



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

March 26, 2021

Lisa Norris-Lampe  
Appellate Legal Counsel  
Oregon Supreme Court  
1163 State Street  
Salem, OR 97301

Re: *State ex rel Representative Tina Kotek, et al v. Shemia Fagan*, S068364

Ms. Norris-Lampe:

The court has asked the parties to address a set of specific questions related to the relief sought in the petition. The Secretary appreciates the opportunity to provide further information and to comment on the court's proposed alternative schedule. This letter addresses the court's questions.<sup>1</sup>

As background, the court should be aware of some new information. First, the 2020 census data is expected sooner than previously thought. On March 15, the Census Bureau notified the public that it would release census redistricting data between August 15 and August 30. Since that time, the Secretary has confirmed that the August data release will be in essentially the same format that the Census Bureau has used in past years, and that it should be readily usable for redistricting purposes. This is the same data that will be released in tabulated format on September 30.

Next, since filing her brief, the Secretary has completed an intergovernmental agreement with the Population Research Center (PRC) to compile data that may be important to redistricting. That agreement is attached as **Exhibit A**. The Secretary intends to make this data available to the Legislative Assembly and the public as needed to support redistricting efforts. The final product will be available June 15, but the PRC intends to

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<sup>1</sup> This letter is not intended to waive any argument that the Secretary made in her brief opposing the petition, including the argument that this petition is inappropriate for mandamus relief at all.

work with the end users to provide early releases as the information develops.<sup>2</sup>

Since receiving the court's questions, the Secretary's counsel has also engaged diligently with the Legislative Assembly's counsel, Anna Joyce, to discuss the court's proposed schedule and identify any areas of agreement. The Secretary's counsel also shared the Secretary's proposed alternative schedule (described below) with Ms. Joyce and explained the Secretary's view of that plan's likely benefits. In addition, at the Secretary's invitation, Ms. Joyce and Dan Gilbert from the Office of Legislative Counsel attended a meeting on March 24 with the Secretary's counsel and representatives of the PRC. The PRC presented its plan for compiling data required by the intergovernmental agreement and answered detailed questions from all counsel about the technical specifications of its data and the expected releases of data from the U.S. Census Bureau. The data-related information presented in this letter is based on that conversation with the PRC, or communications from the U.S. Census Bureau itself. Should the court require further detail, the PRC is happy to respond to the court's questions directly.

Finally, other states may also be considering using a "two step" redistricting process that includes use of non-census data. This week, a federal district court in Ohio rejected a suit in which Ohio sought to force the Census Bureau to produce data earlier, noting that Ohio had no injury because it could use non-census data to accomplish Congressional redistricting. *Ohio v. Raimondo*, No. 21-cv-00064 (S.D. Ohio, Mar. 24, 2021),

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<sup>2</sup> As the Legislative Assembly notes in its reply, the two weeks between June 15 and the constitutional July 1 redistricting deadline is a short time to create a redistricting plan with PRC data. But the Legislative Assembly had the option to begin compiling data through the PRC in February, if not earlier, which would have allowed the PRC to provide data by mid-May. See **Exhibit B**. Nevertheless, the Secretary also recognizes the need to obtain PRC data without delay. The Secretary has commissioned the PRC to compile the data, and she is committed to providing it to the Legislative Assembly as soon as possible. In addition, the Secretary's alternative schedule described in this letter would allow the Legislative Assembly to refrain from finalizing its plan until it has the opportunity to view and correct for final census redistricting data.

at 13-17, *available at* <https://www.courthousenews.com/wp-content/uploads/2021/03/CensusDismissal.pdf>. The Illinois Legislature is also considering using non-census data. Daily Herald, Lawmakers have data sources other than census for redistricting, experts say, (Mar. 17, 2021) *available at* <https://www.dailyherald.com/news/20210317/lawmakers-have-data-sources-other-than-census-for-redistricting-experts-say>. The Secretary supports initially using non-census data to draw maps that can subsequently be evaluated—and revised if necessary—in light of the census. The Secretary continues to believe that this approach will achieve the most timely and accurate solution to this difficult problem, without requiring this court to significantly rewrite the Oregon Constitution.

### **Responses to the Court’s Questions**

As the court’s questions recognize, there is a significant concern on which the court has not solicited additional information: whether the court even has the authority to alter the constitutional schedule, particularly where it is not impossible to follow the constitution as written. If the court believes it has the authority to order an alternative schedule, the Secretary suggests that any alternative hew as closely as possible to the dates in the constitutional mandate, while also honoring the core principles expressed therein: timeliness, accuracy, transparency and public comment. This approach informs the Secretary’s answers below.

#### **A.1 Would the amended deadlines allow you adequate time to draft a plan giving due consideration to the Census data?**

Possibly, but only with substantial confusion and duplication of effort. The proposed deadlines provide the Secretary one week to “conduct a hearing on the reapportionment at which the public may submit evidence, views and argument,” create a record of those proceedings, and finalize the redistricting plan. Art. IV, § 6(3)(a). ORS 188.016 requires at least ten public hearings before a redistricting plan is proposed, and five hearings after plans have been proposed. In 2001, when the then-Secretary last drafted a plan, the Secretary’s office held more than 20 hearings.

The magnitude of the task, and the short timeline the court proposes, means that the Secretary would be unable to accomplish her role within a week. Thus, the court’s proposed schedule would likely require the Secretary to conduct public hearings and create her own redistricting map at virtually

the same time as the Legislative Assembly is conducting public hearings and deliberating on its own redistricting plan. This is likely to create public confusion. It would also create the possibility that these significant efforts by the Secretary—and public input into that process—would prove unnecessary, to taxpayers' detriment. Overall, the proposed schedule would significantly diminish the ability of the public, including marginalized communities, to participate meaningfully in redistricting, compared to either the schedule laid out in the constitution, or to the amended schedule the Secretary describes below.

**A.2 Would the amended deadlines allow you adequate time to respond to objections by electors?**

Yes.

**A.3 Would the amended deadlines have any negative effect on the 2022 elections, including for those conducting the elections or those running for election?**

Yes. The proposed amended deadlines allow only three weeks between the final redistricting map and the March 8 deadline by which candidates must file to run in the May 2022 primary election. As described in the Secretary's brief, this means that candidates may not even know what district they are in until just before the filing deadline. The constitutional deadline is already short, and it is a substantial burden on candidates to shorten this deadline further. In fact, the burden on candidates was a key factor that led to the existing constitutional schedule. This burden also falls disproportionately on non-incumbents and those with fewer resources. Experience indicates those candidates are more often Black, Indigenous and People of Color, or from other traditionally under-represented communities.

**A.4 Would any other applicable deadlines (whether set by constitution, statute, or rule) need to be changed?**

The Secretary has inherited the redistricting rules in OAR chapter 165, division 8, which describe timelines, hearing procedures and guidelines for the Secretary's role in redistricting. The Secretary would need to change those rules if this court orders an alternative schedule.

**A.5 Do you have different suggestions for amended deadlines that would result in a reapportionment plan becoming effective (for**

**purposes of Or Const, Art IV, 6(6)(b) only) no later than February 14, 2022, and that would ensure that electors and the Court would have substantially the same time to object to and review the plan as is currently provided?**

Yes. As described at page 12 of the Secretary's brief, the schedule provided in the constitution could meet these needs if the court is willing to allow challenges to be filed before census data is available but not resolved until after that data is available. Because litigants generally are not required to include definitive evidence when they initiate litigation, and because this court is unlikely to have affirmatively determined by September 1 that a map complies with applicable requirements, the Secretary submits that this approach is appropriate.

If the court nevertheless determines that it does have authority to order an alternative schedule, and that it should do so, the Secretary's proposed schedule is below.

In the Secretary's view, this schedule offers several advantages:<sup>3</sup>

- (1) This schedule allows the redistricting process to begin and to end on the deadlines stated in the Oregon Constitution, with only minor deviations in intermediate dates.
- (2) This schedule recognizes the opportunity created by the earlier release of census data and moves up the dates in the court's plan accordingly. This provides candidates more time at the end of the schedule to consider the assigned district before they run.
- (3) This schedule requires an initial plan before the release of census data, with the opportunity to correct the initial plan if there are material differences between census and non-census data, or if public comment identifies other material issues. Having an initial plan allows the public more time to provide input, secure in the knowledge that the plan will not change unless new and material data or public comment

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<sup>3</sup> Although the Legislative Assembly's reply does not address the proposed alternative schedule, the Secretary's counsel provided a draft of the proposed alternative to the Legislative Assembly's counsel and discussed many of these advantages.

requires it.

(4) This schedule allows the Legislative Assembly the opportunity to create the initial plan, and also to correct that initial plan in light of census data if necessary. This preserves the Legislative Assembly’s role in originating a plan while also allowing the Legislative Assembly to account for any material changes in census data. The Secretary would remain in her constitutionally assigned role, as a “backstop” who would draft an initial plan if the Legislative Assembly does not, correct that plan if new and material data or public comment requires it, and make limited changes in response to challenges, as ordered by this court.

(5) Allowing the Legislative Assembly to create an initial plan before the release of census data also provides the Secretary advance notice of whether the Legislative Assembly will complete the work. This frees the Secretary from having to create her own initial plan at the same time as the Legislative Assembly, on the off chance that it will be needed. This saves resources and spares the confusion of two simultaneous processes.

<b>Constitutional deadlines</b>	<b>Secretary’s alternative</b>	<b>Court’s proposal</b>	
July 1, 2021 § 6 (3).	July 1, 2021	October 15, 2021	Legislature enacts an initial plan, or the responsibility moves to the Secretary.
August 15, 2021 § 6 (3)(a)	August 15, 2021	October 22, 2021	Secretary enacts a plan if the Legislature does not.
<b>Public Comment Period</b>			
Legislature or Secretary (whichever created the plan) hold hearings on initial plan.			
<b>August 15-30, 2021</b>			
U.S. Census Bureau releases 2020 redistricting data.			
	September 15, 2021		Legislature or Secretary (whichever created the plan) corrects the initial plan if material differences in census data require it or if public comment raises material

			concerns that require correction.
<b>Public Review Period</b>			
Public reviews final plan and prepares any challenges.			
August 1, 2021 § 6 (2)(a). or September 15, 2021 § 6 (3)(b).	October 8, 2021	November 19, 2021	The latest date any elector may petition the court to review the plan.
	October 22, 2021	December 3, 2021	Responses to objections due.
	October 29, 2021	December 10, 2021	Reply briefs due (though discouraged)
September 1, 2021 § 6 (2)(b). or October 15, 2021 § 6 (3)(c).	November 5, 2021	December 17, 2021	If the court determines the plan is lawful, it must dismiss by this date.
September 15, 2021 § 6 (2)(c). or November 1, 2021 § 6 (3)(d).	November 19, 2021	December 31, 2021	If the court determines the plan is unlawful, it must issue an opinion and order by this date, specifying how the plan is unlawful. The order shall direct the Secretary to draft a lawful plan.
<b>Public Comment Period</b>			
Secretary takes public comment and also conducts a hearing as described below.			
November 1, 2021 § 6 (2)(c). or December 1, 2021 § 6 (3)(d).	December 17, 2021	January 28, 2022	The Secretary must conduct a public hearing, transcribe the hearing, and file a corrected reapportionment with the court by this date.
November 15, 2021 § 6 (2)(d). or December 15, 2021 § 6 (3)(e).	December 31, 2021	February 11, 2022	The court must review the corrected plan by this date and determine whether it is lawful; it may further correct the plan if necessary.

January 1, 2022 § 6 (6)(b).	January 1, 2022	February 14, 2022	The reapportionment becomes operative for the purposes of electing senators and representatives in 2022.
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**B.1 The Court understands the Secretary of State to assert that, by July 1, the Legislative Assembly could complete a plan using information from the Population Research Center and that such a plan would be sufficiently accurate that it could be the basis for initial objections by electors and judicial review, and could be corrected and refined during that process. Is that your position?**

Yes, the court has described the Secretary’s position accurately. Critically, the Secretary believes that the correction and refinement process would provide the opportunity to incorporate final census data.

**B.3.a. Would the amended deadlines significantly improve the likelihood that the initial plan, whether from the Legislative Assembly or the Secretary of State, would be accurate?**

The Secretary understands this question to ask whether a plan that amended the constitutional deadlines would significantly improve the likelihood that the initial plan more accurately reflects actual population, as compared to a plan developed within the constitutionally prescribed deadlines. The question implicates both allocation of districts by population and appropriate recognition of communities of interest.

Amending the constitutional deadlines would not likely improve the accuracy of drawing equal districts by population. In the Secretary’s view, the Legislative Assembly could establish districts with a “maximum population deviation under 10%,” *Harris v. Arizona Indep. Redistricting Comm’n*, 136 S. Ct. 1301, 1307 (2016), by the constitutional deadline of July 1, 2021. The Secretary also believes allocation of population would not be significantly more accurate under amended deadlines than the constitutional deadlines. Proceeding according to constitutional deadlines would mean using data from the Population Research Center. The PRC is reasonably confident that its population data will allow the legislature to establish an accurate division of the population into districts of equal population. In 2010, the PRC used a



similar process to estimate population by counties before 2010 census data was available. When the PRC compared its estimates to 2010 census data, there was approximately a 2% discrepancy between PRC data and census data for mid-sized counties, which have populations of similar size to Oregon house districts.

It is uncertain whether amending the constitutional deadlines would result in an initial plan that is significantly more accurate in reflecting communities of interest, particularly communities based on race. The PRC's data on the racial distribution of Oregon's population is primarily based on the U.S. Census Bureau's American Community Survey, which reflects responses from a sample of Oregon households taken each year. The PRC intends to bolster the strength of this data using other administrative sources of data, such as school and health records. It is unclear how many of these resources may be available on short notice. It is also unclear how refined PRC's data can be with the addition of those resources.

However, it is also unclear whether 2020 census data will be completely accurate. The Secretary understands that 2020 census data will have limited precision for total population and racial composition of smaller geographies, such as legislative districts and census blocks. The 2020 census is the first time that the U.S. Census Bureau has used "differential privacy" measures to report decennial census data. Those measures intentionally scramble data to prevent the public from cross-referencing census data with other data sets to reveal personal information of people who answered census surveys. This means that 2020 census maps will not precisely reflect the number or race of people who live within any particular census block. While aggregate data of population and race will be accurate at the macro level—for example, at the level of a federal congressional district—it will be less precise for smaller geographical units, including Oregon house districts.

**B.3.b Would there still be a need for correction and refinement due to the delay in receipt of the Census data?**

The court's proposed schedule would allow the Legislative Assembly to complete an initial plan after receiving census data. Thus, in the Secretary's view, the proposed plan would not necessarily require correction due to the delay in receiving the census data.

The Secretary's alternative schedule builds in time for correction of the Legislature's (or the Secretary's) initial plan after census data arrives.

However, every proposed schedule (the constitution's or any alternative) includes a judicial process for the public to object, which also allows the plan to be corrected and refined if needed. Some of those objections may be based on the census data, or the delay in receiving it, in which case the census data would inform any required corrections.

We thank the court for the opportunity to respond to these questions.

Respectfully submitted,

Ellen Rosenblum  
Attorney General  
Benjamin Gutman  
Solicitor General

/s/ P.K. Runkles-Pearson  
P.K. Runkles-Pearson  
Special Assistant Attorney General  
and General Counsel to Secretary of  
State Shemia Fagan

**Intergovernmental Agreement (IGA)  
Population Research Center**

This Intergovernmental Agreement (this “Agreement”) is by and between Portland State University, Population Research Center (“PSU”) and the Oregon Secretary of State (“SoS”), individually the “Party”, and collectively the “Parties”, hereinafter. The Parties are authorized to enter into this Agreement under ORS Chapter 190.

**Agency Information**

Kathy Wai  
Oregon Secretary of State  
Redistricting Administrator  
900 Court St, Rm 136  
Salem, OR 97301  
[Kathy.WAI@oregon.gov](mailto:Kathy.WAI@oregon.gov)  
503-302-6356

**PSU Representative**

Ethan Sharygin  
Population Research Center  
Director  
PO Box 751  
Portland, OR 97207  
[askprc@pdx.edu](mailto:askprc@pdx.edu)  
503-725-3922

**1. Effective Date and Duration**

This Agreement shall become effective upon the date of the last signature below, and shall expire on June 30, 2021, unless extended to terminated or sooner under the provisions identified within this Agreement.

**2. Purpose**

The purpose of this Agreement is for PSU to provide SoS demographic analysis and estimates of population of Oregon census blocks as of April 1, 2020.

**3. Consideration**

SoS agrees to pay PSU, from available and authorized funds, the amount of actual expenses but not to exceed \$68,105, upon completion and acceptance of the Deliverables listed in Exhibit A. Invoices for completed Deliverables shall be submitted in OregonBuys <https://oregonbuys.gov/bs0/view/login/login.xhtml> .

**4. Deliverables**

PSU shall deliver Deliverables to SoS that comply with the requirements set forth in the Statement of Work. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, SoS will determine whether the Deliverables has the characteristics and otherwise meets the criteria set forth in the Statement of Work.

**5. Corrections of Deliverable(s)**

If SoS determines that a Deliverables does not have the characteristics or otherwise meet the criteria set forth in the Statement of Work in all material respects, SoS will notify PSU in writing, and describe in reasonable detail in such notice the SoS’s basis for the need for correction of the Deliverable(s). Upon receipt of notice, PSU shall, within a 15 business day period, modify or improve the Deliverables at PSU’s sole expense so that the Deliverable(s) has the characteristics described in the Statement of Work and meets, in all material respects, the criteria, and notify the SoS in writing that it has completed such modifications or improvements and re-tender the Deliverables to SoS. SoS will thereafter review the modified or improved Deliverables within 15 business days of receipt of the PSU's delivery of the Deliverables. Failure of the Deliverables to have the characteristics or meet in all material respects the criteria set forth in the Statement of Work after the second submission will constitute a default by PSU. In the event of such default, SoS may

either, (i) notify PSU of such default and instruct PSU to modify or improve the Deliverables as set forth in this Section, or (ii) notify PSU of such default and pursue its remedies for default provided for by law or the terms of this Agreement.

**6. Headings**

The headings or captions in this Agreement are for convenience only and in no way define, limit, or describe the intent of any provisions of this Agreement.

**7. Amendments**

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written Amendment signed by both Parties.

**8. Funds Available and Authorized**

The Parties certify at the time of this Agreement is executed that sufficient funds are available and authorized for expenditure to finance costs and obligations of this Agreement within the Parties' current biennial appropriation or expenditure limitation, provided, however, that continuation of this Agreement or any extension, after the end for the fiscal period in which it is written is contingent new appropriation or limitation of each succeeding fiscal period for the purpose of this Agreement. In the event of such Non-Appropriation, the affected party shall immediately notify the other Party of its intent to terminate this Agreement without penalty.

**9. Termination**

A. This Agreement may be terminated by the mutual consent of the Parties at any time or by either Party upon ten days prior written notice to the other Party.

1. SoS agreements to pay PSU for expenses incurred by PSU through the termination effective date.

B. Termination or modification of this Agreement shall be without prejudice to any obligations or liabilities incurred by either Party prior to such termination. Upon termination of this Agreement, the Party receiving the notice shall immediately cease all activities under this Agreement. Upon termination, each Party shall deliver to the other Party all documents, information, works-in-progress, and other property that are, or would be deliverables had the Agreement been completed.

**10. Force Majeure**

Neither Party shall be held responsible for delay or default caused by fire, riot, acts of God, and war which are beyond its reasonable control. The affected Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**11. Independent Contractor Relationship**

PSU through its employees, officers, and agents will provide the Services described in this Agreement as an Independent Contractor and nothing herein shall be interpreted or construed as creating or establishing the relationship or employer/employee principal/agent, partnership, joint venture, association, or any other type of legal or business relationship between SoS and PSU or between PSU and SoS. Each Party shall be solely responsible for paying its own taxes (federal, state, and local of any type or amount); the consideration owned to its own contractors and agents; its operational expenses, the wages, salaries, benefits, withholdings, and assessments for its employees (including, for example, federal and state income taxes, Social Security, Medicare, unemployment insurance, workers compensation, pension or retirement, medical or life insurance); and the damages or settlements for claims arising from the negligent, reckless, or intentional acts of its employees or agents, all without contribution from the other Party.

SoS shall have no right to direct or control the manner or method by which PSU provides the Services that PSU agrees to provide through this Agreement.

**12. Access to Records**

PSU, SoS, and their duly authorized representatives shall have access to the books, documents, papers, and records, otherwise privileged under law which are directly pertinent to this Agreement for the purpose of making audit examination, excerpts, and transcript.

**13. Non-Discrimination**

In their respective performances of this Agreement, no Party shall unlawfully discriminate against any person on the basis of race, ancestry, national origin, color, sex, disability, age, religion, marital status, or sexual orientation. Moreover, each Party shall comport its performance with all application Federal and State antidiscrimination acts and associated regulations.

**14. Notices**

All notices, certifications, or other communications rendered shall be sufficiently given when delivered or mailed postage prepaid to the representative of the Parties listed above. Any communication or notice so addressed and mailed shall be deemed to be given five days after mailing. Any communication or notice by personal delivery or by email shall be deemed to be given when actually delivered, including electronically.

**15. Indemnification**

To the extent permitted under law, including, without limitation the Oregon Constitution, Article XI, Section 7, and subject to the limitations and conditions of the Oregon Tort Claims Act (ORS 30.260 through 30.300), SoS shall indemnify PSU against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, or arising out of, or relating to the negligent activities or omissions of SoS or its officers, employees, or agents acting within the course and scope of their employment under this Agreement; provided, however, SoS shall not be required to indemnify PSU for any such liability arising out of the wrongful or negligent acts of PSU its officer, employees, or agents.

To the extent permitted under law, including, without limitation the Oregon Constitution, Article XI, Section 7, and subject to the limitations and conditions of the Oregon Tort Claims Act (ORS 30.260 through 30.300), PSU shall indemnify SoS against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, or arising out of, or relating to the negligent activities or omissions of PSU or its officers, employees, or agents acting within the course and scope of their employment under this Agreement; provided, however, PSU shall not be required to indemnify SoS for any such liability arising out of the wrongful or negligent acts of SoS its officer, employees, or agents.

**16. Governing Law**

This Agreement shall be governed construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "claim") between PSU and SoS that arises from or relations to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon.

**17. Merger**

There are no understanding, agreements, or representations, oral or written, not specified herein regarding this Agreement.

**18. Signatures**

SoS and PSU, by the signature of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. SoS and PSU agree that they may conduct this transaction by electronic means, including the use of electronic signatures.

**Oregon Secretary of State**

DocuSigned by:  
*Shemia Fagan*  
8581F7AA52CD404...

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**Signature**

Shemia Fagan Secretary of State

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**Printed Name & Title**

3/24/2021

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**Date**

**Portland State University**

*Cassie Leonardi*

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**Signature**

Cassie Leonardi Contracts Officer

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**Printed Name & Title**

03/23/2021

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**Date**

**Exhibit A**  
**Statement of Work (SOW)**

**A. Purpose**

This purpose of this SOW is the outline the Deliverables that will be performed and delivered to SoS regarding demographic analysis and estimates of population of Oregon census blocks as of April 1, 2020.

**B. Project Description**

Beginning with the 1980 Census, the U.S. Census Bureau has shared data for redistricting in the form of the PL94-171 Redistricting File (PL94 file). Delays in processing of the 2020 decennial census have extended the publication dates for block population counts for redistricting to a currently expected date of September 30, 2021. The National Conference of State Legislatures (NCSL) proposes several courses of action available to state legislatures impacted by census delays. One process is a two-step approach envisions using reliable, presently available data to begin redistricting processes on schedule, and then to revise any decisions after the PL94 data are released.

Oregon's population has grown from 3.8 million in 2010 to over 4.2 million in 2020 (est.). The population that is one or more Black Indigenous People of Color (BIPOC) race or ethnicity categories accounts for more than 60% of the state's population growth. Estimates by the PSU Population Research Center and the U.S. Census Bureau currently indicate which regions have experienced significant population shifts since 2010.

PSU produces annual population estimates for Oregon's cities and counties, regular population projections, and is the designated state liaison with the U.S. Census Bureau for a number of statistical partnership programs. PSU works closely with state, county, and city officials, and regularly publishes data and research pulling together information from diverse sources.

SoS is evaluating issues related to the 2020 census and the redistricting process. SoS has requested PSU to produce a dataset with estimates of the total population of each census block in Oregon. There are no sources of current block level population data other than the decennial census. In the absence of such data, a dataset will be produced by combining block-level counts of housing unit and group quarters, block group or tract level total population and demographic characteristics, and city or county level population estimates. SoS's primary goal is to provide the requested analysis as a resource for state legislators to use until census data arrive, to obtain total population counts that can be aggregated into balanced districts exhibiting less than 10% deviation from absolute equality among areas. An additional goal is to include indicative data on racial and ethnic composition of the population. Total population and demographic characteristics can be identified to varying degrees of reliability and geographic precision in census tables, census partnership data, PSU estimates, American Community Survey (ACS) tables, ACS microdata samples, or a combination of these.

**C. Deliverables**

PSU shall:

1. Compile and clean series of relevant population and supplemental data, including but not limited to:
  - a. Average household size of occupied housing units by block (2010 DEC);
  - b. Housing vacancy rate by block (2010 DEC);
  - c. Trends in vacancy and household size by block group/tract (2010-14 and 2015-19 ACS);
  - d. Housing units and GQ facilities by block (2019 GEO);
  - e. Total population (2010 DEC, 2010-14 and 2015-19 ACS, 2019-20 PEP, 2019-20 PRC);
  - f. GQ facilities and population/capacity by block (2010 DEC; PRC);
  - g. 2010-2020 block correspondence file; and
  - h. 2020 block assignment file.
2. Make an effort to procure potentially informative administrative data;
3. Develop and document a model to generate block level total population data;
4. Develop population estimates by block geography as of the 2020 census date;
5. Reconcile estimates at varying levels of geography for internal consistency;
6. Validate and improve accuracy of estimates using additional data sources; and
7. Protect the confidentiality of all nonpublic data referenced in the analysis.

**Deliverable #1:** PSU shall assemble data, develop and document the model, deliver preliminary dataset and documentation, in a mutually agreeable format to the representative above, no later than June 15, 2021.



# EX-B

February 11, 2021

MEMORANDUM for Oregon Senate Redistricting Committee (Attn: Michael Lantz, Legal Counsel)

SUBJECT: Redistricting contingency data

## Background

Delays in processing of the 2020 decennial census mean that the Oregon Legislature may have to conduct redistricting prior to the release of the US Census Bureau PL94-171 Redistricting File (PL94 file). The Senate Redistricting Committee is preparing for contingencies, including exploring the feasibility of conducting redistricting using the current best data available. This plan would be a temporary measure to ensure that there is a legislative plan in place by the July 1 deadline.

## Considerations

*Responsibility for redistricting:* Article IV, section 6 of the Oregon Constitution and ORS 188.010 specify rules for legislative redistricting and set a deadline of July 1 for the legislature to enact a plan.

*Redistricting data from the decennial census:* The PL94 file contains data from the decennial census to aid states in redistricting: total population and the population age 18 and older; total and occupied housing units, and the number of group quarters facilities and their population.<sup>1</sup> The file also includes breakdowns for 126 possible combinations for race and ethnicity.<sup>2</sup> Geographic support products include maps reflecting changes made to block boundaries since 2010. The 2020 PL94 file will have statistical noise added to prevent re-identification of households, which is likely to reduce the accuracy of the data compared to the PL94 file from 2010.

*Demographic change in Oregon:* the state's population has grown from 3.8 million in 2010 to over 4.2 million in 2019 (est.). The population that is one or more BIPOC race or ethnicity categories accounts for more than 60% of the state's population growth. Growth has been concentrated in Deschutes County and throughout the Willamette Valley.

## Options & Evaluation

The National Conference of State Legislatures (NCSL) proposes several courses of action available to state legislatures impacted by census delays.<sup>3</sup> One proposal is a two-step approach that would “use the best data available at present to redistrict on schedule,” and revise after the PL94 data are released. There are no sources of current block-level population data other than the decennial census. However, a best-data-available (BDA) substitute file could be produced by combining other available data, including block-level housing units and group quarters, block group or tract level race and ethnicity characteristics, and city or county level total population estimates.

There are several possible approaches to producing a BDA file:

- *A top-down allocation of total population* of counties by race and ethnicity to blocks, using administrative data for some areas to validate the results. For example, combining block level data on housing units and average household size; applying a block-group or tract-level trend by race and ethnicity, and distributing the total city or county population into housing units by block.
- *A bottom-up estimation of block population* by race and ethnicity from administrative data, scaled to be equal to independently estimated population by race/ethnicity at the county level. For

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example, estimating the number of children from school enrollments, adults and senior citizens from OASDI and Medicare enrollment, driver licenses, etc.

- A hybrid approach, based on averaging the results of the bottom-up and top-down methods.

The criteria for choosing a method are accuracy and timeliness. The top-down method is a better choice based on these criteria, as the bottom-up and hybrid methods rely on administrative data from state and federal agencies that are not already on hand.

Sufficient data already exist to apply the top-down method. A preliminary BDA file should be produced as close to April 1 as possible (the original PL94 publication date). It would be helpful to have additional administrative data to validate and improve the accuracy of the top-down method (which could be done without disclosing any such data).<sup>4</sup>

*Risks of approach:* The production of an alternative redistricting dataset could be impacted by unforeseen technical challenges that result either in delay or reduced accuracy. Regardless of accuracy, redistricting based on BDA may not withstand legal challenge, even for provisional use. The Supreme Court could grant the legislature an extension, in which case the value of the BDA file would be diminished.

*Risks of inaction:* without a legislative plan in place by July 1, redistricting will revert to the Secretary of State, and that plan, if approved by the Supreme Court, could remain in effect until the next decennial census. The PL94 file has been delayed several times beyond the original deadline and could be delayed again beyond July 30. The PL94 file could have data quality issues arising from the implementation of new statistical noise algorithms, and it may be more difficult to identify irregularities in the PL94 file.

## Conclusion

The top-down method uses the best data available and is the most viable substitute for the PL94 file given the available time and accuracy constraints.

The Population Research Center at Portland State University is interested in producing a BDA file for nonpartisan reasons, grounded in the project's research applications. The BDA product will make it possible to flag areas where the 2020 Census shows results that are substantially different from expectations based on post-censal estimates and survey data (ACS). The findings would motivate a closer look at those areas to determine the reasons for deviation from expectations.

Ethan Sharygin

Director, Population Research Center, Portland State University

Attachments:

- (1) Project description and budget.

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<sup>1</sup> Group quarters include communal living situations such as dormitories, prisons, jails, barracks, and skilled nursing facilities. Census blocks are not delineated by population size, the average size of populated blocks in Oregon in 2010 was 44.5 persons and the median size was 22 persons. The largest block had 3,000 persons.

<sup>2</sup> OMB definitions in use provide for 6 races and 2 ethnicities. Race alone or in combination can be derived.

<sup>3</sup> Williams, Ben. 2021. "[5 Ways to Handle Census Delays and Redistricting Deadlines.](#)" *State Legislatures.*

<sup>4</sup> Specific administrative data sources of interest: (1) student enrollment by race and ethnicity with the student's home address included; (2) births (and deaths) by race and ethnicity with the mother's (decedent's) home address included; (3) inventory of state licensed or administered group quarters facilities, including population counts.

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Attachment 1.

## Project Description

The BDA file should be produced in the same format and layout as the PL94 file, to enable the creation of a repeatable workflow for subsequent redistricting analysis once the PL94 file is released. Specific files and fields proposed for production:<sup>1</sup>

File:	Geographic Header	File01 (Table P1)	File01 (Table P2)	File02 (Table H1)	File03 (Table P5)
Fields:	FILEID STUSAB CHARITER CIFSN LOGRECNO GEOID BLOCK LSADC	P0010001 P0010002 P0010003 P0010004 P0010005 P0010006 P0010007 P0010008 P0010009	P0020001 P0020002 P0020003 P0020004 P0020005 P0020006 P0020007 P0020008 P0020009 P0020010 P0020011	H0010001 H0010002 H0010003	P0050001 P0050002 P0050003 P0050004 P0050005 P0050006 P0050007 P0050008 P0050009 P0050010

Population and housing trends since the 2010 decennial census (DEC) are measured by data from several sources, including: the American Community Survey (ACS), the Population Estimates Program (PEP), and the Population Research Center's annual housing and population estimates (PRC). The Census Bureau's geography programs (GEO) also provide some data on housing at the local level. PRC data are available at city and county level; PEP data for counties, and ACS data for a variety of geographies, block group and higher. ACS data are based on an annual survey of approximately 2% of the population and subject to large errors for small areas where few surveys were administered. PEP and PRC data are produced by application of demographic methods using administrative records, census, and survey data.

The specific data requirements for the project are: average household size of occupied housing units by block by race/ethnicity (2010 DEC), housing vacancy rate by block (2010 DEC), trends in vacancy and average household size by block group/tract by race/ethnicity (2010-14 and 2015-19 ACS); housing units and GQ facilities by block (2019 GEO/LUCA); total population by race/ethnicity (2010 DEC, 2010-14 and 2015-19 ACS, 2019-20 PEP, 2019-20 PRC); 2010-2020 block correspondence file; 2020 block assignment file; GQ facilities and population/capacity by block (2010 DEC; PRC).

By late 2021, further releases are expected, including the Demographic and Housing Characteristics File (DHC). The DHC file includes additional tabulations which are not part of the PL94-171 dataset, such as detail by age, sex, and race/ethnicity. These data are essential for evaluating the quality and coverage of the census, and as the baseline for the future population estimates. Demonstration data indicate that disclosure avoidance systems implemented in 2020 may substantially reduce the reliability of population data by age and sex from the 2020 census. Demographic methods for age smoothing may be able to improve the quality of age and sex data for Oregon, with positive downstream effects.

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<sup>1</sup> For further information, see FR Doc. [2018-09189](#) (5/1/2018).

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Specific DHC files proposed as candidates for adjustment:

File:	DHC P7 Sex by age	DHC P7A-P7I Sex by age by race	DHC P9 Sex by age for the population under 20 years	DHC PCT1 Sex by age	DHC PCO23 Sex by age for the population in households	DHC PCO23A-I Sex by age by race for the population in households
Fields:	P0070001 through P0070049	P007*0001 through P007*0049	P0090001 through P0090043	PCT0010001 through PCT0010209	PCO023*0001 through PCO023*0049	PCO023*0001 through PCO023*0049

## Budget

The program is divided into three phases, designed to be completed in full by June 30, 2022. In the first phase, PRC will produce population estimates for redistricting purposes by April 1, 2021. In the second phase, PRC will support revisions of the redistricting data and comparisons with the official PL94 data, should they become available, by December 31, 2021. In the third phase, PRC will validate and adjust, if necessary, subsequent 2020 census data releases that are part of the Demographic and Housing Characteristics File (DHC), should it become available, based on findings from the preceding phases, by June 30, 2022. Total estimated cost across three tasks is estimated at \$232,622.

### Task 1.1: Redistricting Data Alternative

Define the terms and scope of the estimation process. Deliver a prototype alternative redistricting file. Produce a technical report including: (1) background and purpose; (2) conceptual and definitional issues related to race/ethnicity, geographies, and timing; (3) review of related estimation methodology and justification for preferred approaches; (4) description of all currently or prospectively available data sources. Revise as necessary.

Task 1 Product: (1) Convening, date and venue TBD  
(2) Population data by block by race/ethnicity (PL94-171 alternative)  
(3) Technical Report

Task 1 Timeline: TBD [3 months window]

Task 1 Budget: \$68,105

Mo./FTE	Role	Costs
3/0.75	Principal investigator	25,739
3/0.25	Research associate	6,349
3/0.50	Senior research associate	17,457
3/0.10	Accounting technician	2,050
	Indirect costs	16,510
	Total	\$68,105

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## **Task 1.2: Revisions, Updates, and Evaluation of PL94-171 File**

Work with legislative research staff to stress test and improve estimates. After PL94 data is published, produce a comparison of the two data sources. Identify factors associated with differences in results for geographic and demographic strata. Reserve time for related queries, requests, and directions.

- Task 2 Products: (1) Revised dataset and technical report.  
(2) Additional section with comparison to PL94-171 file (if available).  
(3) Additional reports, TBD
- Task 2 Timeline: TBD [6 months window]
- Task 2 Budget: \$83,734

Mo./FTE	Role	Costs
6/0.25	Principal investigator	17,760
6/0.50	Research associate	26,286
6/0.15	Senior research associate	10,841
3/0.40	Grad. research assistant	4,305
6/0.10	Accounting technician	4,243
	Indirect costs	20,299
	Total	\$83,734

## **Task 1.3: Validation and Adjustments of PL94-171, DHC, and PRC Files**

Study the 2020 census data releases and differences from PRC estimates. Evaluate evidence of coverage quality, differential undercount. Adjust data sources as necessary, producing improved 2020 products and or improved PRC inter-censal estimates for 2010-2020. Improve PRC estimates workflows in light of findings to increase post-census accuracy.

- Task 2 Products: (1) Revised PRC estimates for 2010-2020.  
(2) Revised select DHC datasets  
(3) Technical report.
- Task 2 Timeline: TBD [6 months window]
- Task 2 Budget: \$80,783

Mo./FTE	Role	Costs
6/0.25	Principal investigator	18,381
6/0.50	Research associate	27,206
6/0.15	Senior research associate	11,220
6/0.10	Accounting technician	4,392
	Indirect costs	19,584
	Total	\$80,783