

MICHELE M. FLETCHALL, CHARLES E.  
LEE, KEVIN L. MANNIX, BECCA  
UHERBELAU, DAVID ROGERS, and  
REYNA LOPEZ,

Petitioners,

v.

ELLEN F. ROSENBLUM, Attorney General,  
State of Oregon,

Respondent.

Supreme Court No. S66460 (Control)  
S066463  
S066465

REPLY MEMORANDUM OF  
PETITIONERS FLETCHALL, LEE, and  
MANNIX

Petitioners, who are also the Chief Petitioners for this citizen initiative, reply to the Attorney General's Answering Memorandum as follows:

We ask this Court to take a step backwards and to take a broad look at what this initiative is all about. What does it do? Here are the answers:

1. The initiative replaces section 6, Article IV of the Oregon Constitution.
2. The initiative takes the Legislature and the Secretary of State out of the redistricting process. Both of these government elements are elected on a partisan basis.
3. The initiative establishes the Citizen Commission on Legislative Redistricting. This is the actual name of the entity, as presented in the initiative.
4. The nature of the Citizen Commission is different from typical state boards and commissions, where the members are usually appointed by the Governor. The members of the Citizen Commission are appointed by county commissioners around the state, a majority of whom are elected on a non-partisan basis.

5. The initiative requires that the members of the Citizen Commission be citizens, but not partisan elected officials or party officers. The term “citizen” here has a straightforward meaning, as explained below.

6. The initiative establishes a review process where the Oregon Supreme Court is empowered to apply the standards of the United States Constitution and the Oregon Constitution in determining whether the redistricting plan is appropriate.

7. In establishing standards for legislative redistricting, the initiative applies an overriding new standard which is objective, to the extent possible. Each district, based on census tracts, shall be as compact in area as possible, and the aggregate linear distance of all district boundaries shall be as short as possible.

8. The initiative eliminates the “communities of interest” redistricting standard, which will be discussed below.

Consider the name of the commission: Citizen Commission on Legislative Redistricting. Somehow the Attorney General seems to be obsessed with avoiding the use of the word “citizen” anywhere in the 190 words used in the Attorney General’s ballot title. This, despite the fact that the word “citizen” appears at least 38 times in the proposed constitutional amendment. The Attorney General’s obsession is so complete that the Attorney General will not even once present to the voters the official title of the new entity: Citizen Commission on Legislative Redistricting.

We characterize this approach as an obsession because the word “citizen” has significant meaning in explaining this initiative. This initiative requires that the members of this Citizen Commission must be Oregon voters. To be an Oregon voter, one must be a citizen of the United States, one must reside in the state of Oregon, and one must be 18 years of age or older. Perhaps

we could have called this a “voter commission on legislative redistricting,” but there is an additional factor at work: not all voters may serve on the Citizen Commission. A person who holds an elective partisan political office or a political party officer position, or who has held any such position within the previous 10 years, may not serve; a legislator or a county commissioner, or the spouse or domestic partner of such person, may not serve.

In addition, Citizen Commission members are not appointed on the basis of any particular background. Many commissions require that people be appointed from a community group, business, or profession. The one requirement here is that Citizen Commission members reside in 11 different geographic sectors of the state.

The citizen makeup of the Commission deserves to be explained. Certainly, the Attorney General should let the voters know the name of this new entity: Citizen Commission on Legislative Redistricting.

The Attorney General seems to be extremely concerned with avoiding an explanation that this commission is non-partisan. This description is important because there are several approaches at work in regard to independent commissions related to legislative redistricting. As pointed out in Exhibit E to our Petition for Review to this Court, the approaches taken by 14 states with independent commissions are varied; some are bipartisan; some are multi-partisan; and some have a mixed setup. Our initiative goes as far as reasonably possible to establish a non-partisan commission. This is in terms of the nature of the persons who may serve on the Citizen Commission as well in terms of the nature of the persons who will select the Commission members (county commissioners, largely elected on a non-partisan basis). The non-partisan nature of the Commission deserves mention, as we have proposed in our alternative ballot title.

As to the change in redistricting standards, we do not quarrel with the idea that there should be some comment about the elimination of the standard of “communities of interest.” The “communities of interest” standard is so open to a broad range of interpretation that one could drive a gerrymandering truck through it. This initiative goes out of its way to avoid the opportunity for political play and the “communities of interest” standard is removed. Perhaps that deserves comment.

It is very important to provide a proper description of the objective standard to be applied: maximally compact districts based on U.S. census tracts. This standard, which can only be modified by plus two percent or minus two percent variation in population, is hard to play with. The U.S. census tracts are not established by Oregonians; they are established by the federal government. Those population districts are clearly discernible and, indeed, are presently used in most redistricting systems. This initiative requires that the census tracts be used. It also requires that they be applied in a way so as to make the districts as compact as possible. A clear description of this standard is necessary for the voters to understand the change which is being applied here.

We have already addressed the concept of “limits judicial review” in our opening Petition. Those initial comments stand, despite the counter arguments by the Attorney General. The ordinary voter will think that “limits judicial review” takes away the power of the Oregon Supreme Court to decide whether the redistricting process has been handled properly. The capability to conduct a substantive review is different from requiring, procedurally, that at least 15 people get together to seek judicial review. This might be worth some discussion in the Summary, since it might help educate voters about the challenge this and other courts face when one person can drag a major project into litigation. We should at least require that 15 people get together to press for

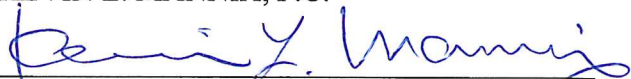
such a major review process when their personal rights are not being harmed. This is an institutional process; there is no requirement of personal harm in petitioning for review of a redistricting plan. Accordingly, there is no need to have a single individual empowered to seek such review.

Finally, we continue to be surprised by the Attorney General's insistence that the apportionment of the 11 non-partisan Citizen Commissioner member positions requires such a focus in the ballot title. This is a Citizen Commission with a single mission: Re-drawing legislative district lines. It is not a commission broadly empowered to carry out any other elements of governance. It is not a commission empowered to implement public policy generally. Accordingly, the "apportionment" issue is relatively minor and does not merit inclusion in the caption, or in the Result of Yes Vote or Result of No Vote sections. It may merit mention in the Summary.

We stand by our original arguments about the failure of the Attorney General's ballot title to meet the statutory standards. We recognize that the general concept of review herein may be (with a sense of humor) characterized as whether it is "close enough for government work." We would argue that the question here is whether the ballot title is close enough to let the voters know what the initiative is all about.

DATED this 22<sup>nd</sup> day of February 2019.

Respectfully Submitted,  
KEVIN L. MANNIX, P.C.



By: Kevin L. Mannix, OSB #742021  
Of Attorneys for Petitioners Michele M.  
Fletcher, Charles E. Lee, and Kevin L. Mannix  
[kevin@mannixlawfirm.com](mailto:kevin@mannixlawfirm.com)

**CERTIFICATE OF FILING AND PROOF OF SERVICE**

I hereby certify that on February 22, 2019, I electronically filed the original REPLY MEMORANDUM OF PETITIONERS FLETCHALL, LEE, and MANNIX, with the Appellate Court Administrator.

I further certify that on February 22, 2019, I served the foregoing REPLY MEMORANDUM OF PETITIONERS FLETCHALL, LEE, AND MANNIX, via first-class post mail and/or via e-mail on:

Ellen F. Rosenblum, OSB #753239  
Jona Jolyne Maukonen, OSB #043540  
DOJ Appellate Division  
1162 Court St NE  
Salem OR 97301  
Phone: (503) 378-4402  
Fax: (503) 378-3997  
Email: [jona.j.maukonen@doj.state.or.us](mailto:jona.j.maukonen@doj.state.or.us)  
Attorneys for Respondent

Evan R. Christopher, OSB #183214  
Gregoary A. Chaimov, OSB #822180  
Davis Wright Tremaine LLP  
1300 SW 5th Ave Ste 2400  
Portland OR 97201  
Phone: (503) 778-5286  
Fax: (503) 778-5299  
Email: [evanchristopher@dwt.com](mailto:evanchristopher@dwt.com)  
Of Attorneys for David Rogers & Reyna Lopez

Secretary of State  
Elections Division  
Email: [lrrlistnotifier.sos@oregon.gov](mailto:lrrlistnotifier.sos@oregon.gov)

Steven C Berman, OSB #951769  
Stoll Berne PC  
209 SW Oak St Ste 500  
Portland OR 97204  
Phone: (503) 227-1600  
Fax: (503) 227-6840  
Email: [sberman@stollberne.com](mailto:sberman@stollberne.com)  
Of Attorneys for Becca Uherbelau

Ms. Aruna A Masih, OSB #973241  
Bennett Hartman Morris  
210 SW Morrison St Ste 500  
Portland OR 97204  
Phone: (503) 227-4600  
Fax: (503) 248-6800  
Email: [aruna@bennetthartman.com](mailto:aruna@bennetthartman.com)  
Of Attorneys for Joseph Baessler

DATED this 22<sup>nd</sup> day of February 2019.

By: 

Kevin L. Mannix, OSB #742021  
Of Attorneys for Petitioners  
Michele M. Fletchall, Charles E. Lee,  
and Kevin L. Mannix  
[kevin@mannixlawfirm.com](mailto:kevin@mannixlawfirm.com)