social act of approaching strangers in a crowd to collect signatures on a petition is now not only unimaginable, but illegal.² Although Oregon’s Pandemic-related public health restrictions are undoubtedly important protections, they impose significant burdens on democratic participation. Plaintiffs People Not Politicians Oregon, League of Women Voters of Oregon, Common Cause, NAACP of Eugene/Springfield, Independent Party of Oregon, and C. Norman Turrill (“Plaintiffs”) are in the unique and unfortunate position of attempting to collect signatures to qualify an initiative for the ballot entirely during the era of shelter-in-place orders, social distancing restrictions, and mandatory non-essential business closures. Unable to engage in normal in-person signature collection, Plaintiffs attempted to collect signatures through a number of creative, but ultimately unproven and less efficient, methods. Although it obtained enough signatures to demonstrate widespread support for its proposed initiative—concerning innovative and time-sensitive changes to Oregon’s once-a-decade redistricting process—it has fallen short of Oregon’s pre-Pandemic signature requirements. Through no fault of its own, Plaintiffs now stands unable to exercise its fundamental First Amendment right to participate in the initiative process and further statewide discussion of their initiative.

² See Or. Exec. Order No. 20-12(1)(c) (Mar. 23, 2020) (“When individuals need to leave their homes or residences, they should at all times maintain social distancing of at least six feet from any person who is not a member of their immediate household.”); Or. Exec. Order No. 20-25(2)(c) (May 14, 2020) (“When individuals leave their home or place of residence, they should maintain physical distancing of at least six (6) feet from any person who is not a member of their household.”); see also Oregon Health Authority, *Reopening Guidance* (Jun. 11, 2020), <https://sharesystems.dhsoha.state.or.us/DHSForms/Served/1e2342D.pdf> (“Practice physical distancing of at least six (6) feet between you and people who you do not live with.”).

The United States Constitution requires Oregon’s election regulations, like all other aspects of life, to adapt to the Pandemic’s exceptional circumstances. Courts across the country have recently provided relief to parties, like Plaintiffs, who have struggled to meet election requirements created for a world that looks nothing like the present day. Given Plaintiffs’ diligent efforts to comply with Oregon’s initiative signature requirements during exceptional circumstances, and the practically insurmountable burden those requirements now impose on Plaintiffs’ First Amendment rights to participate in the political process, this Court should grant PNP’s request for injunctive relief.

II. STATEMENT OF FACTS

A. The Initiative Coalition and Goals

Plaintiff People Not Politicians (“PNP”) is a broad nonpartisan coalition of good government groups, which includes Plaintiffs League of Women Voters of Oregon, Common Cause Oregon, Eugene/Springfield NAACP, Independent Party of Oregon, and Norman Turrill—former president of the League of Women Voters of Oregon and current PNP coalition chair, and others. Together, these parties are the Plaintiffs in this lawsuit.

Plaintiffs seek to participate in Oregon’s November general election through the initiative process. On November 12, 2019, PNP filed Initiative Petition 57 (“Initiative”), proposing to amend the Oregon Constitution to create an independent redistricting commission to draw Oregon’s electoral maps for the State Senate, State House and U.S. House of Representatives. Declaration of C. Norman Turrill in Support of Plaintiffs’ Motion for a Temporary Restraining Order (“Turrill Decl”), ¶ 2.

On April 9, 2020, after resolution of separate legal challenges to the Initiative, the Oregon Secretary of State cleared PNP to begin gathering the required 149,360 signatures.

Turrill Decl., ¶ 19. But by early April, the COVID-19 pandemic and “Stay Home, Save Lives” restrictions had already upended normal life—including the normal ways of collecting voter signatures.

The Initiative proposes an independent citizens’ redistricting commission composed of twelve Oregonians who are free from conflicts of interest and represent the diversity of the state. *See* People Not Politicians, Initiative 2020-057 (Or. 2019). The commission would be charged with holding public hearings, providing for public input, and drawing maps in compliance with strict mapping criteria. *Id.*

The Initiative is the result of years of work with various policy experts and advocates from across the political spectrum both in Oregon and nationally who have come together to reform Oregon’s redistricting process ahead of the 2021 redistricting cycle. The Initiative is modeled on the widely acclaimed California Citizens Redistricting Commission and work in a 2017 Oregon Secretary of State Redistricting Reform Task Force.³ The Initiative removes the inherent conflict of interest that results when politicians chose their own voters through gerrymandering. Instead, the Initiative is designed to put people, not politicians, at the center of the redistricting process and ensure that every Oregonian has equal opportunity to elect a candidate of their choice regardless of their party affiliation or zip code.⁴

Members of the PNP coalition, led by the League of Women Voters of Oregon and Common Cause, conducted extensive pre-petition and pre-pandemic efforts to plan for this

³ Redistricting Reform Task Force, Oregon Secretary of State (last visited Jun. 29, 2020), <https://sos.oregon.gov/Pages/independent-redistricting.aspx>.

⁴ *See* People Not Politicians, Our Proposal, <https://www.peoplenotpoliticiansoregon.com/our-proposal/>.

initiative. Such efforts included holding a series of forums on the need for redistricting reform around that state in late 2018, drafting the initiative in 2019, and recruiting volunteer circulators for in-person signature collection in early 2020. Declaration of Candalynn Johnson in Support of Plaintiffs’ Motion for a Temporary Restraining Order (“Johnson Decl.”), ¶ 4.

B. The state’s Pandemic-related restrictions on signature gathering

State and local governments have taken important steps to protect individuals’ health during the Pandemic. But the same features that make these measures effective from a public health perspective—sheltering in place, social distancing, closures of public spaces—also fundamentally frustrate PNP’s signature collection efforts. While Oregon does not require signature gathering to take place only in-person, such collection remains the most common and efficient means of doing so. Plaintiffs, through no fault of their own, have now been functionally barred from engaging in such collection for the entirety of the period in which the State authorized them to do so.

Prior to the Pandemic, initiative campaigns seeking to collect signatures engaged petition circulators to approach people in public spaces. These petition circulators — armed with clipboards, petitions, and pens — typically operated in high-traffic public spaces. Declaration of Ted Blaszak in Support of Plaintiffs’ Motion for a Temporary Restraining Order (“Blaszak Decl.”), ¶ 4. The most efficient locations for collection were those where a large number of people concentrated in a small area, such as public transit stations, shopping centers, farmers markets, libraries, fairs, rallies, parades, and concerts. *Id.* Inevitably, in-person signature collection depends on conversing with strangers in close quarters, while around passing clipboards, sheets, and pens. *Id.*

The Pandemic made this type of signature collection a public health risk, and the

resulting government restrictions effectively barred it. On March 23, Governor Kate Brown issued Executive Order 20-12. Included in the new restrictions were: (1) requiring individuals to “at all times maintain social distancing of at least six feet from any person who is not a member of their immediate household” (2) a prohibition on all non-essential social and recreational gatherings of individuals, regardless of size, if a distance of at least six feet between individuals cannot be maintained; (3) the closing of specific categories of businesses, including indoor and outdoor malls and retail complexes, arcades and theaters; (4) the closure of outdoor recreation facilities such as playgrounds, sports courts, and skate parks; (5) the limit of all outside recreational activities to non-contact activities; and (6) the directive that Oregonians stay home whenever possible. Failure to comply with the order is a punishable crime and civil violation that can result in fines or jail time.

These restrictions were on top of earlier orders to shut down on-site dining at restaurants, in-person teaching at schools, and in-person public gatherings larger than 25 persons. Subsequent executive orders established a phased reopening of some Oregon businesses and granted permission for gatherings of greater numbers of people—primarily on a county-by-county basis. Or. Exec. Order No. 20-05 (Mar. 12, 2020); Or. Exec. Order No. 20-07 (Mar. 17, 2020). Oregon’s three most populous counties – Multnomah, Washington, and Clackamas – cannot obtain approval to move to phase II until July 10, 2020 at the earliest. All other counties in Oregon have received approval to enter phase II except for Lincoln County, which remains in phase I. Phases I and II of Oregon’s gradual reopening, and thus restrictions that currently apply to the entire state, continue to mandate physical distancing of at least six feet and significant restrictions on large gatherings that render the in-person gathering of signatures practically impossible. And with recent rises in COVID-19 cases, there is no end in sight to these state

restrictions that inhibit in-person signature gathering.

C. PNP’s extraordinary signature-gathering efforts despite state restrictions on signature gathering

By the time PNP was authorized to begin its signature collection efforts to qualify the Initiative, the once-mundane behavior on which the qualification process typically relied simply was not possible. PNP’s petition circulators could not approach strangers and hand them petitions, the spaces in which they normally would operate had been declared off limits, and the social gatherings of people that would have facilitated contact with a large number of voters was specifically banned. This required PNP to abandon its extensive prior plans for circulation and shift to an entirely new approach.

Despite these tremendous challenges, PNP has engaged in a good faith effort to meet the qualifying signature requirements through unconventional means. PNP built from scratch a signature gathering campaign that relies exclusively on downloadable and mail petition signature gathering methods. Johnson Decl., ¶ 7. Although some parts of this campaign are straightforward—for example, PNP created a website portal allowing Oregonians to download petitions and signature pages at home—key aspects are acutely burdensome. Most homes do not have the capacity to print documents on the required 20-pound paper, and any printed petition would still need to be addressed and mailed by the signing party, creating additional barriers to participation. Or. Admin. R. 165-014-0005; Turrill Decl., ¶ 15. To overcome these challenges, PNP also mailed over 500,000 packets to households reaching over 1.1 million Oregon voters. Turrill Decl., ¶ 29. These packets provided voters the petition, signature page, instructions and return envelope with paid postage that would allow every eligible person in the household to sign a petition and mail it back. *Id.* While the response rate has been higher than most mailings, it is still far lower than the response rate for in-person signature gathering. Finally, PNP’s coalition

member Common Cause organized an effort to send texts to 25,220 Oregon voters with a link allowing them to print a petition, which they could sign and mail back. *Id.* ¶ 25.

Despite these efforts, the Pandemic-related order’s frustration of the traditional signature collection methods has proven insurmountable. Using normal in-person signature collection, PNP would expect to collect an average of 15,000-20,000 signatures per week deploying a typically-sized team of petition circulators. Blaszak Decl., ¶ 9. Had PNP been able to collect signatures in the usual manner, it would have met the signature requirement in an 8 to 10-week period before the July 2, 2020 submission deadline. But because state and local regulations effectively barred these methods during the Pandemic, PNP gathered over 60,000 signatures, but not the requisite 149,360. Turrill Decl., ¶¶ 4, 30.

On June 29, 2020, PNP formally requested that Secretary Clarno remedy the as-applied unconstitutionality of Oregon’s initiative requirements by extending the signature submission deadline to August 17 and using the 2018 threshold for referenda (58,789) as the most appropriate basis of demonstrating sufficient support. The Secretary did not provide the requested relief. Given the extraordinary circumstances of Pandemic public health restrictions, the pre-Pandemic requirements for qualifying an initiative for the ballot have imposed unreasonable burdens on PNP’s rights to participate in the initiative process.

D. Oregon’s Secretary of State recognized the need to modify other elections processes in light of COVID-19

On March 19, 2020, Oregon’s Secretary of State determined that “[b]ecause Oregon votes by mail we do not have to be concerned about social distancing issues,” so she moved forward with the May 19 primary election while also developing “[c]ontingency plans . . . to deal

with any impacts the COVID-19 virus may have on our election processes.”⁵

On March 24, 2020, in light of the Governor’s Executive Order one day earlier, the Secretary suspended most agency in-person services and began requiring appointments for limited in-person elections services.⁶ These restrictions continue today.⁷

On June 12, 2020, the Secretary convened the first meeting of the Financial Estimate Committee as a live-streamed remote meeting, despite having only four members and a few staff.⁸ The Secretary chairs this committee, which drafts financial estimates of potential ballot measures for the voters’ pamphlet. As chair, the Secretary determined that a remote meeting was needed and had members sign an official committee document electronically.⁹ Committee staff working at the direction of the Secretary as chair indicated that all official documents would be

⁵ Press Release, Oregon Secretary of State, May Primary Moves Forward as Planned (Mar. 19, 2020), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36214>.

⁶ Press Release, Oregon Secretary of State, Service Impacts to Secretary of State (Mar. 23, 2020), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36242>; 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> (“In light of the Governor’s Executive Order and the current health situation in general, I have ordered my staff to suspend in-person services normally offered by Secretary of State’s office until further notice. The vast majority of public needs can be addressed online, by phone, or email. Statutorily required in-person services will be available by appointment only.”).

⁷ Secretary of State Response to COVID-19, Oregon Secretary of State Bev Clarno (last visited Jun. 29, 2020), <https://sos.oregon.gov/Pages/covid-19.aspx> (“All in-person services normally offered by Secretary of State are suspended until further notice.”).

⁸ Press Release, Secretary of State, Financial Estimate Committee Meeting: June 12, 2020 (Jun. 8, 2020), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36761>.

⁹ Appointment of City, County, or District Representative to the Financial Estimate Committee, Financial Estimate Committee (Jun. 12, 2020), <https://sos.oregon.gov/elections/Documents/fec/Appoint-5th-member-signed.pdf>.

signed electronically for the remainder of the summer.¹⁰

On June 19, 2020, the Secretary announced that meetings of the Financial Estimate Committee scheduled for July 8, July 9, July 23, and even as far out as August 5, 2020 would not allow in-person public testimony despite statutory public hearing requirements.¹¹

E. Numerous courts in other states have modified election requirements to protect political rights in light of COVID-19

On March 25, 2020, a Virginia court granted a preliminary injunction reducing in the number of signatures needed to be a primary election candidate by 66%. The court found that “the circumstances as they exist in the Commonwealth of Virginia and across the United States are not normal right now,” and that the signature threshold was not narrowly tailored because it did “not provide for emergency circumstances, like those that currently exist.” *Faulkner v. Va. Dep’t of Elections*, No. CL 20-1456, slip op. at 2-3 (Va. Cir. Ct. Mar. 25, 2020).

On April 2, 2020, a Wisconsin federal court extended deadlines for requesting an absentee ballot, for postmarking absentee ballots, and for absentee ballots to be received after election, due to the undue burden on constitutional rights created by otherwise applicable statutory requirements in light of COVID-19. *Democratic National Committee v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1638374 at *22 (W.D. Wis. Apr. 2, 2020).

On April 17, 2020, Massachusetts’ highest state court ordered a 50% reduction in the

¹⁰ The Secretary of State’s office said they are preparing IP57 for a possible financial estimate statement. Financial Estimate Committee, June 12, 2020 Meeting (Oregon State Legislature 2020), https://oregon.granicus.com/MediaPlayer.php?view_id=23&clip_id=28268 (at 15:02 to 15:37).

¹¹ Press Release, Secretary of State, Financial Estimate Committee (FEC) Meeting Schedule (Jun. 19, 2020), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36826>.

signature requirement to be a candidate and extended the deadlines for filing signatures. The court agreed that “these extraordinary times of a declared state of emergency arising from the COVID-19 pandemic create an undue burden on prospective candidate’s constitutional right to seek elective office.” *Goldstein v. Sec’y of Commonwealth*, 484 Mass. 516, 517 (Mass. 2020).

On April 20, 2020, a Michigan federal court granted a motion for preliminary injunction reducing the state signature requirement by 50% for a candidate to Michigan’s Eleventh Congressional District and extending the submission deadline after finding that “the State’s actions in the form of enforcing both the Stay-at-Home Order and the statutory ballot-access requirements operate in tandem to impose a severe burden.” *Esshaki v. Whitmer*, No. 2:20-cv-10831-TGB, 2020 WL 1910154, at *1 (E.D. Mich. Apr. 20, 2020). The court found that “state action”—Michigan’s social distancing order—“pulled the rug out from under [candidates’] ability to collect signatures,” “shuttered” the locations and events at which signatures are normally gathered, and left only “prohibitively expensive” means to obtain signatures. *Id.* at *6. Further, the court found that the option of running a mail-only petition campaign was not sufficient and created an unacceptable hurdle to ballot access. *Id.* at *5.

On April 23, an Illinois federal court granted a motion for preliminary injunction eliminating the signature requirements for candidates of existing third parties as well as reducing the signature requirement by 90% and extending the submission deadline for a candidate to qualify from a new party or as an independent. *Libertarian Party of Illinois v. Pritzker*, 20-cv-02112, 2020 WL 1951687, at *4-5 (N.D. Ill. Apr. 23, 2020).

On May 5, 2020, the Sixth Circuit Court of Appeals upheld the *Esshaki* order enjoining the state from enforcing the signature threshold and submission deadline but stayed the specific remedy ordered by the district court. Instead, the Sixth Circuit ordered the state “to select its

own adjustments so as to reduce the burden on ballot access, narrow the restrictions to align with its interest, and thereby render the application of the ballot access provisions constitutional under the circumstances.” The Sixth Circuit noted that the district court’s ordered remedy was not necessarily right or wrong, but rather that the state needed to have the first opportunity to attempt to remedy the constitutional violation before the court weighed in on whether the state’s attempted remedy was sufficient. *Esshaki v. Whitmer*, 20-1336, 2020 WL 2185553, at *2 (6th Cir. May 5, 2020).

On May 8, 2020, Michigan adopted the three remedies originally ordered by the district court in *Esshaki*—including the 50% signature reduction and delayed deadline—but limited the availability of those remedies to candidates who had created candidate committees by March 10, 2020. On May 20, 2020, however, the district court enjoined the state’s enforcement of the additional requirement to file a candidate committee by March 10 as overly burdensome. *Esshaki v. Whitmer*, No. 2:20-cv-10831-TGB, 2020 WL 2556754, at *5 (E.D. Mich. May 20, 2020).

On May 29, 2020, a Nevada federal court granted a motion for preliminary injunction extending the deadline for initiatives to file signatures. The court held that it is “both unreasonable and unfair not to extend a statutory deadline for a corresponding period of time” as the six weeks Plaintiffs were effectively prohibited from collecting signatures by the Governor’s Stay-at-Home orders. Despite the fact that the Secretary of State would be “severely inconvenienced” by extending the deadline, the court held that the normal deadline was “neither narrowly tailored, nor does it advance a compelling governmental interest under the circumstance.” *Fair Maps Nevada v. Cegavske*, No. 3:20-cv-00271, 2020 U.S. Dist. LEXIS 94696, at *42-43 (D. Nev. May 29, 2020).

On June 11, 2020, a Michigan federal court granted a motion for preliminary injunction and held that both the Michigan constitution’s signature threshold and the statutory signature deadline for placing an initiative on the ballot were unconstitutional as-applied in light of the state’s COVID-19-related orders. The court recognized that “there is nothing inherent in the [8%] signatures threshold that establishes that an initiative has a modicum of public support only if it has that many signatures.” *SawariMedia LLC v. Whitmer*, Case No. 20-cv-11246, 2020 U.S. Dist. LEXIS 102237, at *36 (E.D. Mich June 11, 2020). Notably, Michigan’s constitutional signature threshold in Mich. Const., 1963, art. 2, § 9 is nearly identical to Oregon’s—8% “of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected”—and it was found unconstitutional as-applied in *SawariMedia*.

III. ARGUMENT

Under Rule 65 of the Federal Rules of Civil Procedure, this Court may issue a temporary restraining order. The standards for preliminary injunctions and requests for temporary restraining orders are “substantially identical.” *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

A plaintiff must show (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); accord *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012). All these factors are met here.

A. Plaintiffs are likely to succeed on the merits of their claims because, as applied during the Pandemic-related government restrictions on Plaintiffs, Oregon's signature-gathering requirements violate Plaintiffs' First Amendment rights.

To satisfy the “likelihood of success” element, the plaintiffs do not have to “prove [their] case in full” nor show that they are “more likely than not to prevail.” *Koller v. Brown*, 224 F. Supp. 3d 871, 875 (N.D. Cal. 2016) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). Rather, a plaintiff must show only that the plaintiff has a “fair chance of success on the merits or raises questions serious enough to require litigation.” *Koller*, 224 F. Supp. 3d at 875 (quoting *Benda v. Grand Lodge of Int’l Ass’n. of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978)); see also *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“This circuit has adopted and applied a version of the sliding scale approach under which a preliminary injunction could issue where the likelihood of success is such that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.’”).

The right to petition the government is at the core of First Amendment protections, which include the right of initiative. *City of Cuyahoga Falls Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196 (2003). As such, the circulation of ballot petitions is “core political speech” where First Amendment protection is at its “zenith.” *Meyer v. Grant*, 486 U.S. 414, 421-422, 425 (1988); see also *Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 128 (2011). While certain regulations of the initiative process are valid, regulations that are overly burdensome to the initiative process—let alone regulations that would make participation in the initiative process effectively impossible—are met with strict scrutiny. *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 197 (1999) (blocking requirement that petition circulators be registered voters).

In *Meyer*, for example, the United States Supreme Court overturned prohibitions on paid

petition circulators. *Meyer*, 486 U.S. at 423. While recognizing that petitioners had “other avenues of expression” and that “the State has the authority to impose limitations on the scope of the state-created right to legislate by initiative,” the Court determined that the “prohibition of paid petition circulators restricts access to *the most effective, fundamental, and perhaps economical avenue* of political discourse, direct one-on-one communication.” *Id.* at 424 (emphasis added). Going further, the Court determined that leaving open “‘more burdensome’ avenues of communication, does not relieve its burden on First Amendment expression.” *Id.* (citations omitted). Rather, the “First Amendment protects appellees’ right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.” *Id.*

The Ninth Circuit has recognized that the analysis in *Meyer* is directly parallel to the type of situation in this case. The Ninth Circuit found two categories of restrictions on initiatives that create a “severe burden” triggering strict scrutiny: (1) “restrict[ing] one-on-one communication between petition circulators and voters” (2) “mak[ing] it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot.” *Angle v. Miller*, 673 F.3d 1122, 1132 (9th Cir. 2012).

1. As applied during the Pandemic-related government restrictions on Plaintiffs, Oregon's signature-submission deadline restricts one-on-one communication between petition circulators and voters.

In evaluating the first category of “sever burden,” the Ninth Circuit considers whether a restriction “limits the number of voices who will convey the initiative proponents’ message,” or “discourages participation in the petition circulation process.” *Id.* at 1132-33 (quoting *Buckley*, 525 U.S. at 194-95, 200). Oregon requires ballot initiative proponents to turn in signatures at least four months before the election, which is July 2, 2020 for this election. Oregon Constitution Art. IV § 1. There is no question that this deadline “restrict[s] one-on-one

communication between petition circulators and voters” as it shortens the time period for such communication to occur. Further, it limits the overall number of voices that will be involved—for example, someone who only hears about the initiative after the deadline will never have the opportunity to convey the initiative’s campaign message if the deadline prevents the initiative from qualifying. For the same reasons, it also discourages participating in the petition circulation process, especially where, as here, Pandemic-related restrictions on person-to-person contact are expected to be in place well past the deadline. Thus, the petition-submission deadline is subject to strict scrutiny.

2. As applied during the Pandemic-related government restrictions on Plaintiffs, Oregon's signature threshold and signature-submission deadline both make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot.

In evaluating the second category of “severe burden,” the Ninth Circuit recognized 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”—thereby “limiting their ability to make the matter the focus of statewide discussion.” *Angle, supra*, 673 F.3d at 1132-33 (quoting *Meyer*, 486 U.S. 423). An initiative barrier will be subject to strict scrutiny if “(1) the proponents of the initiative have been ‘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.” *Fair Maps Nevada*, 2020 U.S. Dist. LEXIS 94696 at *31 (quoting *Angle*, 673 F.3d at 1132).

a. Plaintiffs’ efforts to gather signatures under extraordinary circumstances have far exceeded reasonable diligence.

Plaintiffs’ efforts to collect signatures in the midst of a global pandemic easily meet the first *Angle* requirement for application of strict scrutiny to Oregon’s ballot initiative signature

requirements.

In *Fair Maps Nevada*, the federal court found reasonable diligence when petitioners pushed forward with organizing their campaign infrastructure during pre-circulation legal challenges, begin gathering signatures as soon as the main legal challenges were resolved, and continued working on their campaign infrastructure when COVID-19-related government orders effectively prevented circulation. This was despite the facts that petitioners (1) did not file their initiative until January 7, 2020; (2) had collected less than 11% of required signatures—only about 10,000 out of the 97,598 needed; (3) did not even attempt to collect any signatures after the Stay-at-Home order went into effect; and (4) had not presented any evidence about comparable initiative campaigns. *Id.* Since this fact pattern showed reasonable diligence, Plaintiffs in this case satisfy this requirement easily.¹² See also *SawariMedia*, 2020 U.S. Dist. LEXIS 102237, at *36 (holding Plaintiffs showed “diligence” by collecting over 60% of required initiative signatures despite waiting to file until January 16, 2020).

PNP filed three initiative petitions, including this one, on November 12, 2020. Nine of the 65 other initiatives this cycle were filed at later dates.¹³ Oregon law requires that any

¹² State Defendants are likely to point to an earlier Arizona federal court decision distinguished by *Fair Maps Nevada*. The Arizona decision denied a motion for a temporary restraining order against state *statutory* requirements for in-person signature gathering. However, that occurred primarily because the plaintiffs in that case failed to also challenge the state’s *constitutional* requirements—thus their entire case was moot. *Arizonans for Fair Elections v. Hobbs*, No. CV-20-00658-PHX-DWL, 2020 WL 1905747 (D.Ariz. Apr. 17, 2020). On appeal, the Ninth Circuit denied a motion for emergency relief for the sole reason that redress from state statutory requirements was meaningless when the unchallenged state constitutional requirements would still be in place. *Arizonans for Fair Elections v. Hobbs*, No. 2:20-cv-00658-DWL (9th Cir. May 5, 2020). In contrast, PNP challenges Oregon’s constitutional, statutory, and administrative restrictions. Overall, the present case is far more analogous to *Fair Maps Nevada*.

¹³ See Search Result For: 2020 Active Initiatives, Elections Division Initiative, Referendum, and Referral Search (last visited Jun. 29, 2020),

prospective ballot initiative effort collect and submit to the Secretary of State’s office an initial set of between 1,000 and 2,000 signatures. ORS 250.045(1). People Not Politicians demonstrated its initial diligence by collecting the requisite signatures quickly over the Thanksgiving weekend in 2019. Turrill Decl., ¶ 3. PNP’s team gathered these signatures in Portland by carrying petitions attached to clipboards and approaching strangers in high-traffic public spaces, including public transit stations, on Portland MAX trains, in busy shopping centers and farmers markets. *Id.*

After collecting the initial set of signatures in the traditional in-person manner, PNP submitted the sponsorship signatures to the Elections Division. Opponents of IP 57 quickly launched a legal challenge to the Initiative’s draft ballot title. Complaint, *Uherbelu v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020). Under Oregon law, petitioners cannot collect more than the first 2,000 signatures until the ballot title is finalized. *See* ORS 250.052(3)(b)-(4).

The Oregon Supreme Court did not certify the final ballot title needed to begin signature collection until March 27, 2020. In every election cycle this decade, initiatives that have received final ballot title approval to begin circulating around the same time, or even much later, have qualified for the ballot—2018 (IP37 March 3), 2016 (IP65 March 18), 2014 (IP55 May 14; IP44 May 12; IP53 March 22), 2012 (IP21 April 3; IP35 April 2), 2010 (IP77 March 18).¹⁴ In fact, these similarly timed initiatives represent just over one third (8/23) of the initiatives that have

http://egov.sos.state.or.us/elec/web_irr_search.main_search (detailing the dates at which initiatives were filed with the Secretary of State’s office).

¹⁴ *See* Oregon Secretary of State, Elections Division, Initiative, Referendum, and Referral Search (“Oregon Initiative Search”) (last visited Jun. 29, 2020), http://egov.sos.state.or.us/elec/web_irr_search.search_form (showing all certified initiatives, including when they were approved for circulation and which ones met the requirements to be placed on the ballot).

qualified for the ballot this decade—2018 (1/4); 2016 (1/4); 2014 (3/4); 2012 (2/7); 2010 (1/4).¹⁵ Clearly, then, ballot title approval in March is consistent with reasonable diligence. IP36 in 2004 qualified despite being first *filed* on March 2 and not receiving ballot title approval till May 21.¹⁶ Thus, at the time PNP’s initiative received ballot title approval on March 27, it was well in line with—or even ahead of—where a “reasonably diligent” initiative campaign in Oregon needed to be to qualify for the ballot.

On April 9, 2020, the Secretary of State cleared PNP to gather petition signatures. By that time, Oregon Governor Brown’s first Stay Home Save Lives orders had been in place for weeks. No other still-active initiative faced this perfect storm of challenges in qualifying for the ballot—the burden of pre-Pandemic qualification requirements combined with a signature-collection period that fell during the height of the Pandemic’s public health restrictions. All three other initiatives that faced the same situation (45/2020, 46/2020, and 60/2020) have given up.¹⁷

Given public health restrictions, the PNP campaign could not deploy signature gatherers to large public gatherings, stores, or transit centers to gather signatures in person. State requirements of six-foot distance from non-household members in all public places have blocked, and continue to block traditional in-person circulation. During PNP’s signature collection period, state and local regulations banned gatherings of more than 25 persons and shut all businesses except those providing essential services. Or. Exec. Order No. 20-07 (Mar. 17, 2020). The traditional methods that PNP had used successfully just a few months earlier—

¹⁵ See Oregon Initiative Search, http://egov.sos.state.or.us/elec/web_irr_search.search_form.

¹⁶ See Oregon Initiative Search, http://egov.sos.state.or.us/elec/web_irr_search.search_form.

¹⁷ See Oregon Initiative Search, http://egov.sos.state.or.us/elec/web_irr_search.search_form.

approaching strangers, engaging them in a conversation, and handing them a petition on a clipboard with a pen that other people had touched—were no longer viable or legal.

The Pandemic’s unprecedented and unpredictable nature further frustrated People Not Politicians’ efforts to adopt alternative means of signature collection. When the first Pandemic public health orders issued in late March, no one knew how virulent COVID 19 would be or how long the Stay Home restrictions would need to be in place. Over the course of April, PNP learned from health authorities about the categories of people who were considered high risk and what activities and types of contact might promote or prevent spread. Turrill Decl., ¶ 11. The campaign discussed the possibility that the orders might be lifted in a few weeks with the coalition of supporters, volunteers, vendors, lawyers and state officials—a possibility that would have allowed it to continue its traditional signature gathering methods rather than creating new methods from scratch. Turrill Decl., ¶ 17. PNP remained in regular contact with its signature gathering team about adjustments they could make to begin gathering petitions, but as the weeks of April passed, it became clear that the campaign would not be able to rely on in-person signature gathering to gather the bulk of the signatures as planned. With no “return to normal” in sight, PNP devised an alternative plan to contact voters, through email, mail, phone and texts. Turrill Decl., ¶ 22. But the cascading closures or disruptions of support organizations, vendors, and government offices as a result of the Pandemic-related orders frustrated even these alternative efforts. Turrill Decl., ¶ 23. On May 4, 2020, Gov. Brown issued an Executive Order extending the state of emergency in response to COVID-19 to July 6, 2020. This order was challenged in court and momentarily suspended by a circuit court—injecting additional uncertainty into PNP’s planning—until the Oregon Supreme Court accepted review and reversed the suspension.

Ultimately, despite these unprecedented challenges, People Not Politicians diligently continued its signature collection efforts. PNP activated a website portal to allow Oregonians to download petition and signature pages at home, print them, and return the signatures by mail. Turrill Decl., ¶ 22. Additionally, because most households do not have the capacity to print documents on 20-pound paper at home, PNP printed and mailed petition packets to 500,000 households with a total of over 1.1 million Oregon voters. Turrill Decl., ¶ 29. These packets provided the petition, signature page, instructions and return envelope that would allow every eligible person in the household to sign a petition and mail it back. *Id.* Coalition member Common Cause organized an effort to send texts to 25,220 Oregon voters with a link allowing them to print, sign, and mail one or more signatures. Turrill Decl., ¶ 25. Although these efforts have yielded impressive results, the mail and internet outreach required a significant infrastructural shift to as yet, largely untested methods of signature gathering. Turrill Decl., ¶ 30.

During the same time period, one recall petition campaign was active in State Senate District 26. Recalls have 90 days to gather signatures. ORS 249.875. After the first few weeks of circulation before COVID-19 orders, the recall campaign was on track to gather the 9,025 needed signatures well before the June 2 deadline. However, the campaign said that “because of the restrictions required to keep Oregonians safe during the COVID-19 crisis, in-person signature gathering had to stop abruptly, and it became impossible to maintain our pace.” Thomsen Recall Folds Up Short of Needed Signatures, The Dalles Chronicle (Jun. 10, 2020).¹⁸

Only about 400 signatures were gathered from voters who were able to “locat[e] the petition online, print[] it, and mail[] in their signatures.” *Id.* The recall failed overwhelmingly despite

¹⁸ https://www.thedalleschronicle.com/free_news/thomsen-recall-folds-up-short-of-needed-signatures/article_711f1648-aa7f-11ea-9837-7b50fe6560fb.html.

strong financial backing—raising \$130,750—from influential labor unions. Dirk VanderHart, Effort Fails To Recall Oregon Republican For State Senate Walk-Out, OPB (Mar. 29, 2020).¹⁹

Despite facing similar difficulties, PNP has been far more diligent.

To date, PNP has gathered over 60,000 signatures and counting—an average of just over 20,000 per month each in April, May, and June. This is well ahead of the pace of signature gathering for the two other initiatives still active this cycle. Both of those initiatives received ballot title clearance far earlier, so they had already gathered most needed signatures before the pandemic came along. By the end of March, IP34 had 126,964 signatures and IP44 had 142,391.²⁰ Both needed more signatures to offset likely invalid signatures, so they continued collection efforts. IP34 managed to gather and submit 8,609 signatures from April 1 to May 22—a pace around 76% lower than PNP. IP44 managed to gather and submit 21,134 signatures from April 1 to June 19—a pace around 57% lower than PNP.²¹ Thus, PNP gathered signatures at a far higher rate during the pandemic restrictions—more than demonstrating that PNP was “reasonably diligent.”

PNP has collected over 40% of the normal signature threshold despite Pandemic-related restrictions. This is far above the 11% found sufficient in *Fair Maps Nevada* and close to the 60% found sufficient in *SawariMedia*. The discussion above shows that PNP meets or surpasses all of the relevant considerations that the court found sufficient in *Fair Maps Nevada* to meet the controlling *Angle* test and trigger strict scrutiny.

¹⁹ <https://www.opb.org/news/article/recall-fails-oregon-republican-senator-chuck-thomsen/>.

²⁰ See Oregon Initiative Search, http://egov.sos.state.or.us/elec/web_irr_search.search_form.

²¹ See Oregon Initiative Search, http://egov.sos.state.or.us/elec/web_irr_search.search_form.

In short, PNP has engaged in a creative and energetic effort to meet pre-Pandemic signature requirements that have not been appropriately adjusted to meet the current unprecedented emergency circumstances. PNP’s efforts go beyond reasonable diligence.

b. Oregon’s signature threshold and signature-submission deadline both significantly inhibit People Not Politicians’ ability to place their Initiative on the ballot

Oregon’s signature-gathering requirements—and the Secretary of State’s refusal to grant People Not Politicians relief from them—satisfy the second *Angle* requirement for strict scrutiny because they significantly inhibit PNP’s ability to place the Initiative on the ballot. Courts assess regulations and restrictions on the right to vote and to engage in political expression under the sliding-scale standards established by *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). If a severe burden on these rights is established, then strict scrutiny applies. *See, e.g., Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

The Supreme Court has identified ways in which regulations on the initiative process may burden “core political speech.” *Meyer*, 486 U.S. at 422. Regulations may make it less likely that proponents will be able to gather the necessary signatures to get their initiative on the ballot, “thus limiting their ability to make the matter the focus of statewide discussion.” *Id.* at 423. In *Meyer*, the unconstitutional restriction was a ban on paid signature gathering, which is the most efficient subset of in-person petitioning. *Id.* at 424. Such ballot initiative regulations trigger strict scrutiny when they “significantly inhibit the ability of initiative proponents to place initiatives on the ballot.” *Angle*, 673 F.3d at 1133.

Here, the analysis is very simple. PNP cannot qualify for the ballot with the current signature threshold and submission deadline. This factor is met, and strict scrutiny is triggered for both requirements.

Oregon's initiative signature requirements pose such a significant burden to People Not Politicians' efforts because the requirements have failed to account for the Pandemic's wave of unprecedented public restrictions. Governor Brown's Stay Home, Save Lives order, the banning of public gatherings of larger than 25 people, and six-foot social distancing requirements have severely limited the one-on-one communication between the plaintiffs, petition circulators, and voters. They preclude the traditional approach to signature-gathering, where circulators engage voters in the public arena and highly-trafficked areas, including markets or public-transportation nexuses, which are the type of quintessential public forums where First Amendment Protections are at their highest. *See, e.g., Perry Educ. Ass'n v. Perry Educators' Ass'n*, 460 U.S. 37, 45 (1983). These in-person interactions, in public spaces less than six feet apart with strangers, are at the core of traditional signature-gathering practices and were integral parts of the elections used to set the current signature requirement figures. As recognized by the court in *Fair Maps Nevada*, the Pandemic-related state restrictions create the factual circumstances under which the signature threshold and submission deadline requirements are severely burdensome.

The Pandemic-related orders prohibit high-efficiency, in-person *paid* circulators—a prohibition that the United States Supreme Court found was unconstitutional in *Meyer*. However, the Pandemic-related orders also go even further than the unconstitutional prohibition in *Meyer* by also prohibiting in-person *volunteer* circulators. Now, although the Pandemic has completely stymied fundamental signature-gathering practices, the Secretary of State has not adjusted the signature requirements accordingly.

The impending submission deadline for the petition and the high signature threshold in light of the pandemic and the subsequent restrictions on movement make it practically impossible for the proponents to gather the necessary signatures to place this initiative on the

ballot. As discussed above, no other active initiative campaign faced these challenges, since all other initiative campaigns were cleared to begin their signature collections before the Pandemic arose and disrupted normal life or have given up.²² With the significant restriction on collecting signatures due to social distancing measures and the Stay Home order, the plaintiffs are unable to gather the required number of signatures to meet the signature threshold and submission deadline. This precludes plaintiffs from making this initiative a matter of statewide discussion and places a severe burden on the plaintiffs' core political speech. As the court recognized in *Fair Maps Nevada*, this satisfies the second prong of the *Angle* test and triggers strict scrutiny.

3. Oregon's signature threshold and signature-submission deadline both fail strict scrutiny as-applied during the Pandemic-related government restrictions on PNP.

In order to survive strict scrutiny, the Secretary of State's signature requirements must be narrowly tailored to further a compelling government interest. *Prete v. Bradbury*, 438 F.3d 949, 961-62 (9th Cir. 2006). Oregon's regulations fail that test.

The present combination of state restrictions is even more burdensome than the restriction on *paid* circulators that the Supreme Court held unconstitutional in *Meyer*. The Pandemic-related orders restricting both *paid* and *volunteer* in-person circulation, in combination with the artificial signature thresholds and turn-in deadlines, create an overall regulator scheme that is unconstitutional as-applied to PNP in this unique situation.

²² Like IP 57, many earlier initiative campaigns have received ballot title approvals and approvals for circulation between late-March to mid-May before they were allowed to begin signature collection. In each of these previous cases, however, the campaigns were able to operate traditional signature gathering operations without the burdens of a pandemic and ultimately qualified for the ballot.

a. Oregon’s arbitrary 149,360 signature threshold cannot survive strict scrutiny in these unique circumstances

The signature threshold requirement to place an initiative on the ballot is not narrowly tailored given the challenges faced by People Not Politicians to collect signatures during the Pandemic-related orders. PNP recognizes the state’s interest in conducting an orderly election process and ensuring reasonable statewide support before placing an initiative on the ballot.²³

But imposing a pre-Pandemic numerical signature requirement provides no flexibility for accurately or reliably determining sufficient support for a ballot initiative when the in-person gathering of signatures is impossible. The threshold thus is not narrowly tailored to achieve the governmental interest of properly measuring support for initiatives and qualifying them for the ballot in a fair and objective process.

One of the key principles of fair elections is not changing the rules in the middle of the game—but this is exactly what the state did to PNP in a uniquely harmful way in this case by banning in-person signature gathering during the very period when PNP had long been planning to conduct in-person signature gathering.

Other courts have agreed that initiative requirements—including minimum signature requirements—fail strict scrutiny and must be adjusted in response to the COVID-19 pandemic-related orders. In *SawariMedia* the court held that the state’s compelling interest to ensure that

²³ Should the state assert an interest in enforcing state constitutional requirements, it is important to point out that there is nothing extraordinary about the fact that these requirements are in the state constitution. The United States Constitution is the supreme law of the land. It is superior to state constitutions, as well as statues, rules, and policies. Courts have found that other Oregon constitutional provisions have been superseded when in conflict with the United States Constitution. *See, e.g., Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128 (D. Ore. 2014) (overturning Oregon’s constitutional provision banning same-sex marriage due to conflicting with the Equal Protection Clause of the 14th Amendment of the U.S. Constitution).

an initiative has enough verified support can still be achieved by requiring a lesser number of signatures than what would be required absent a global pandemic. That case dealt with Michigan’s constitutional threshold of 8% of votes in the last governor’s election—nearly identical to Oregon’s threshold. The *SawariMedia* court recognized that “there is nothing inherent in the [8%] signatures threshold that establishes that an initiative has a modicum of public support only if it has that many signatures.” 2020 U.S. Dist. LEXIS 102237 at *36.

Likewise, in *Esshaki*, the court found that the signature threshold for candidates did not survive strict scrutiny even when the option of running a mail-only petition campaign was available. *Esshaki v. Whitmer*, 2020 WL 1910154, at *1. The Sixth Circuit affirmed the *Esshaki* analysis that the signature threshold did not survive strict scrutiny. *Esshaki v. Whitmer*, 2020 WL 2185553 at *2.

Other cases have reached similar conclusions when enjoining signature thresholds. *Libertarian Party of Illinois*, 2020 WL 1951687 at *4-5; *Goldstein*, 484 Mass at 517; *Faulkner v. Va. Dep’t of Elections*, No. CL 20-1456, slip op. at 3 (Va. Cir. Ct. Mar. 25, 2020) (the signature threshold was not narrowly tailored because it did “not provide for emergency circumstances, like those that currently exist.”).

Oregon’s signature threshold for a constitutional amendment is 8% of the votes cast at the last governor’s election for a full term—149,360 signatures in 2020. At the outset, this is a rather arbitrary threshold. It is not the number itself that is the government interest but rather what it represents—a reasonable estimate for what is needed to determine sufficient support. The 2020 threshold is uniquely disconnected from historical standards of demonstrating sufficient support due to more than just Pandemic-related restrictions. Oregon’s 2018 governor election had the highest ever mid-term election turnout, even surpassing many prior record-

breaking presidential election turnouts like for President Barak Obama’s election in 2008. Voter Turnout History for General Elections, Oregon Secretary of State Elections Division (Feb. 27, 2019).²⁴ This resulted in a 21.3% jump in the number of signatures required for initiatives for 2020. Secretary of State Dennis Richardson, Midterm Election Sees Second Highest Ballots Cast in Oregon History, Oregon.gov (Dec. 6, 2018).²⁵ Thus, using the artificially-high 2018 baseline for setting the threshold does not survive strict scrutiny. Use of the most recent prior baseline is more appropriate.

Further, Oregon has a lower signature threshold for referenda (4%), which makes much more sense under the present circumstances. In the uniquely difficult circumstances for signature collection in a world of state social distancing restrictions, the referenda threshold calculated on the 2014 baseline is a more reasonable representation of what is needed to demonstrate sufficient statewide support. That number would be 58,789.

b. Oregon’s submission deadline cannot survive strict scrutiny in these unique circumstances

The Secretary of State has ample means to conduct an orderly election process even if the signature submission deadline were delayed.

In *Fair Maps Nevada*, the court found that the existing deadline for petition submission to qualify an initiative for the ballot was not narrowly tailored to serve a compelling governmental interest because the defendants could still accomplish what they normally do to verify the collected signatures to then prepare the initiative for the ballot with less restrictive

²⁴ https://sos.oregon.gov/elections/Documents/Voter_Turnout_History_General_Election.pdf.

²⁵ <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=3031>.

means. The court held that it is “both unreasonable and unfair not to extend a statutory deadline for a corresponding period of time” as the six weeks Plaintiffs were effectively prohibited from collecting signatures by the Governor’s Stay-at-Home orders. *Fair Maps Nevada*, 2020 U.S. Dist. LEXIS 94696 at * 43. While recognizing that extending the deadline for submitting signatures could create a burden on the Secretary for verification, that burden did not outweigh the right to ballot access. *Id.* at *27 (“Thus, the Court does not find severe inconvenience a compelling government interest given these extraordinary circumstances”).

Likewise, in *Esshaki*, the court found that the signature deadline for candidates did not survive strict scrutiny even when the option of running a mail-only petition campaign. *Esshaki v. Whitmer*, 2020 WL 1910154 at *1. The Sixth Circuit affirmed the *Esshaki* analysis that the signature deadline did not survive strict scrutiny. *Esshaki v. Whitmer*, 2020 WL 2185553 at *2.

Other courts have reached a similar conclusion. *SawariMedia*, 2020 U.S. Dist. LEXIS 102237 at *36 (extending initiative signature deadline); *Goldstein*, 484 Mass at 517 (extending deadline for filing candidate signatures). The Secretary of State possesses similar flexibility with the Oregon election process. Oregon’s deadline for verifying signatures falls on August 1, 2020, approximately one month after the signatures are currently due, but more than three months before the general election. State Initiative and Referendum Manual, Secretary of State Elections Division (Mar. 2020) (as adopted by Or. Admin. R. 165-014-0005). The Secretary is able to verify signatures very quickly when needed—for example taking only 4 business days to verify IP31’s 173,142 signatures in 2018.²⁶

²⁶ See Elections Division Initiative, Referendum, and Referral Search (last visited Jun. 29, 2020), http://egov.sos.state.or.us/elec/web_irr_search.record_detailp_reference=20180031..LSCYYY (signatures were submitted for verification on June 29, 2018 and were verified on July 5, 2018).

Using a statistical sampling technique, elections staff examine a sample of no more than 5% of submitted signatures for a petition. Or. Admin. R. 165-014-0030(24). Further, the Secretary has already certified that 2020's IP44 has qualified for the ballot and has verified most of the signatures for 2020's IP34.²⁷ Since no other initiatives remain active, PNP's signatures would be the only remaining ones that the Secretary will need to process.

During these extraordinary circumstances presented by the ongoing pandemic, there is no compelling governmental interest in maintaining the existing requirements, as there remains sufficient time for the Secretary of State and the Elections Division to fulfill their responsibilities to verify the petition on an expedited basis.²⁸ This is especially the case if there is a lower signature threshold. Although it may pose some inconvenience to the Secretary of State, any such burden is outweighed by the alternative: PNP's practical exclusion from the initiative process due to the Pandemic and related public health restrictions.

Ultimately, the July 2 submission deadline and required number of 149,360 signatures are therefore not narrowly tailored as applied to People Not Politicians' efforts to qualify the

The total period was seven days but included two weekend days and the July 4 state holiday.

²⁷ See Oregon Initiative Search, http://egov.sos.state.or.us/elec/web_irr_search.search_form.

²⁸ The current deadline for submitting Voter's Pamphlet statements is not until August 25, 2020. Secretary of State, *State Voters' Pamphlet Manual*, 4 (revised Feb. 2020). Thus, without shifting any other deadlines, the Secretary could accept signatures as late as August 17 and verify them in sufficient time to allow the public a few days to submit voter's pamphlet statements on the measure. The Secretary could accept signatures even later if either (1) the total number of signatures needing to be verified was lower, or (2) the Secretary waived the policy of not beginning verification until 100% of signatures are submitted and started verifying PNP's first batch of signatures now—and especially if both occurred together. This also requires enjoining Art. IV § 1(4)(a) of the Oregon Constitution and Oregon Revised Statutes §§ 250.105(3)-(4) to facilitate the Secretary's efficient review of signatures in the least burdensome manner to the Secretary.

Initiative during the current emergency circumstances. The defendant has no interest in effectively barring the initiative from appearing on the November ballot. The defendant's interest in providing an orderly and fair election can still be accomplished without maintaining the existing deadline or signature threshold.²⁹

B. Plaintiffs will suffer irreparable harm without an injunction

The People Not Politicians redistricting reform measure is unique among Oregon initiatives because 2020 represents the last opportunity voters will have to reform Oregon's redistricting process this decade. The United States Census produces population data that states and localities use to redraw voting districts. The Census takes place only once per decade in years ending in zero. U.S. Const. art. I, § 2, cl. 3. The Oregon Constitution mandates that the redistricting of state legislative and congressional districts take place in the year ending in one following the census. Or. Const. art. IV, § 6; Or. Rev. Stat. Ann. § 188.125. No provision of Oregon law authorizes redistricting to take place in any other year or more frequently than once per decade. As a result, voting districts drawn following the census occurring this year must take place in 2021 and will be in effect for the rest of the decade, barring court action.

Unlike other ballot initiatives that may only be delayed in their implementation by two years if passed in 2022 instead of 2020, any delay in the passage of the People Not Politicians initiative will delay implementation for an entire decade. If this court does not rectify the severe

²⁹ Extension of the deadline alone is not sufficient to remedy the situation here because there is no end in sight to the state orders that make a remedy necessary in the first place. COVID-19 cases have been rising recently and the Governor has stated that she is unlikely to continue lifting restrictions until September. Governor Kate Brown, *Governor Kate Brown Extends COVID-19 State of Emergency for Sixty Days* (June 30, 2020), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36874>

burden Oregon’s signature-gathering requirements place on First Amendment rights during a pandemic, plaintiffs will be effectively barred from placing an effective redistricting initiative before the voters this decade.

C. The balance of equities sharply favors Plaintiffs

Enforcement of signature-gathering requirements that do not account for extraordinary public health restrictions would effectively bar plaintiffs from gathering signatures to place an initiative before the voters. This causes unique harm to proponents of redistricting reform because districts drawn in 2021 will remain in effect until the next redistricting cycle following the 2030 census.

The primary harm to the defendant, a slightly abbreviated timeline to certify signatures, is minimal when weighed against a de facto prohibition preventing the plaintiffs from exercising a fundamental right enshrined in the Oregon Constitution. Moving this deadline would still allow sufficient time to certify signatures and print materials in time to mail ballots to overseas voters by September 19, 2020. An order lowering the number of signatures plaintiffs will be required to collect would reduce the defendant’s burden. Oregon law requires a statistical sampling of at least five percent of signatures submitted to determine the validity of those signatures. ORS 250.105(5). Reducing the required number of signatures plaintiffs must submit would also reduce the number of signatures the defendant must verify.

From a practical perspective, the only “harm” to the state is that one more initiative qualifies for the ballot, but since this would increase statewide discussion on an important issue of public policy, this is a positive outcome rather than a negative one. More speech is good.

D. An injunction would serve the public interest

In the absence of action by the Court, the Plaintiffs’ constitutional rights will be abridged.

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002. This is particularly true for First Amendment freedoms. Indeed, the harm here will not only be felt by the Plaintiffs. Should they fail to succeed, the integrity of Oregon’s political system will be harmed to the detriment of all Oregonians. Because Oregon’s interest in public support and signature integrity can be accomplished through less restrictive means, there is no reason not to grant the requested relief. *See Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) (“[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))); *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005) (recognizing that a “colorable First Amendment claim” is “irreparable injury sufficient to merit the grant of relief”).

This Court would not be alone in finding that the public interest is served by enjoining the current requirements to place an initiative on the ballot; in response to the COVID-19 pandemic, courts across the nation have recognized that these requirements must be adjusted in order to preserve citizens’ constitutional rights. *See, e.g., SawariMedia*, 2020 U.S. Dist. LEXIS 102237 at *36 (lowering the number of signatures required and the submission deadline in order to place an initiative on the Michigan ballot); *Fair Maps Nev.*, 2020 U.S. Dist. LEXIS 94696 at 49-51 (extending the deadline to submit signatures to place an initiative on the ballot). Because the requested injunction will preserve the state’s ability to run an orderly election process while also preserving the constitutional rights of the Plaintiffs, the public interest also favors an order protecting Plaintiffs.

IV. CONCLUSION

Plaintiffs respectfully request that this Court grant their request for a temporary

restraining order to extend Oregon's deadline for submitting signatures for ballot initiatives and to reduce the number of signatures required to be submitted.

DATED: June 30, 2020

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 9,534 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

s/ Steve Elzinga
STEVE ELZINGA

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2020, I electronically filed the foregoing 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/ R. Adam Lauridsen

R. ADAM LAURIDSEN