

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 Eugene Division

4 PEOPLE NOT POLITICIANS OF )

5 OREGON, et al., )

6 Plaintiff, )

7 vs. ) No. 6:20-cv-01053-MC

8 BEVERLY CLARNO, Oregon )

9 Secretary of State, )

10 Defendant. )

11  
12  
13 BE IT REMEMBERED THAT on the 10th day of July,  
14 2020, the above-entitled matter came on for hearing  
15 before the HONORABLE Michael J. McShane, District Court  
16 Judge.

17  
18  
19  
20  
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1 PROCEEDINGS

2 Friday, July 10, 2020, at 2:11 p.m.

3  
4 THE COURT: Let's go on the record and I will  
5 have the courtroom deputy call the case.

6 COURT CLERK: Now is the time set for Civil Case  
7 No. 20-1053, People Not Politicians of Oregon, et al.,  
8 versus Clarno for oral argument.

9 THE COURT: Let's have the parties please  
10 introduce themselves. Let's start with the plaintiffs.

11 MR. ELZINGA: My name is Steve Elzinga on behalf  
12 of People Not Politicians of Oregon, Common Cause, League  
13 of Women Voters of Oregon, NAACP of Eugene/Springfield,  
14 Independent Party of Oregon, C Norman Turrill.

15 THE COURT: Thank you, Mr. Elzinga. You will be  
16 doing all the argument on behalf of the plaintiffs today?

17 MR. ELZINGA: That is correct.

18 THE COURT: And for the defendants.

19 MS. BEATTY-WALTERS: This is Christina  
20 Beatty-Walters for the Secretary of State. I am joined  
21 today by Brian Marshall. And I plan to split up the  
22 argument, with the Court's indulgence.

23 And also with us, I wanted to mention that  
24 Michelle Teed, the deputy director of elections is on the  
25 phone, and also present by video, Summer Davis.

1 THE COURT: Thank you, Ms. Beatty-Walters.

2 Is there an intervenor on the line with us?

3 MR. BERMAN: Good afternoon, Your Honor. This is  
4 Steven Berman on behalf of the intervenor amicus  
5 applicant, Our Oregon, Becca Uherbelau. And with me is  
6 Lydia Anderson-Dana from my office.

7 And we will be splitting the argument.  
8 Ms. Anderson-Dana will be arguing the motion to  
9 intervene. I will be handling the merits, to the extent  
10 we're allowed to appear.

11 Also with us is Becca Uherbelau, one of the  
12 plaintiffs and one of the declarants. And another of the  
13 declarants is apparently somewhat frenetically trying to  
14 figure out how to get on the video line right now, and  
15 that's Ms. Kaufman. And I know the Court asked for  
16 witnesses to be available, and she's trying.

17 Unfortunately, Mr. Unger is unavailable this  
18 afternoon, so we have Ms. Kaufman and Ms. Uherbelau for  
19 any questions the Court may have.

20 MS. BEATTY-WALTERS: It appears that the judge is  
21 speaking, but we cannot hear anything the judge is  
22 saying. My video has completely stopped. I see the  
23 judge's mouth moving, but that's all.

24 COURT CLERK: Counsel, are you hearing me now?  
25 Ms. Beatty-Walters, can you hear me?

1 MS. BEATTY-WALTERS: Yes.

2 COURT CLERK: Your Honor, if you want to speak.

3 THE COURT: Can you hear me? Let's all be  
4 patient with the technology. I appreciate that piece of  
5 it. We will do our best, all of us. Please speak  
6 slowly. If at any time you cannot hear me, or any of the  
7 other parties who are speaking, please interrupt.

8 But please, for the sake of our court reporter,  
9 who isn't necessarily seeing you as you speak, please  
10 speak a little more slowly and a little louder.

11 I know the parties have probably prepared ways of  
12 addressing things. I would like to just jump into this,  
13 and I'd like to really start with the defendants in this  
14 case. There's a couple of things about your briefing.

15 First of all, you did cite a number of cases for  
16 the proposition that Federal Courts have denied signature  
17 gatherers relief in other jurisdictions, and that is  
18 true. But, you know, it shouldn't be my job to have to  
19 look up all of those cases only to find out that they  
20 were so factually distinguishable that they were not  
21 helpful to you.

22 There were two cases that you cited. Lyons  
23 versus City of Columbus, Thompson versus DeWine, but I  
24 mean, you are correct. The Federal Court denied relief  
25 to petition gatherers. But you failed to tell me in your

1 own briefing that there were built-in exceptions in the  
2 governor's executive order for signature gatherers in  
3 those cases, so I felt like I spent an inordinate amount  
4 of time fact-checking your cases, when you should have  
5 brought those facts to my attention in your briefing.

6 I realize we're all in a rush, and sometimes when  
7 we're in a rush, we cite cases as blunt instruments. But  
8 I think they did very little to forward your argument.  
9 And I have to say I was up quite late last night having  
10 to fact-check your cites, because after reading the first  
11 one, I started not trusting the remainder.

12 You also spent a lot of ink on the facial  
13 validity of the laws surrounding signature gathering in  
14 Oregon. And that's not an issue. Everybody is in  
15 agreement that the Secretary of State has a significant  
16 government interest in enforcing the initiative laws as  
17 written. That's not an issue.

18 The issue is, is there something specific to  
19 these plaintiffs at this time that makes the laws and  
20 regulations unconstitutional as applied. So I understand  
21 the government has an interest in enforcing laws, but I  
22 guess my first question really involves that, the  
23 government's interest here in enforcing laws.

24 Oregon government has lost interest in enforcing  
25 quite a few laws during this period of time in response

1 to Covid 19. So let's just name a few of them, and they  
2 center on people's rights. They center on people's  
3 finances, they center on health and safety. But  
4 residential eviction laws, they have been expended.  
5 Commercial eviction laws have been expended. Deadlines  
6 for paying certain business taxes have been extended.  
7 Registration and licensing requirements have been  
8 extended by the Department of Motor Vehicles. Speedy  
9 trial rights have been modified by the Supreme Court.  
10 Legal sentences have been completely commuted by the  
11 governor. Bar exam passage requirements was suspended  
12 this term. Court rules have been suspended and modified  
13 regarding personal appearances. Commercial motor vehicle  
14 laws have been suspended. Our bottle bill in Oregon was  
15 suspended for a period of time. I mean, for God's sake,  
16 we were allowed to pump our own gas for a period of time.  
17 And I was handed a plastic bag in Eugene, Oregon, at a  
18 grocery store.

19 A lot of laws that we hold very, very dear to our  
20 hearts, including self-service -- not self-service,  
21 curbside liquor was able to be served in Oregon. Some  
22 important; some not so important.

23 But the question I have is, what is the Secretary  
24 of State's interest when we have here an initiative  
25 process that is core to the First Amendment. Is it the

1 defense position that this is not a First Amendment  
2 issue?

3 Now I can't hear you, Ms. Beatty-Walters.

4 MS. BEATTY-WALTERS: I am sorry, Your Honor.  
5 Going to have to be reminded of that.

6 This is Christina Beatty-Walters, for the record,  
7 and I think this is probably one we will want to split  
8 between myself and Mr. Marshall. But let me take first  
9 the question of what is Oregon's interest in enforcing  
10 the election laws.

11 This is a drastic remedy that the plaintiffs are  
12 asking for at the very last minute. They are asking the  
13 Court to enjoin provisions of the Oregon Constitution,  
14 not just Oregon Administrative Rules or Oregon statutes  
15 that provide for certain deadlines and requirements.  
16 They are asking for the Court to change the Constitution.

17 And those provisions of the Oregon Constitution  
18 they are asking for relief from were decided upon and put  
19 there by the citizens of Oregon themselves. So we think  
20 it's a rather drastic remedy.

21 And what is the State's interest? Well, Your  
22 Honor, the State's interest here is -- in particular the  
23 Secretary's interest, is ensuring a fair election and an  
24 efficient election.

25 THE COURT: But how can you do that if



1 petitioners can't show up to petition the government?  
2 That's the initial issue. It's not whether the length is  
3 fair. It's whether people's right to petition the  
4 government, which is held to be a core First Amendment  
5 right by the US Supreme Court, how does this impact that?

6 I mean, if nobody gets to participate in  
7 government, it doesn't matter what kind of an election  
8 you have.

9 MS. BEATTY-WALTERS: Well, Your Honor, I am going  
10 to disagree with you that it is impossible to participate  
11 in government or petition government. It is absolutely  
12 true that the executive order entered by Governor Brown  
13 has curtailed some activities in Oregon. There's no  
14 question about that. But we cited those cases from Ohio  
15 to -- in contrast to the case from Michigan, for example,  
16 because we think the governor's executive order here are  
17 more like the Ohio order than they are like the Michigan  
18 order.

19 THE COURT: Well, in Ohio the governor made an  
20 exception for signature gatherers. Where is that  
21 exception in any Oregon executive order?

22 MS. BEATTY-WALTERS: That's right, Your Honor. I  
23 can't cite to you a specific exemption, and that's  
24 correct. But the reason why we think that the executive  
25 order 20-12 and 20-25 are more like the Ohio and less

1 like the Michigan is that they are structured completely  
2 differently.

3 Executive order 20-12 says that to the maximum  
4 extent possible, you should stay home. And to that end,  
5 here is what I am ordering. So this is how I am going to  
6 implement that, is what the governor said. And the way  
7 that she implemented that is to say, I am closing these  
8 specific types of businesses to -- because it's almost  
9 impossible to stay six feet away from each other when you  
10 are conducting these businesses -- closing these types of  
11 businesses if you can't stay six feet apart.

12 I am going to allow people to go out and  
13 recreate, because I am. She did. She let people go out  
14 and recreate and that was explicit and express in her  
15 order. She said to the extent you can, if you aren't in  
16 a different kind of business, like you work in an office,  
17 you can open if you can. So these were all reasonable  
18 restrictions that she put in place in light of the  
19 pandemic.

20 But none of them made it impossible to circulate  
21 petitions. People were still going out, even from the  
22 very first day of the very first executive order -- were  
23 still going out to the grocery store and to the pharmacy.

24 THE COURT: But certainly it is not impossible.  
25 The question is does it impose a First Amendment burden

1 on the plaintiffs in this case, these rules. And is your  
2 answer simply no, because there were alternatives, that  
3 nobody believes are sufficient to gather the kinds of  
4 signatures needed? Or is it yes, it is a burden, and  
5 we're not obligated to do anything more.

6 MS. BEATTY-WALTERS: No, I have a couple of  
7 answers for that. First, and I put this in the brief,  
8 but we don't think the angle standard is the right  
9 standard here, because the two provisions that they are  
10 challenging, the signature and the deadline provision,  
11 aren't regulating. So we don't think the First Amendment  
12 legitimately applies here at all.

13 But I also get that that is a better argument  
14 probably for the 9th Circuit. And if you looked at Angle  
15 it's broad language -- I am sorry about that. I will try  
16 to speak a little more slowly since you are not able to  
17 read my lips.

18 So I was saying about Angle, if you look at the  
19 broad language of Angle, this case would fit within that  
20 broad language. But in order to have a severe burden, in  
21 order to be a severe burden on First Amendment rights,  
22 you have to have -- the 9th Circuit has said, you measure  
23 that by whether, in light of the entire scheme,  
24 reasonably diligent candidates can normally gain a place  
25 on the ballot.

1           And Your Honor, we think the evidence shows here  
2 that the answer to that is yes. Certainly in past  
3 elections that's true, and I understand the plaintiffs  
4 aren't challenging these two provisions of the Oregon  
5 Constitution.

6           But even with respect to this current election,  
7 and this current year, there are two measures that  
8 qualified. And as the Court knows, it has -- it has  
9 declarations from the proponents of those measures. They  
10 were able to qualify and conduct in-person circulation.

11           THE COURT: But there's a couple of things about  
12 that. No. 2 -- No. 1, two isn't very many, is it? What  
13 is our average?

14           MS. BEATTY-WALTERS: If we look at the  
15 declaration of Ms. Davis, and I think she has a chart in  
16 there, it's some -- less than half, certainly, that  
17 qualify -- that are approved to circulate, qualify. And  
18 in 2016 it was a quarter, and 2014 it was a fifth.

19           THE COURT: I am not interested in how many  
20 qualify. I am asking, on average, in a four-year  
21 presidential general election, how many ballot measures  
22 do we have before voters? Two strikes me as a very small  
23 number. In other words, I don't know if saying because  
24 two people made it, that helps your argument, if in past  
25 years 15 people made it through the process.

1 MS. BEATTY-WALTERS: Well, Your Honor, there were  
2 four in 2016.

3 THE COURT: All right. Thank you.

4 MS. BEATTY-WALTERS: And in 2012 there were  
5 seven. There's a chart in Ms. Davis's declaration on  
6 these four that provide some of that data. But, Your  
7 Honor, in light of the entire statutory scheme, is what  
8 the 9th Circuit has directed Courts to look at -- in  
9 light of the entire scheme, getting ballot access, can  
10 reasonably diligent candidates gain a place on the  
11 ballot, or can a measure gain a place on the ballot.

12 And here our argument is that the proponents of  
13 IP 7 started too late, and they didn't have the necessary  
14 plan in place. They didn't have the funding. They  
15 didn't have what they needed to have. So add to the  
16 pandemic and the governor's executive order relating to  
17 the pandemic, they didn't have what they needed to have  
18 in place to get to the finish line and qualify for the  
19 ballot.

20 THE COURT: I am not sure what you are basing  
21 that on when they had community forums as soon as  
22 possible in 2018. They had a road map in 2019. And they  
23 certainly had qualified the petition with sponsor  
24 signatures. And then there was hold ups that happened to  
25 some ballot measures and not others in terms of the title

1 of the ballot measure. And my understanding is the  
2 intervenors challenged that, and that held it up further.

3 But they were looking to bring on signature  
4 gatherers as early as January of 2020 to begin gathering  
5 signatures in April of 2020. Now, if they are not  
6 prophets they could not have foreseen there would be a  
7 pandemic to disrupt that road map.

8 But I'm not seeing -- and I can certainly see  
9 other cases. I believe I have another case before me  
10 where it doesn't appear the signature gatherers or the  
11 petitioners have done much at all. They just want a free  
12 pass. But I am not sure where you are finding that there  
13 was no reasonable diligence to get this on the ballot.  
14 Even under the worst of circumstances they were able to  
15 get over 60,000 signatures. And they even attempted some  
16 fairly creative ways of using mail and other ways of  
17 getting signatures to the Secretary of State.

18 So they haven't been sitting on their hands  
19 certainly, and these are not amateur organizers. The  
20 League of Women Voters is a well-known nonprofit and well  
21 funded. So you make these blanket statements that they  
22 weren't diligent and not well funded, not exactly  
23 specifically sure where these facts are coming from.

24 MS. BEATTY-WALTERS: For those points I'm really  
25 relying on what the intervenor had brought forward.

1 COURT REPORTER: Wait a minute. Wait a minute.

2 MS. BEATTY-WALTERS: And this is

3 Ms. Beatty-Walters, for the record.

4 Your Honor, what I am relying on for those  
5 statements are the declarations that were submitted by  
6 the Intervenors.

7 But what we, in our papers, one the other facts  
8 that we relied on in other papers, and you are correct,  
9 Your Honor, that they had submitted evidence, the  
10 plaintiffs have, that they were in 2018, going out and  
11 spreading the word. But the interesting thing is that  
12 they waited until November of 2019, a full year later, to  
13 actually file the paperwork with the Secretary of State  
14 that would start the process to allow them to qualify for  
15 the ballot. And if they were -- you know, if this was as  
16 important as they are claiming, why didn't they start  
17 earlier?

18 So as part of the whole calculation of the  
19 Court -- if the Court is going to apply the Angle  
20 standard, as part of that the Court should look at the  
21 whole scheme, regulating the ballot access. And courts  
22 have done that, in fact. And because petitioner started  
23 too late in some situations, the Courts have found that  
24 there was not reasonable diligence. And I think that was  
25 Arizona case -- Arizona for Fair Elections and the Sinner

1 case.

2 THE COURT: How do you distinguish the Reclaim  
3 Idaho, Fair Maps Nevada, and SawariMedia, LLC.

4 MS. BEATTY-WALTERS: Well, Your Honor, Sawari  
5 Media, the Michigan case, in that case -- I think all of  
6 these cases are different. Because the executive orders  
7 that were in operation in those states were very  
8 different. And in that case the Court found in the  
9 SawariMedia case, the Court found that the governor's  
10 executive order, Governor Whitmer, made it impossible to  
11 collect signatures.

12 That's not true here, Your Honor. It was not  
13 impossible to collect signatures. The Court found that  
14 the executive order in that case was the root cause of  
15 the inability to get the signatures. And we submit to  
16 you, Your Honor, that's just not true here.

17 The Reclaim Idaho -- oh, I am sorry.

18 THE COURT: Go head.

19 MS. BEATTY-WALTERS: Similar, with the Reclaim  
20 Idaho case, the governor's order there required all  
21 individuals to self-isolate except for certain activities  
22 and there weren't any exceptions there. And that's not  
23 what Governor Brown's executive order says.

24 But also in the Reclaim Idaho the plaintiffs had  
25 collected, by the time -- had started the process earlier



1 and by the time the governor's orders had issued they had  
2 collected more than half of the signatures that they  
3 needed. That wasn't true here, because the plaintiff  
4 didn't start as early as they could have.

5 And the evidence there shows that they were on  
6 track to meet the deadline. There isn't any such  
7 evidence here, Your Honor, to show that they were on  
8 track or they had a plan that would have allowed them to  
9 meet the deadline.

10 In the Fair Maps Nevada case the plaintiff had  
11 collected, already, a good portion of signatures. They  
12 had 10,000 signatures. And in that case, as well, the  
13 executive order ordered citizens to stay at home, and  
14 forbade gatherings outside of homes. That wasn't true  
15 here under Governor Brown's executive orders.

16 So really what it comes down to for those cases  
17 affecting -- the executive orders under those cases were  
18 very different. And I would be happy to walk through the  
19 executive orders in a little bit more detail if that  
20 would be helpful for the Court. The fact that the  
21 proponents of IP 34 and IP 44 were able to, and did, in  
22 fact, go out and collect in-person signatures  
23 demonstrates that it certainly wasn't impossible. And it  
24 wasn't the result of state action that the plaintiffs  
25 didn't conduct any in-person signature gathering.

1 THE COURT: Do you know how much -- the two  
2 petitions that passed, what percentage of their  
3 signatures were they able to obtain after the shutdown  
4 orders?

5 MS. BEATTY-WALTERS: I don't know the answer to  
6 that, Your Honor. I don't know the answer to that, but I  
7 can certainly look it up while we're chatting.

8 Also -- I am sorry.

9 THE COURT: Give me just a moment. I am trying  
10 to finish up some notes.

11 MS. BEATTY-WALTERS: Sure. All right.

12 THE COURT: All right. Go ahead. What else  
13 would you like to say?

14 MS. BEATTY-WALTERS: I was going to say that  
15 Mr. Blaszak, I believe that's how he pronounces his name.  
16 He submitted a declaration on behalf of the plaintiffs.  
17 It doesn't appear he's a campaign -- he says that he's a  
18 person who runs campaigns like this, but it doesn't  
19 appear that he was hired by the petitioner. He didn't  
20 claim to have been hired by the petitioner, so he's just  
21 coming in to opine.

22 And to the extent that he suggests that they  
23 could have made the deadline, it's speculative, Your  
24 Honor. He doesn't say that they could have, based on  
25 what he knows. He says if they had the funding, and if

1 they had the plan, you know, they could have done it.  
2 They could have raised 150,000, they could have obtained  
3 150,000 signatures. And that's what he says in his final  
4 paragraph of his declaration.

5 Well, 150,000 isn't close to enough to have this  
6 measure qualify for the ballot. If you read Ms. Davis'  
7 declaration, she explains that the verification  
8 percentage of submissions is never as high as  
9 99.5 percent, which is what it would have to be if  
10 Mr. Blaszak was correct, and they were able to submit  
11 150,000 signatures by the deadline.

12 THE COURT: Okay. Let's -- I am going to wait on  
13 plaintiffs, if you don't mind. And let's talk to the  
14 proposed intervenors. Let's start with why should you  
15 intervene?

16 MS. ANDERSON-DANA: I am Lydia Anderson-Dana, and  
17 I am from Stoll Berne, and I am representing intervenors  
18 Our Oregon and Becca Uherbelau. Because we have a  
19 limited time and a lot of ground to cover, and the Court  
20 has our briefing, I am going to keep this short unless  
21 you have questions, or you would like further analysis.

22 THE COURT: Okay.

23 MS. ANDERSON-DANA: Essentially we have a  
24 different perspective and expertise to offer the Court  
25 from those of the parties, whether it's through

1 intervenor or amicus status. We have an independent  
2 interest in participating in, and funding an opposition  
3 campaign as opposed to the State, which wants to  
4 facilitate fair electoral procedures.

5 THE COURT: That's a big problem with you as an  
6 intervenor is you are really -- I mean, you are not  
7 adding anything to the Court other than the opposition to  
8 the actual subject matter of the petition itself. I  
9 mean, as a result, I know what you are going to say,  
10 right. There's not a -- I mean, you have already been  
11 fighting them both in Court and in front of the Secretary  
12 of State; isn't that correct?.

13 MS. ANDERSON-DANA: Yes, Your Honor. And I think  
14 that's one of the reasons why, under the FRCP 2482 test,  
15 do you have standing as to intervene as a right, because  
16 we have separate interests that could be impaired by --  
17 our ability to protect that interest could be impaired by  
18 the disposition of the Court in this matter. And because  
19 we have a separate perspective, we think that the  
20 existing parties will not adequately represent that  
21 interest.

22 THE COURT: Okay.

23 MS. ANDERSON-DANA: And to the extent our angle  
24 here is really to get evidence to the Court through  
25 declarations and testimony, whether we call those

1 witnesses or the State does, or the Court does. And I  
2 also wanted to note in our briefing that neither party  
3 has taken a stance on the matter. So we're just asking  
4 the Court to grant our motion to intervene or  
5 alternatively grant us leave to appear amicus in the  
6 matter.

7 THE COURT: I will let you appear amicus in the  
8 matter. I have reviewed your briefs and declarations.  
9 Is there anything more you wish to say on the merits?  
10 Not on the underlying -- merits of the underlying  
11 petition or initiative, obviously, but in regard to the  
12 First Amendment violations and whether some reasonable  
13 accommodations are required?

14 MS. ANDERSON-DANA: I will turn that over to  
15 Mr. Berman.

16 MR. BERMAN: Your Honor, this is Steven Berman.  
17 Can the court reporter hear me okay?

18 THE COURT: Yes, thank you.

19 MR. BERMAN: Your Honor, there are a couple of  
20 legal issues and points that were in your talk with  
21 Ms. Beatty-Walters I would like to address for a moment.  
22 And then, again, we have Ms. Uherbelau available, as well  
23 as Ms. Kaufman. If the Court wants us to call them or  
24 put them on, we're happy to. They are available for your  
25 questions, for my questions, for plaintiff 's counsel's

1 questions, or for the State's questions. The Court asked  
2 for them and we wanted to make sure they were here.

3 I think there are a couple of points that I would  
4 like to raise in response to the Court's discussion with  
5 Ms. Beatty-Walters. One issue -- I am going to jump  
6 around a little bit to try to keep this brief.

7 With the Fair Maps case, Your Honor, you asked  
8 how do you distinguish Fair Maps. Fair Maps and these  
9 other cases predominantly involve State laws or  
10 regulations that further burden the State's  
11 Constitutional rights. So in Fair Maps it was an Arizona  
12 law that required signature submissions well in advance  
13 of the Constitutional deadline. They weren't challenging  
14 the Constitutional deadline. And three different times  
15 in the Fair Maps opinion the Court said, We assumed that  
16 the defaults -- I am paraphrasing, we assume that the  
17 defaults will be the Constitutional deadline.

18 What the plaintiffs here are seeking is something  
19 different. What they are seeking to do is not state a  
20 rule or regulation to be abandoned. They didn't  
21 challenge the governor's stay-at-home order. They didn't  
22 challenge any of the State's signature production  
23 regulations or statutes.

24 What they are challenging is the actual  
25 Constitutional provisions, not only of the number of

1 signatures that you need to amend the Constitution, but  
2 also the time at which you need to do those. And the  
3 State has an overriding interest in protecting the  
4 integrity of its Constitution, and in protecting the  
5 integrity of the --

6 THE COURT: I know that, but we're back to an  
7 as-applied challenge. And the Federal Courts have an  
8 overriding interest in protecting core First Amendment  
9 values, even if they are in conflict with State  
10 Constitutions. We do it all the time. We do it in the  
11 criminal law context, in the gay marriage context. I get  
12 it. You have an absolute right and interest in upholding  
13 your constitutional rules, the Constitution. I get it.  
14 But there are moments where it comes into conflict with  
15 the Federal Constitution, here the First Amendment.

16 And I am not hearing anybody on the defense side,  
17 or the intervenors, even acquiesce a little bit that  
18 there is a First Amendment here. Which is fine, if you  
19 are telling me it simply doesn't rise to that level,  
20 that's fine. But it seems -- it does have some burden on  
21 the right to petition the government if the Oregon  
22 Constitution cannot adapt under these remarkable  
23 circumstances.

24 MR. BERMAN: Your Honor, I would like to address  
25 that in two respects -- I guess, three. The first is,

1 going back to it, you asked how do you distinguish this  
2 from Fair Maps. The way that you distinguish this case  
3 from Fair Maps is --

4 The Fair Maps Court -- I am just circling back,  
5 Your Honor. The Fair Maps Court said we are not being  
6 asked, and we're not providing relief from the provisions  
7 of the Nevada Constitution. We're simply providing  
8 relief from the statutory scheme, because that is what  
9 the plaintiffs are entitled to.

10 I think the second point, Your Honor, is -- and I  
11 am not taking the position that plaintiffs do not have a  
12 First Amendment right to petition their government. Of  
13 course they do. And I am not taking the position, Your  
14 Honor, that Covid 19 made it harder to collect  
15 signatures. I don't think that that would be a  
16 reasonable position to take.

17 The position that I am taking is the position  
18 that the 9th Circuit took, which is you have to look at  
19 the entirety of the circumstances and whether a  
20 reasonably diligent campaign could qualify. And here we  
21 know that two reasonably diligent campaigns qualified.

22 And respectfully to the Court, I do not believe  
23 the inquiry is how many measures qualified in past  
24 election cycles, because each election cycle is  
25 remarkably different. Each cycle has different issues,



1 different people that want to come to the Court, and  
2 different people who want to seek relief.

3 For example, it was widely reported in the  
4 newspaper a few months ago that there were going to be  
5 three environmental initiatives that were going to have  
6 signature collections commence. Except the timber  
7 interests and environmental interests reached a  
8 compromise, and that was actually just passed in the  
9 special legislative session.

10 So you would be in a situation where you have  
11 five initiative positions here instead of two. It just  
12 didn't happen that way, because those chief petitioners  
13 chose not to pursue the initiatives.

14 The use of the initiative system historically in  
15 Oregon has generally been declining, and it's important  
16 to draw a distinction between initiative petitions,  
17 referrals, and referendums. All of those are ballot  
18 measures. And often, if I look at my ballot when I get  
19 it I see Measure 102 to 108. In this session there are  
20 going to be two legislative referrals, and as well as the  
21 two measures that qualify.

22 And under the reasonable diligence standard the  
23 reason we spent so much time, and Ms. Davis spent so much  
24 time in her declaration, is the simple fact that this is  
25 a Constitutional amendment. It has a higher signature

1 threshold. That signature threshold is based on the last  
2 gubernatorial election, which had a high voter turnout.  
3 Our population is growing exponentially and people are  
4 exceedingly more interested in politics.

5 And the -- since, I believe, they went back to, I  
6 believe, 2000 or 2002, only two Constitutional amendments  
7 have qualified as filed and started the process as late  
8 as this initiative.

9 THE COURT: One in 2004, and the Federal Court  
10 struck it down as a violation of basic rights.

11 MR. BERMAN: No, I agree. But that was -- that  
12 was one of two that managed to qualify. All other  
13 attempts to qualify on a Constitutional amendment that  
14 have happened this late simply have not made it, because  
15 you have to start early.

16 The suggestion -- and I take some -- I took some  
17 suggestion -- the suggestion that a ballot title  
18 challenge, which is part of the standard process of  
19 getting a ballot -- of getting the initiative  
20 circulation, the suggestion that that is somehow improper  
21 or improper delay is simply not true. In fact, in this  
22 instance --

23 THE COURT: But --

24 MR. BERMAN: -- the ballot --

25 THE COURT: It's hard to interrupt on video. I'm

1 not disagreeing with you there, Mr. Berman. It's  
2 perfectly appropriate. But the argument -- I mean, did  
3 the psilocybin referendum have a challenge to its title?

4 MR. BERMAN: They didn't. But, Your Honor --

5 THE COURT: That goes towards timing, and that  
6 goes towards when signatures -- I mean, these aren't  
7 prophets, right. Nobody knew a pandemic was coming.  
8 They had to get through certain procedures around the  
9 ballot measure title. And I realize part of that,  
10 there's a surprise. There's politics going on. And a  
11 delay from your client, benefits the delay in getting  
12 signatures.

13 But what I hear you telling me is irrespective of  
14 that, even if they started in February, they were not  
15 going to get enough signatures.

16 MR. BERMAN: And I think that's the evidence.  
17 And when we went through -- and going back, and I know  
18 you have seen this in the papers, and the State has  
19 argued this as well. When I go back and look at  
20 Mr. Turrill's declaration I read it differently than the  
21 Court does. And that's not just because I am opposed to  
22 the measure, it's also because I'm deeply engaged in  
23 initiative politics. I have been doing this for years.

24 And when you look at Ms. Kaufman's and  
25 Ms. Uherbelau's and Mr. Unger's declarations, what they

1 all say is there wasn't a plan here. They said they  
2 needed a paid signature circulation firm, but there  
3 wasn't a paid signature firm that was hired or  
4 contracted. They say they need to gather X number of  
5 signatures, I believe 230,000 to meet your 150,000  
6 threshold, but they didn't have a plan in place. They  
7 did not register any paid circulators beyond the initial  
8 five, when they did their qualification signatures. They  
9 didn't have any money in the bank.

10 And if you read Mr. Turrill's declaration, what  
11 he says is we had a number of meetings and we talked  
12 about how we really should have gotten going on this  
13 stuff, but we never did. And under those circumstances  
14 both -- two of the resident experts who both qualified 34  
15 and 35, as well as Ms. Uherbelau, she spent a lot of time  
16 monitoring these things, all say under these  
17 circumstances one would not qualify.

18 And respectfully, even with the First Amendment  
19 right implicated under Angle, that doesn't get them  
20 anywhere near the threshold they need to get to for the  
21 extraordinary relief that they are seeking.

22 World War I, 1919 flu pandemic, the Great  
23 Depression, World War II, the civil unrest in the '60s,  
24 the Great Recession were all significant impediments to  
25 fund raising, to action, and to political activity. And

1 people managed to circulate initiatives and qualify them  
2 in all of those times.

3 This June, full Phase 1 in Multnomah County, the  
4 proponents's of Multnomah County initiative 08 gathered  
5 and submitted over 30,000 signatures in four weeks. And  
6 that's just in one county. That is reasonable diligence,  
7 Your Honor. It is not reasonable diligence to simply do  
8 nothing, have some community meetings, not file your  
9 initiative petition until November. That's why it's  
10 No. 57 instead of No. 5, which was the first  
11 redistricting initiative that was filed this cycle. And  
12 they could have filed this in 2018 when they spoke to  
13 Mr. Unger about doing it, and they did not.

14 THE COURT: This is in your briefing. I remember  
15 this.

16 MR. BERMAN: I'm getting there. The reasonable  
17 diligence standard -- even if the First Amendment rights  
18 are implicated, the reasonable diligence standard here  
19 simply was not even close to being there.

20 THE COURT: Mr. Elzinga, I want to address  
21 primarily that issue. I think that's the turning point  
22 of this case in my mind. I do believe First Amendment  
23 concerns are implicated. The question is, are you likely  
24 to succeed on the merits? I think on your legal  
25 arguments, yes. But I am concerned about this issue of

1 whether the campaign was ever really in a position to  
2 succeed in gathering the amount of signatures that were  
3 required for an amendment. This isn't just a referendum,  
4 but you are amending the Constitution.

5 It would be kind of similar if you graduated at  
6 the bottom two percent of your law class and, you know,  
7 you get to enter the Oregon Bar this year. That's not  
8 the rules here. You have to show that there was some  
9 diligence, and in some ways you would have to show you  
10 are kind of in that top percentile.

11 So if you could address that, I would appreciate  
12 it.

13 MR. ELZINGA: Thank you, Your Honor. This is  
14 Steve Elzinga on behalf of the plaintiffs. I agree with  
15 the Court -- sorry.

16 THE COURT: For some reason I am still looking at  
17 Mr. Berman. I don't know why Mr. Elzinga --

18 MR. ELZINGA: The reason for that, Your Honor, is  
19 I was having connection issues so I am doing video  
20 through my computer, but I'm doing audio through my  
21 phone. So it doesn't come up as speaker view. I  
22 apologize, Your Honor.

23 THE COURT: I see you now in the bottom right in  
24 a small corner. You are one of the Brady Bunch squares.  
25 Oh, now you are here. Okay. We got you.

1 MR. ELZINGA: So I agree with the Court that the  
2 reasonable diligence test is the key issue in this case.  
3 And I think it's important to think through the four main  
4 stages of an initiative process, and how that uniquely  
5 applies in this case. And then after I walk through  
6 those, I would appreciate the opportunity to call Mr. Ted  
7 Blaszak, who is our main expert on this issue with  
8 extensive experience. And my understanding is he's on  
9 the line and available to testify. I believe he can  
10 provide the best information for the Court on exactly why  
11 we are confident we would have qualified.

12 THE COURT: Stop for just a second. I heard you  
13 say his name, but could you say his name out loud again?

14 MR. ELZINGA: Ted Blaszak.

15 THE COURT: So you are declarant, right?

16 MR. ELZINGA: That's correct. Yes, Your Honor.

17 THE COURT: Thank you. Go ahead, please.

18 MR. ELZINGA: And I also have Mr. Turrill and  
19 Ms. Johnson on the line, as well, if they are needed for  
20 testimony.

21 THE COURT: Okay.

22 MR. ELZINGA: So the four stages of the  
23 initiative process that this campaign has gone through,  
24 start with the first stage being the drafting and  
25 coalition building stage of the process. And the State

1 and amicus spent a lot of time criticizing the campaign  
2 for waiting until the fall to file. And there's an easy  
3 explanation for that, is that this initiative deals with  
4 redistricting. It's a very complex topic. And the  
5 drafting of a plan to deal with that was complicated,  
6 especially because there is such a broad coalition here.

7 Your Honor, the coalition ranges from, you know,  
8 the Farm Bureau to the Progressive Party of Oregon. And  
9 not every member of the coalition was involved in  
10 drafting, but a large number of groups and individuals  
11 were involved in drafting, and it was being tweaked to  
12 adjust to those various government groups to make sure  
13 that all concerns were addressed before it was filed.

14 And the fact that the Supreme Court of Oregon  
15 quickly dismissed the challenge to the ballot title shows  
16 they did a good job in the drafting of the initiative.  
17 It was done in a way that enabled a clear ballot title to  
18 be drafted on the first try without any need for a Court  
19 intervention.

20 And they went through the preliminary signature  
21 process of getting between 1,000 and 2,000 signatures.  
22 They got 2,200 signatures, more than needed. They got  
23 through the ballot title appeal process, and had a ballot  
24 title approved by the Oregon Supreme Court at the end of  
25 March.



1           And if the Court looks at historical precedent  
2 for qualification of initiatives that have similar  
3 circumstances, in every election cycle for the past  
4 decade an initiative that had a ballot title approved in  
5 March, April or even May, was able to qualify. And in  
6 fact --

7           THE COURT: Okay. But are all of those  
8 petitions, or are any of them Constitutional amendments?

9           MR. ELZINGA: Your Honor, not all of those were  
10 Constitutional amendments, and I do not remember off the  
11 top of my head how many of them -- I know there's at  
12 least one that was a Constitutional amendment from -- if  
13 you look at the chart, it's from the declaration of  
14 Summer Davis, which the State pointed you to earlier.

15           My recollection is that one of the -- no, I think  
16 two of the Constitutional measures were similarly  
17 situated. But I would have to go back and check. I am  
18 not 100 percent confident off the top of my head, Your  
19 Honor, and if I could check on that and get back to the  
20 Court on that while the Court is hearing other arguments,  
21 I would be happy to do that. And I will make a note to  
22 do that.

23           The point being, though, that if initiatives have  
24 been able to qualify, despite receiving ballot title  
25 approval that late in the cycle, and over a third of all

1 initiatives began as Constitutional and statutory, in the  
2 last decade have qualified.

3 And since the year 2000, an average of 7.2  
4 initiatives have qualified per cycle. Now, there's been  
5 some pretty wide variance. I think one cycle there was  
6 up to as many as 18 qualified, and another cycle it's  
7 been as low as four. But clearly there are fewer  
8 initiatives that qualify under the normal rules.

9 And so that's an important contextual situation.  
10 And what Mr. Blaszak will testify to is that there was no  
11 contract signed between him and the campaign, but there  
12 was an agreement and a proposal from him, specific  
13 proposal with a specific timeline, specific dollar  
14 amount, and they were ready to hit go as soon as the  
15 campaign was ready.

16 And so the problem was the campaign received  
17 approval of the ballot title at the end of March, and at  
18 that point the governor's executive order had gone into  
19 effect. And that prohibited people from coming within  
20 six feet of someone who is not a member of their  
21 household. That executive order removed the main forum  
22 for signature gathering, because there were no options  
23 for group events.

24 You couldn't stand outside of the Blazer game  
25 after the crowd comes out of the stadium like you used

1 to. There was a stay-at-home requirement that required  
2 people to stay home to the maximum extent possible.  
3 Businesses were required to offer telecommuting options  
4 to their employees to the maximum extent possible. And I  
5 think that provision did not start in March. I think  
6 that came in a later executive order, possibly in May.

7 But the point being there was a number of  
8 significant State imposed regulations that made it, as a  
9 practical matter, impossible to qualify an initiative for  
10 the ballot despite the fact that the campaign had done  
11 extensive planning, despite the fact that the campaign  
12 had infrastructure in place. They were ready to hit go  
13 on a paid signature gathering team.

14 It had all costs broke out. They raised over  
15 \$600,000 and, yes, they needed to raise at least \$900,000  
16 to qualify, but the problem is, as Mr. Turrill will  
17 testify if given the opportunity, once the governor's  
18 executive orders came into effect, it significantly  
19 hampered their fund raising from large donors who look at  
20 the situation and say, you are probably not going to  
21 qualify. So why would you get campaign donations in that  
22 situation? So they did everything they possibly could to  
23 get moving.

24 And I think it's important and very instructive  
25 to the Court in thinking about the information that

1 amicus provided from Our Oregon. And the PNP campaign  
2 and their coalition do not dispute that Our Oregon has  
3 provided evidence that they are sophisticated, they are  
4 professional, they are experienced. They know how to  
5 qualify ballot measures. They are good at what they do.  
6 And, in fact, Ted Blaszak will testify, if allowed, that  
7 he believes Our Oregon is the single most sophisticated  
8 entity in terms of ballot measures in the State of  
9 Oregon.

10 But that's not the standard. The standard is  
11 not, are you the best initiative campaign ever. The  
12 standard is, are you a reasonably diligent campaign. And  
13 the initiative system itself is a process about the  
14 people of Oregon empowering average citizens, average  
15 people to participate in the process. And that's what  
16 this case is ultimately about. It's about people and  
17 it's about precedent. It's about people --

18 THE COURT: And I appreciate that part. But  
19 let's talk about some facts.

20 How many signatures have you actually gathered to  
21 date?

22 MR. ELZINGA: As of July 2nd they turned in  
23 64,172. And there is no evidence in the record regarding  
24 signatures received this week, but if the Court will  
25 indulge, I can tell you that they received several

1 hundred additional signatures this week in the mail, and  
2 are prepared to continue gathering.

3 THE COURT: So tell me, about when did that  
4 signature gathering begin? Was it all under the kind of  
5 cloud of Covid, we will call it, and what diligence did  
6 you perform in getting those 64,000 signatures? Because,  
7 I mean, it seems like a reasonable number to me to have  
8 gotten under the circumstances.

9 And I maybe didn't quite understand in your  
10 briefing, because we had a quick time frame here, how it  
11 was that you got those signatures. I knew you explained  
12 it, but can you walk me through how you were able to,  
13 under even the worst of circumstances, get the  
14 signatures, or were you able to get some of these  
15 signatures, the majority of them, before the worst of  
16 situations occurred?

17 MR. ELZINGA: Thank you, Your Honor. So the  
18 campaign, when it received approval for the ballot title,  
19 was in a very difficult predicament, because of all the  
20 governor's orders. So there was initially a pause, and  
21 quite frankly, a panic trying to figure out how do we  
22 move forward. And the chief petitioners on the line are  
23 able to testify today that the campaign was considering,  
24 are these orders going to be lifted in a week, in two  
25 weeks, in a month.

1           And so they prepared a three pronged approach.  
2 The first prong was hoping to be able to do in-person  
3 signature circulation starting up -- I believe it's April  
4 or May. And Mr. Turrill will be able to testify exactly  
5 when during that time it was.

6           And the second prong was to do an online web  
7 portal to allow people to download the petition and print  
8 the petition at home. Put it in an envelope, mail it  
9 back.

10           And the third prong, the most important prong for  
11 gathering those 64,000 signatures was a large mailing  
12 that was done to over 500,000 Oregonians that had  
13 instructions on how to sign a petition sheet. Trying to  
14 call out the fact that even if you are the only signer,  
15 you have to sign at the top, and you also have to sign a  
16 second time as the circulator. That's a confusing  
17 process for a lot of people who aren't familiar with the  
18 initiative system, so there were several thousand  
19 signatures that had to --

20           THE COURT: Let's back up on that. So if I got  
21 something in the mail it would have said, if you are  
22 interested in this petition, sign it, but you are also  
23 the circulator who is witnessing your own signature and  
24 you have to sign that? Is that what I am trying to --

25           MR. ELZINGA: Yes, Your Honor. That's the

1 requirement. There used to be a provision that had been  
2 repealed in 2019, ironically -- well, I won't get into  
3 why it was repealed. But there used to be a provision  
4 that allowed a campaign to mail out a sheet that just had  
5 one signature spot on the sheet, and they could just sign  
6 once and turn it back in.

7 But that process was prevented by the legislature  
8 in 2019 when they said that such sheets could not be sent  
9 out as Our Oregon did actually a couple of cycles ago,  
10 they sent out thousands of those sheets. But they now  
11 had to be printed at home by an individual on their own  
12 computer, and certify they printed it at home. So that  
13 effectively prevented that from being used in mailings.

14 So that means signature gathering by mail  
15 effectively has to send out a normal petition sheet that  
16 requires both the signing at the top to say you want it  
17 on the ballot, and a signature at the bottom as the  
18 circulator.

19 THE COURT: Did the mailing give a phone number  
20 or a website to gather more information?

21 MR. ELZINGA: I believe it did, Your Honor, yes.  
22 And Ms. Johnson is on the line, and I think she'll  
23 testify to that because she helped put that mailing  
24 together. But the mailing had instructions on how to  
25 sign the sheet.

1 I actually received one myself, so I took a look  
2 at it.

3 THE COURT: Did you sign it?

4 MR. ELZINGA: Yes, Your Honor, I did. I signed  
5 it, my wife signed it, and we sent it back.

6 THE COURT: I don't mean to play devil's  
7 advocate, but 500,000 mailings went out, you got  
8 something less than the 60,000 signatures that you got.

9 Is there an argument that the voters weren't that  
10 interested in it, or do you think it was a matter of the  
11 process itself, the mailing process was never going to be  
12 that successful?

13 MR. ELZINGA: Your Honor, it's because of the  
14 process itself. The mail-in had a six percent -- I think  
15 over a six percent response rate, which is extraordinary  
16 compared to a normal response rate that I believe is  
17 lower than half a percent.

18 Our Oregon in their declaration talks about a  
19 mail-in they did where they got an 11 percent response  
20 rate, and Ted Blaszak is able to testify that his  
21 understanding is that that was likely a small mailing,  
22 that was a little more targeted. So you are going to get  
23 a larger response rate -- or higher response rate when  
24 it's targeted and a smaller mailing.

25 But when you are doing a general, broad mail-out



1 blast to 500,000 Oregonians, you are going to get a lower  
2 rate. And no one has submitted any evidence that any  
3 campaign has done anything like that before on that  
4 scale, that has had that level of response rate for  
5 signing initiative petitions, let alone for signing them  
6 and then signing them again as the circulator the second  
7 time.

8 THE COURT: I do want to hear briefly from your  
9 witnesses. Who would you like to have speak first?

10 MR. ELZINGA: Your Honor, I would appreciate Ted  
11 Blaszak first.

12 THE COURT: Mr. Blaszak, are you on the line?  
13

14 EDWARD LEWIS BLASZAK,  
15 produced as a witness, having been first duly sworn,  
16 was examined and testified as follows:

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Please state your name and spell your  
19 first and last name for the court reporter.

20 THE WITNESS: Edward Lewis Blaszak the III, also  
21 known as Ted Blaszak. So B as in boy, L-A-S-Z-A-K.

22 THE COURT: Mr. Blaszak, what I really want you  
23 to focus on is what factors did you take into account to  
24 opine that this was a diligent campaign that had a  
25 reasonable chance of getting the number of signatures it

1 needed in the time frame it had, absent the Covid virus  
2 restriction.

3 THE WITNESS: Well, I was hired by the campaign,  
4 and I helped run their signature validation and  
5 processing. My firm did that. So I was intimately aware  
6 with seeing the returns in the mail, the validity rate.  
7 The error rate, all of that.

8 So I was quite involved in the campaign. So I  
9 have that perspective of being on the ground. But the  
10 basis of my opinions is also upon qualifying several  
11 measures, including Constitutional measures in the State  
12 of Oregon -- and past clients have included Our Oregon  
13 and the Oregon Secretary of State's office that hired me  
14 personally, not my company, to -- that was when Governor  
15 Brown was Secretary of State, so that's my background.

16 And I have qualified several measures in the past  
17 within this time frame. So I --

18 THE COURT: Measures for Constitutional  
19 amendments or simply legal change?

20 THE WITNESS: Both. Both Constitutional and  
21 statutory measures, Your Honor.

22 THE COURT: Which Constitutional amendments were  
23 you able to get the number of appropriate signatures in  
24 this kind of time frame?

25 THE WITNESS: Okay. Hold on, I will pull it up.

1 Let's see, I have to double-check on this, but I believe  
2 the equal rights amendment, which I worked on in 2016,  
3 was Constitutional, and that would have been within the  
4 same time frame. Trying to find other Constitutional  
5 ones. Sorry, I am looking through a list of 20. Most of  
6 them -- and then there was the casino, that second time  
7 that I gathered signatures for it in 2018. And then --

8 THE COURT: So I guess the difficulty of asking  
9 this question is that -- Constitutional amendment  
10 requires more signatures. But a Constitutional  
11 amendment, you know, eight years ago could have required  
12 80,000 and today we're requiring over 140,000. So maybe  
13 a better question is what kind of numbers were you able  
14 to arrive at in terms of signatures in a similar time  
15 frame?

16 THE WITNESS: I believe from my notes I can say  
17 that the casino measure that I qualified that was  
18 Constitutional in 2016 required 138,000 valid, which  
19 would be pretty much 10 or 11,000 less than this year's  
20 requirement.

21 THE COURT: You are telling me you did that in  
22 the same time frame as here?

23 THE WITNESS: Yeah. I mean, the typical time  
24 frame for me is to gather signatures February, March, but  
25 I frequently have started gathering on campaigns as late

1 as April.

2 THE COURT: Okay. What else would you like to  
3 tell me.

4 THE WITNESS: Okay. Thanks for asking. A few  
5 things. One is the rate of return, the 65,000. There  
6 was an additional 10 percent signatures about 6,500  
7 signatures that we had to mail back to voters because  
8 they were confused by the Byzantine practice of having to  
9 sign as a circulator and a petitioner themselves, and  
10 they were just quite confused by that. So the response  
11 rate was actually higher, if not for the errors.

12 Also, I have worked on this campaign for this  
13 coalition group in the past, although it was a long time  
14 ago. And they were able to -- and I worked for them in  
15 their volunteer signature gathering efforts and they were  
16 able to gather in the past like 20 or 30,000 signatures  
17 easily.

18 And this time the volunteer signatures came in at  
19 closer to 4,000. And I think that -- and that's clearly  
20 just because of the pandemic. That's the other thing I  
21 wanted to say. The pandemic unquestionably, undeniably  
22 dampened, prohibited, inhibited, made signature gathering  
23 very, very difficult. I don't know why you can pretend  
24 that --

25 THE COURT: Mr. Blaszak, that's not the issue I

1 need you to talk about. It was the reasonable diligence  
2 and whether it was sufficient for me to find that it's  
3 reasonable to believe that they are irreparably harmed  
4 because there's at least reason to believe they would  
5 have made the ballot here.

6 THE WITNESS: Oh, well, I had sent them a  
7 proposal and several revised proposals as circumstances  
8 changed, and the latest proposals I was sending them were  
9 in late March where I detailed exactly how we would  
10 gather the signatures and how the approach would be, and  
11 how much it would cost.

12 And as the pandemic was breaking out, it was  
13 clear we needed to move away from sidewalk gathering or  
14 the more traditional approach. But earlier this year I  
15 had given them a full proposal and full plan that they,  
16 speaking with our consultant, had tacitly agreed to and  
17 it was just a matter of waiting to pull the trigger.

18 So I was fully prepared. I had a full detailed  
19 plan, and they had -- were given the price of how much it  
20 would cost, and they felt that they could do it. It was  
21 900,000. So there was a plan in place.

22 THE COURT: Okay. Thank you. Mr. Elzinga, do  
23 you have any questions of your witness? I will allow  
24 each side to ask a couple of questions if there's  
25 something you feel needs to be highlighted.

1 .

2 DIRECT EXAMINATION

3 BY MR. ELZINGA:

4 Q Mr. Blaszak, could you talk briefly about the normal  
5 rate of gathering signatures as you scale up the  
6 signature gathering, and then plateau, and what you  
7 expect to gather per week, et cetera.

8 A Sure. So a normal signature gathering campaign has a  
9 little bit of an arc, a curve. And this is particularly  
10 true of paid-per-hour campaigns that I run. Where the  
11 first week you will gather 1 to 3,000. Then the second  
12 week you are coming in at 4 to 6,000. And then the third  
13 week you are getting at nine.

14 And then usually after that in Oregon on  
15 statewide, I quickly get to the level of about 15,000 a  
16 week. And depending upon the urgency, I can ramp that up  
17 or dial it down. If you dial it down, you have more  
18 efficiency in your hours and labor activity. So you want  
19 to keep it low if you have time. But if you don't have  
20 time, you can expand.

21 I certainly have done it in the past, and there's  
22 been several campaigns where late in the spring I have  
23 gathered over 20,000 signatures a week.

24 Q Mr. Blaszak, one more question for you. When you --  
25 when you had the initiative that didn't qualify on

1 casinos, can you talk about why you think that initiative  
2 is different than this initiative for qualification  
3 purposes?

4 A Oh, well, so on the casino measure in 2014 I ran two  
5 petitions, companion petitions, and one of them qualified  
6 and one of them barely did not, and that was because of  
7 duplicate signatures. But the quantity of signatures was  
8 sufficient. Certainly one of them qualified.

9 The second time I gathered signatures, both of  
10 them in 2016, both of them qualified and that was one  
11 Constitutional and one statutory. But that was an  
12 unpopular petition compared to gerrymandering, and the  
13 subject matter really does matter.

14 If it's a confusing issue that you have to spend  
15 a lot of time explaining to voters, and that dampens your  
16 signatures per hour. But I felt this would be very  
17 popular, and I focus group tested it with several people,  
18 and I got a very good response.

19 So I feel that this is a good petition to  
20 circulate, and would have a decent amount of signatures  
21 per hour, which would be better than the casino by far.

22 MR. ELZINGA: That's all I have for now.

23 THE COURT: Ms. Beatty-Walters or Mr. Marshall,  
24 do you have any questions you would like to pose to  
25 Mr. Blaszak?

1 MS. BEATTY-WALTERS: Your Honor, I have a little  
2 trouble with the mouse. I am going to kick it over to  
3 Mr. Marshall for questions, if you wouldn't mind.  
4

5 CROSS EXAMINATION

6 BY MR. MARSHALL:

7 Q Mr. Blaszak, what is the basis of your estimate of  
8 20,000 per week?

9 A I did it for -- I got 20,000 a week when I was doing  
10 the legal marijuana petition, when I was doing the ERA  
11 petition. And also there was an environmental petition,  
12 Oregon Wildlife and Parks, that came to me at the last  
13 minute, and in ten days I got 60,000 signatures. So my  
14 basis? I have done it.

15 Q How many signature gatherers did you have?

16 A 100.

17 Q Was that the top speed in the ramp-up process, as you  
18 referred to it?

19 A I would say that the most amount of signatures I have  
20 ever gathered in a week in Oregon would be a little -- I  
21 think it's as much as 25,000, but that would be a peak  
22 week performance. That takes a few weeks to build up to.

23 Q And the early weeks are more in the category of 1 to  
24 2,000, you said?

25 A I would say -- well, it depends on how much pressure



1 I have on me in terms of deadlines. I would say you can  
2 think about it as like 2 to 3,000 the first week, 4 to  
3 6,000 the second week, and close to 9,000 on the third  
4 week. And during the third week is when you really jump  
5 up.

6 And my approach is I open up offices, multiple  
7 offices, statewide. But I start with one office in  
8 Portland, and I open another office in Eugene, and that's  
9 why I am able to gather quick growth.

10 Q Have you ever been involved in a campaign that  
11 qualified a Constitutional amendment for the Oregon  
12 ballot that started circulation in April of the election  
13 year or later?

14 A Yes, that's what I said earlier. Especially I told  
15 you that that casino ballot measure that I did in 2016  
16 would have been on that time frame. And also I just  
17 referred to the Oregon Parks and Wildlife linking park  
18 funding to the lottery fund. I did -- like I said, that  
19 was 60,000 signatures in ten days so --

20 Q Sir, I apologize. Are you done?

21 A -- that was statutory.

22 I am sorry. Go ahead.

23 Q Focus in on my question. Have you ever been involved  
24 in a campaign that qualified a measure for the Oregon  
25 ballot that would amend the Oregon Constitution, that

1 began circulating in April of the election year or later?

2 THE COURT: Mr. Marshall, both of us asked him  
3 that question and he answered it yes.

4 MR. MARSHALL: The answer, I believe, is going to  
5 be no, because he just said it was statutory. He just  
6 corrected himself and said it's statutory.

7 THE WITNESS: Okay. In 2016 I qualified a  
8 Constitutional ballot measure to allow casinos to operate  
9 in Oregon that was very, very close to this time frame.  
10 It may have started in late March. It didn't start any  
11 earlier.

12 MR. MARSHALL: Okay. Thank you.

13 THE COURT: Okay. Thank you, Mr. Blaszak.

14 Mr. Elzinga, any other witnesses you wish to have  
15 address the Court?

16 MR. BERMAN: Your Honor, this is Mr. Berman. May  
17 I have the opportunity to ask Mr. Blaszak a couple of  
18 questions?

19 THE COURT: You are amicus counsel. I did not  
20 allow an intervention. So I have read your amicus briefs  
21 and your amicus declarations.

22 MR. BERMAN: Would the Court permit us to  
23 subsequently submit the Secretary of State's records on  
24 initiative 36, ballot measure 82, which I believe is the  
25 2016 measure Mr. Blaszak was referring to that occurred

1 in 2012 where circulation began in February.

2 THE COURT: Yes, I will take your statement that  
3 that is the case. We are still talking about reasonable  
4 diligence, not absolute. Okay.

5 Any further witnesses, Mr. Elzinga?

6 MR. ELZINGA: Your Honor, if I could -- may I ask  
7 one more question of Mr. Blaszak?

8

9 DIRECT EXAMINATION CONTINUING

10 BY MR. ELZINGA:

11 Q As I mentioned earlier, you testified to this and I  
12 want to make sure it's on the record.

13 Mr. Blaszak, how would you characterize Our  
14 Oregon's sophistication related to initiatives processes?

15 A They are brilliant. They are very good. They are  
16 the best in the state. They are an excellent  
17 organization that clearly understands the ballot measure  
18 process. They came to exist for this reason, and they  
19 have been functioning -- I was there when they formed. I  
20 was part of their early days. Yeah, they are great. Are  
21 you kidding me?

22 MR. ELZINGA: Thank you.

23 THE COURT: Okay. Any further witnesses?

24 MR. ELZINGA: Your Honor, I would like to call  
25 Mr. Turrill.

1 THE COURT: I am sorry, Mr. --

2 MR. ELZINGA: Mr. Turrill, the chief petitioner  
3 in this case.

4 THE COURT: Are you there online with us?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: All right.

7 NORMAN TURRILL,

8 produced as a witness, having been first duly sworn,  
9 was examined and testified as follows:

10 THE COURT: State and spell your first and last  
11 name for us.

12 THE WITNESS: Yes. Norman Turrill, N-O-R-M-A-N,  
13 last name T-U-R-R-I-L-L. And it's pronounced "Turrill"  
14 that rhymes with "pearl" if the Court would be helped by  
15 that.

16 THE COURT: Thank you. All right.

17 Mr. Turrill, what would you like to tell me about  
18 the campaign in terms of its diligence, and if, in a  
19 perfect world, starting the signature gathering would  
20 have been successful at the beginning of April.

21 THE WITNESS: So first of all, Your Honor, we  
22 were delayed continually by the efforts of our opponents  
23 at a couple of different points. And the dynamics of a  
24 coalition are such that we have to attract people to the  
25 issue by adjusting the issue, so the drafting itself took

1 quite awhile. And it's a very complicated issue.  
2 Redistricting, I think, is maybe one of the most  
3 complicated. And I think we can claim that we don't have  
4 the best proposal for a redistricting process, but we can  
5 claim that the process that we came out with in the long  
6 drafting process is better than what the legislature does  
7 now.

8 As far as the diligence in the campaign, we did  
9 everything we could to get ready to do the campaign when  
10 we were permitted to by the Secretary of State.

11 There's an additional step, by the way, after the  
12 State Supreme Court validated the ballot measure title,  
13 and that is, the Secretary of State has to then prepare  
14 templates. And there's a little negotiation that goes on  
15 between the campaign and the Secretary of State as to  
16 exactly what is on those templates, and that took the  
17 additional week or two.

18 We were ready to hire Mr. Blaszak with a prepared  
19 contract, and we were ready to pull the trigger on that  
20 back in March, but we didn't get the permission to  
21 circulate until early April. The campaign then really  
22 went into a period of consternation, because three things  
23 happened. One, because of the governor's orders there's  
24 a lot of fund raising that dried up temporarily, because  
25 the people who might have given us large contributions

1 essentially didn't think we could do it.

2 I remember talking to one person that was capable  
3 of getting us a six figure donation, and she said that  
4 she really didn't think we could do it, come back after  
5 we made the ballot. We did extensive fund raising  
6 anyway. We were very successful getting individual  
7 contributions early on, and contributions from League of  
8 Women Voters put in some \$30,000 altogether. Common  
9 Cause put in \$140,000, as I recall. And so the fund  
10 raising did happen, but it happened at a slower pace.

11 The other thing is that our volunteers sort of  
12 dried up, as well. We had expected to do a component of  
13 volunteer street petitioning, and the demographics of the  
14 League of Women Voters, and to some extent, Common Cause,  
15 the principal grass roots organizations, they really were  
16 unwilling to get out into the streets, at least at first.  
17 There were a couple of groups that finally did get out in  
18 the -- late May and -- excuse me, late June and early  
19 July, but those were exceptions to the rule.

20 Many of our members are between 60 and 90 years  
21 old. They are just in the vulnerable groups that are  
22 vulnerable to the pandemic, and many were unwilling to  
23 even consider it. I, myself, am 77 years old, and have  
24 done extensive signature gathering in the past,  
25 collecting thousands of signatures on different

1 petitions, and I am in the vulnerable group because of my  
2 age, and I am also diabetic.

3 Another member simply refused, because she was  
4 also in the vulnerable group and her partner was a  
5 diabetic, and she didn't want to be able to bring the  
6 pandemic to her home. So that was another factor.

7 And then the third thing that was -- even if we  
8 could have gotten out on the street, there was nobody  
9 else on the street to petition, especially early on.  
10 There's no big venues of sporting events. There wasn't  
11 large crowds of people that were going to work through,  
12 say, the Beaverton Transit Center where we have  
13 traditionally collected signatures.

14 THE COURT: Tell me about where else you have  
15 traditionally gone to get signatures.

16 THE WITNESS: County fairs, for example, or big  
17 gatherings of people. The governor's orders prohibited  
18 anybody over 250 at first, and then 25, as I recall,  
19 later.

20 THE COURT: I understand the impacts of Covid.  
21 What I am trying to get at is what you had in place. If  
22 I understand right, you know, by the time you were ready  
23 to gather signatures things were already closing down, or  
24 was there any period of time where you had hired -- you  
25 had a plan of signature gatherers to go out.

1 THE WITNESS: We had a plan to do signature  
2 gathering in March, and as soon as the pandemic set in we  
3 pivoted to the three-prong plan that Mr. Elzinga  
4 described earlier, principally the direct mail campaign.

5 THE COURT: Can you tell me about how large your  
6 coalition is? I hear coalition, I think of a lot of  
7 groups. Can you tell me how many partners are involved  
8 in this coalition, how many members they have, whether  
9 they were financially supporting you, whether they were  
10 willing to give you a volunteer support, the demographics  
11 of just in -- across Oregon or in particular areas?

12 THE WITNESS: We have a very large coalition that  
13 really spans the whole political spectrum. The League  
14 was one of the principle organizations in this, the  
15 League of Women Voters of Oregon. Common Cause of  
16 Oregon, the Farm Bureau of Oregon, Taxpayers Association  
17 of Oregon, Oregon Taxpayer Association, the AARP,  
18 American University of Women, OSPIRG, the Independent  
19 Party of Oregon, the Progressive Party of Oregon, some  
20 Chambers of Commerce were supportive. There's a whole  
21 flock of individuals that covered the political spectrum,  
22 as well.

23 There was well-demonstrated support for this  
24 proposal, and I have no doubt that if we had had the  
25 chance, we could have gotten the signatures that we were



1 going to be required to qualify for the ballot. And if  
2 we did get it on the ballot, I am quite sure the voters  
3 would pass it.

4 We did some polling early on that showed the  
5 viability of the issue, and we tested some messages in  
6 what we would have in the ultimate campaign. All of that  
7 looked very good compared to other previous efforts that  
8 I had been involved in.

9 As far as how fast we could gather the  
10 signatures, in my experience, I actually grew up in  
11 Washington State and Seattle, and I remember a ballot  
12 measure in Washington State that started a month before  
13 the deadline and gathered 400,000 signatures very rapidly  
14 because the issue was very popular. So it is doable. We  
15 were optimistic that we could do it. We just didn't have  
16 the opportunity to do that.

17 THE COURT: Okay. Mr. Elzinga, any other  
18 questions for Mr. Turrill?

19 MR. ELZINGA: Yes, Your Honor.  
20

21 DIRECT EXAMINATION

22 BY MR. ELZINGA:

23 Q How much money did the campaign raise overall?

24 A We raised about \$600,000 to the end. The campaign  
25 fund raising actually picked up once we started signature

1 gathering, and we think we could have gotten everything  
2 we needed if we had not been delayed.

3 Q And Mr. Blaszak said earlier that he quoted you, I  
4 think, around \$900,000 for doing the full paid initiative  
5 petition circulation. Can you --

6 A I am confident we could have raised that.

7 Q And what makes you confident that you could have  
8 raised that?

9 A Because we were delayed -- the impact of the pandemic  
10 was that our fund raising dried up temporarily, and we  
11 could have raised another \$300,000 during that period, I  
12 think.

13 Q What did you budget to raise in the campaign?

14 A One million dollars for the signature gathering part  
15 of the campaign.

16 Q Did you assume you were going to hit your budget?

17 A Yes.

18 Q Did you have a plan in place to hit your budget from  
19 the fund raising perspective?

20 A Yes, we hired a professional fund raiser, Lori  
21 Hardwood, was her name. And she was on track to raise  
22 that kind of budget. And as I said, we were sort of shut  
23 down for a month or so.

24 Q Is there anything else you think is important to  
25 share with the Court?

1 A Well, I think the Court understands the personal  
2 nature of signature gathering, and why individuals would  
3 be hesitant to go out and do that kind of personal  
4 signature gathering. It requires somebody to stop a  
5 stranger on the street, be within a conversation distance  
6 of them, hand them a clipboard and a pen that may be  
7 contaminated, and have a brief conversation, at least  
8 with them in a close conversational distance.

9 And that was just not possible, and that's how  
10 traditional petitioning occurs, and we had to pivot to  
11 the mail and electronic means for collecting signatures.  
12 And given how many signatures we actually collected, I  
13 think we were phenomenally successful in demonstrating  
14 the viability of the issue among the voters, and they  
15 quickly understand the problem of redistricting and  
16 gerrymandering, especially with the various court cases  
17 that have occurred around the country, including the  
18 United States Supreme Court.

19 There was a lot of attention paid to the problem  
20 of gerrymandering, and voters in Oregon are very astute  
21 and got the message very quickly and would readily have  
22 signed it.

23 Q So the big question is, if it were not for the  
24 pandemic and related health orders, would you have  
25 qualified for the ballot?

1 A Absolutely, in my opinion.

2 MR. ELZINGA: That's all I have, Your Honor.

3 THE COURT: Mr. Marshall, do you have any  
4 questions for Mr. Turrill?

5 MR. MARSHALL: Yes, Your Honor.

6

7

CROSS EXAMINATION

8 BY MR. MARSHALL:

9 Q Mr. Turrill, do you have your declaration in front of  
10 you, by chance?

11 A Maybe.

12 Q If not, I can point you to the timeline and maybe you  
13 can remember.

14 A I have a draft of it, anyway. Go ahead.

15 Q Paragraph 9 of that declaration talks about the  
16 meaning of the EC, which I take to be Executive Committee  
17 on the petition?

18 A Yes.

19 Q At that point, you didn't expect there to be -- you  
20 didn't know of the Covid issue being of the magnitude as  
21 it is; is that right?

22 A That's just when the first order from the governor  
23 came out, yeah. And we imagined that it would last for a  
24 month or so, or a few weeks. We had no idea that it  
25 would last for the whole period of signature gathering

1 that we had left.

2 Q So your declaration moves to the -- the next  
3 paragraph talks about the executive order on March 8th.  
4 So at that March 3rd executive committee meeting, how  
5 many staff were on staff for the petition campaign?

6 A We had -- well, one and a half staff at that point.

7 Q Paragraph 9 details a number of forums, but it  
8 doesn't say how many people were going to be hired in the  
9 next several weeks. Why is that?

10 A We had the plan in place to hire the signature  
11 gatherers through Mr. Blaszak's company, and that had  
12 always been the plan at that point.

13 Q Was Mr. Blaszak one of the one and a half?

14 A No.

15 Q Okay. How many ballot measures that seek  
16 Constitutional amendments has League of Women Voters been  
17 a part of the coalition to put on the ballot in Oregon?

18 A How many ballot measures?

19 Q I am sorry. How many Constitutional amendments, is  
20 what I meant to say. I apologize.

21 A I can't answer for sure, but I think the ballot  
22 measure to institute all-mail voting was a Constitutional  
23 measure, and the League of Women Voters was the principal  
24 on that. It was about 1990 something. That was before I  
25 entered the state, though.

1 Q And since then, the League of Women Voters hasn't  
2 been part of the coalition that has successfully  
3 qualified a Constitutional amendment?

4 A That's correct, to my knowledge. But we have been  
5 involved in other ballot measures, even through --  
6 together with Our Oregon, we worked together on the  
7 ballot measure, I believe it was No. 49, in which one of  
8 the league members was actually their poster woman for  
9 the TV ads.

10 Q What -- do you know how many of the 54,000 signatures  
11 you have collected are valid signatures?

12 A Yes. We have an estimate, anyway. Our process when  
13 we received the mail was to open the envelopes, and then  
14 validate as far as we could, all of the signatures by  
15 looking them up in the voter registration database. And  
16 of the ones that were mailed back from our mailing and  
17 the electronic efforts, there was something like  
18 98 percent that were probably valid. We couldn't  
19 validate their signatures as such, but we did validate  
20 their names and addresses. So it was a very high  
21 percentage.

22 MR. MARSHALL: No further questions.

23 THE COURT: Thank you.

24 Mr. Elzinga, anybody else that is going to add  
25 any additional information?

1 MR. ELZINGA: Yes, I would like to call  
2 Ms. Johnson, please.

3 THE COURT: Ms. Johnson, are you on the line?

4 THE WITNESS: I am thank you.

5  
6 CANDALYNN JOHNSON,  
7 produced as a witness, having been first duly sworn,  
8 was examined and testified as follows:

9 THE COURT: Could you please state your first and  
10 last name, and spell them?

11 THE WITNESS: My name is Candalynn Johnson, and  
12 it's spelled C-A-N-D-A-L-Y-N-N, Johnson.

13 THE COURT: With no T?

14 THE WITNESS: No T.

15 THE COURT: Okay. Thank you, Ms. Johnson. What  
16 can you tell me about the campaign and why you believe  
17 reasonable diligence was being exercised, such that but  
18 for the Covid cloud, you would have achieved the  
19 signature gathering goals?

20 THE WITNESS: The campaign really focused at the  
21 beginning of making sure that we had supporters across  
22 the state. It really needed to be multi-partisan. It  
23 needed to be large. We needed to get the word out across  
24 Oregon that this is an issue. And we did that education  
25 across the state very early, because it was a complicated

1 issue a lot of voters had a lot of questions on. It's  
2 not a hot issue, it's not a sexy issue.

3 And so it took a lot of voter education, and a  
4 lot of talking to voters about what even is  
5 redistricting, how is gerrymandering even done in Oregon.  
6 And so what I would say is that a lot of my  
7 responsibility was that voter education and the coalition  
8 building.

9 So I was the one that was presenting to potential  
10 coalition members, members like the Polk County Democrats  
11 who wanted someone from the campaign to come and present  
12 to their group, because they had a lot of questions about  
13 this complex measure. And I actually had to go several  
14 times to their meetings, because after having a  
15 presentation they would have even more questions before  
16 their board would approve it.

17 And different organizations who ended up  
18 endorsing our measure, they had a lot of leadership that  
19 needed campaign -- campaign questions answered, too.  
20 Along with folks who signed up as an individual.

21 So there were a few questions that I wanted to  
22 either clarify or answer for the Court. One is that just  
23 individuals, we had over 600 folks who signed to endorse  
24 the campaign. Not sign the measure, but saying they  
25 endorse on our website. We also have had several of



1 those who said we could publicly list their  
2 organizations, and we list quite a few of our coalition  
3 members.

4 But there are actually quite a few that I was not  
5 able to connect with that probably would have endorsed if  
6 I was able to actually speak to their groups in person.  
7 And I actually have a whole list of really, really  
8 awesome public events that would have reached a lot of  
9 groups in Oregon that are usually very involved that I  
10 just wasn't able to due to the pandemic, and due to lack  
11 of access and ability to use teleconferencing  
12 communication.

13 And some of those examples I can actually bring  
14 up. So I had in March through May, I had a public forum  
15 in Gold Beach that was cancelled, I had a public forum in  
16 Eugene that was sponsored by the -- co-sponsored by the  
17 NAACP that was canceled. I had a presentation with the  
18 Marion County Dems canceled. I had a presentation with  
19 PSU students that was canceled.

20 And then the biggest event that we had that we  
21 had been spending probably a couple of months planning,  
22 that we were really excited for was that the California  
23 Independent Redistricting Commissioners were going to  
24 come up and do a week-long tour across the state where  
25 they could talk to voters about how this Independent

1 Redistricting Commission works in California. And we  
2 were expecting this to be really huge that ended up being  
3 canceled.

4 Some of those events throughout that week, one  
5 was going to be at the Capitol with a Q and A with really  
6 involved folks, able to ask those California  
7 commissioners questions. We had a program that was  
8 scheduled in Portland with -- facilitated by Commissioner  
9 Hardesty. We had another program that was scheduled in  
10 Eugene.

11 And so that's just some examples of some of the  
12 outreach that is essential, I think, to a grass roots  
13 campaign that just didn't happen because of the pandemic  
14 and because of the orders.

15 THE COURT: Thank you. Mr. Elzinga any  
16 questions?

17 DIRECT EXAMINATION

18 BY MR. ELZINGA:

19 Q As you think about what type of campaign the People  
20 Not Politicians campaign was, how would you characterize  
21 it on the spectrum of on the one hand, highly  
22 professional, and on the other hand, highly volunteer and  
23 grass roots. Where on that spectrum would you say that  
24 campaign was?

25 A I would actually classify it as a volunteer grass

1 roots coalition. I think we had folks on the coalition  
2 that had a lot of professional experience, but the  
3 majority of the people in the leadership came from really  
4 big grass roots organizations that are all volunteer like  
5 the League of Women Voters. Those are all volunteers.  
6 The Common Cause is a lot of volunteers.

7           So part of the issue that we had was that when  
8 Covid happened and there was an order saying unless it's  
9 absolutely necessary, please stay at home, a lot of our  
10 volunteers were in at-risk populations. And even when  
11 some places did end up opening up to Phase 1, they really  
12 really felt like it was detrimental to their health to  
13 come out and support us.

14           So they were very limited in what they were able  
15 to do to be able to gather signatures for us, because  
16 they had to prioritize the safety and health of the  
17 people around them.

18 Q Ms. Johnson, based on your intimate knowledge of the  
19 campaign and its planning and what got canceled, what  
20 would have happened, et cetera, do you believe that the  
21 campaign would have qualified for the ballot if Covid 19  
22 and related health orders had not come along?

23 A I definitely think it would have. Part of the reason  
24 why I think the Covid really hurt us was that every time  
25 we thought, okay, this is the new state of being, this is

1 where we can move forward, it kept changing the timeline.

2 We were so unsure of when certain counties were  
3 going to open, what was going to be allowed, what would  
4 be those restrictions, and we had to create contingency  
5 plan after contingency plan, and that kept on having to  
6 change.

7 Because you can't just say tomorrow I am going to  
8 have 100 people in some area go out and do this. They  
9 have to have training. They have to have all of this  
10 contact tracing, all of these things. And every county  
11 had completely different requirements. And so that  
12 involved so much planning and so much safety, and we  
13 really wanted to prioritize the safety of all of our  
14 supporters. We wanted to make sure people knew that we  
15 prioritized their safety on the campaign. And we love  
16 this issue.

17 And so having to have to keep going back to that  
18 timeline really limited our ability to be able to really  
19 bring out a large on-the-streets effort, even if we  
20 thought we could safely, just due to the fact that every  
21 county would have been so different.

22 Q Can you talk briefly about the process of the mail  
23 campaign that gathered most of the 60,000 signatures, and  
24 how that was put together and what happened?

25 A Right. Yeah.

1 THE COURT: Hold on a second. I think I have a  
2 enough testimony on that, Mr. Elzinga.

3 THE WITNESS: One thing I did want to clarify for  
4 the Court, though, is the number 500,000. So the  
5 house -- those were actually households. So we mailed  
6 500,000 households. The number of voters that those  
7 households had in them was approximately 1.3 million. I  
8 did want to clarify that for the Court.

9 THE COURT: I am not sure if that helps you or  
10 hurts you.

11 THE WITNESS: I like being honest, so --

12 THE COURT: All right. Mr. Marshall, any  
13 questions for --

14 MS. BEATTY-WALTERS: That one is me, Your Honor.  
15 This is Christina Beatty-Walters for the Secretary of  
16 State. I would like to ask a few questions.

17  
18 CROSS EXAMINATION

19 BY MS. BEATTY-WALTERS:

20 Q Ms. Johnson, you testified that and explained in your  
21 declaration that your original -- what you originally did  
22 is to go out and gather support, and to talk to people  
23 starting in 2018; is that right?

24 A Uh-huh, correct.

25 Q But it wasn't until November of 2019 that the

1 campaign submitted the petition to the Secretary of  
2 State, so more than a year later, right?

3 A That it was filed, correct.

4 Q Why did it take so long?

5 A Well, the reason for that was because not only did we  
6 have to finish drafting the proposal, and this is a very  
7 legally complex proposal, but the other reason -- can you  
8 all still hear me because everyone is frozen.

9 THE COURT: Yes.

10 THE WITNESS: Wanted to make sure. So this is a  
11 very legally complex proposal. But the other thing is  
12 before we filed, we wanted to make sure that we were  
13 telling Oregonians that this is a multi-partisan measure  
14 that had multi-partisan support. So that involved  
15 actually making sure that organizations across the  
16 political spectrum had input -- final input in that  
17 process. So we had several, several moments in the  
18 drafting where more organizations were brought in that  
19 represented different communities in Oregon that didn't  
20 have a chance to be in that initial drafting that needed  
21 to be a part of that in order for us to finally file  
22 going forward.

23 COURT CLERK: This is Paul with the Court. If  
24 you are having difficulty with the video, if you refresh  
25 your browser all of the images should unfreeze.

1 THE WITNESS: Okay. As long as that won't  
2 hurt --

3 THE COURT: Or you will disappear.

4 THE WITNESS: Disappeared. There you are. Am I  
5 back -- there's something on my screen. Okay. So  
6 what --

7 Q BY MS. BEATTY-WALTERS: How were those meetings and  
8 the coalition members you were talking to -- how was that  
9 going to translate to signatures, because meeting with  
10 people doesn't result in actual signatures on your  
11 measure, right?

12 A I think it does, because no one is going to sign a  
13 measure or tell their supporters or their members to sign  
14 a measure if they don't agree with your policy. So in  
15 order to get people to help you get signatures, they have  
16 to say that they support this complex policy that I  
17 usually would have to have multiple meetings to get them  
18 to finally understand it, and be able to say they support  
19 or not support it.

20 So if you don't even know what this seven page  
21 measure is all about, and you haven't had a chance to  
22 have it explained to you, you are not going to ask  
23 someone to sign it.

24 Q So how many signatures resulted in the year plus of  
25 meetings you did around the state?

1 A We weren't allowed to gather signatures at that time,  
2 because it wasn't filed. We had to wait until that  
3 moment the Secretary of State said you are allowed to  
4 gather the signatures to gather the signatures.

5 Q I understand that, but once you got that, how did  
6 that -- all of that work that you did to lead up to the  
7 filing, how did that translate into signatures?

8 A Right. Yeah. So all of those members of the  
9 coalition were then able to, during Covid -- usually they  
10 would have brought all of their volunteers out. It would  
11 have been that volunteer effort that goes along with a  
12 paid signature gathering effort that supplements some of  
13 that signature gathering that happens in a campaign.

14 So for instance, the League of Women Voters,  
15 Common Cause, the Independent Party of Oregon, and some  
16 of our other coalition members, instead of bringing  
17 people out on the streets, they were sending e-mails to  
18 their members, printing out petitions for folks and  
19 mailing it to them, and finding other ways that they were  
20 able to send the petitions to them in a safe manner due  
21 to the fact that we couldn't do a huge volunteer  
22 mobilization on the streets.

23 Q So you also mentioned that there were meetings that  
24 got cancelled even as early as early March, because --  
25 and I think you said just a little bit ago that people



1 were concerned about their safety. Would you agree with  
2 me that there were -- that people were taking precautions  
3 for themselves more than they were worried or thinking  
4 about or looking at executive orders? Would you agree  
5 with me that it was the pandemic and not the executive  
6 orders that caused a lot of your meetings to cancel?

7 A I would not. And reason for that is the meetings  
8 that I mentioned, the forums, those were scheduled after  
9 the executive stay-at-home order. So the Coos Bay forum,  
10 the Eugene forum, those were actually scheduled after  
11 the -- I believe the date was March 17th and March 12th,  
12 that's when those forums were scheduled. And they were  
13 canceled because of the stay-at-home order. And because  
14 it would have violated the people gathering. And I  
15 believe there was also an age requirement, too, that said  
16 if you are above this certain age and at risk, it's even  
17 a lower amount able to gather.

18 And so a lot of the -- a lot of the league  
19 members who were in the at-risk group and were  
20 recommended to not have groups of over ten just  
21 completely canceled all of their meetings.

22 Q Okay. Let me switch gears a little bit. So the  
23 campaign decided not to collect signatures in person,  
24 right? At some point decided not to do that?

25 A Correct. Or at least not to have it be a part of our

1 infrastructure. We didn't say no. If a volunteer came  
2 up and said, I would like to, with all of these safety  
3 things that I can prove I am doing, but we didn't push  
4 out that effort as a part of our infrastructures.

5 Q And you didn't end up hiring anyone to conduct paid  
6 signature gathering, right?

7 A Correct.

8 Q You are aware, aren't you, that there were actually  
9 folks out there, signature gatherers, on the streets  
10 gathering signatures for a variety of measures, right,  
11 during the last couple of months?

12 A I am aware of that, yeah.

13 Q And you're asking, the plaintiffs in this case are  
14 asking for relief that includes extra time and a lower  
15 signature requirement. So why is it that you think that  
16 now something has changed that will enable you to  
17 collect -- if you were unable to do any in-person  
18 circulating, why do you suddenly think you can do it now?

19 A I think that part of the reason why I think we could  
20 do it now is because some of the counties that when we  
21 were doing the signature gathering, were still barely  
22 entering Phase 2, are finally starting to enter phases  
23 where people are really starting to figure out how they  
24 can go out and do things safely.

25 And we do -- and towards the end of the campaign

1 we did have more volunteers reach us and say, I am going  
2 to go out and collect signatures in person. And we were  
3 able to start doing that volunteer effort. And I think  
4 that we could really push that out in our infrastructure,  
5 and hire paid signature gathering if we were given more  
6 time now that the restrictions are less stringent.

7 Q So you do know that most of the state -- the vast  
8 majority of the state has been in Phase 1 since May 15th,  
9 right? Are you aware of that?

10 A Yeah. So I know that -- so I was in Salem and I know  
11 that we weren't allowed to go into Phase 2 until -- what  
12 was it, like mid May is when we were finally said that we  
13 could go into Phase 2. And I know that a lot of other  
14 counties were not allowed to go into Phase 2 until after  
15 May.

16 Q But under Phase 1 and Phase 2, and at baseline, are  
17 you aware that it would have been reasonable and could  
18 happen that a signature gatherer could set up a card  
19 table, stand six feet back, have the measure on the card  
20 table outside the grocery store, and ask people passing  
21 by coming in and out of the grocery store or pharmacy to  
22 sign the measure. Are you aware that that was possible?

23 THE COURT: Hold it, Ms. Johnson.

24 THE WITNESS: It's two different things.

25 THE COURT: Stop. I wanted to hear evidence.

1 This is argument, and really we are expecting the witness  
2 to make our arguments with her. And we can also argue  
3 about the fact that the numbers are going up and nobody  
4 should have to die over signature gathering. I am having  
5 her testify about the diligence of the campaign.

6 MS. BEATTY-WALTERS: Understood, Your Honor.  
7 That's all I have, then.

8 THE COURT: Does -- Ms. Beatty-Walters are you  
9 planning on calling a witness with regard to the  
10 diligence piece?

11 MS. BEATTY-WALTERS: Yes, Your Honor. We would  
12 actually like to call Elizabeth Kaufman.

13 THE COURT: Ms. Kaufman, are you on the line? Do  
14 we have Ms. Kaufman on the line?

15 MR. BERMAN: This is Mr. Berman.

16 THE COURT: Okay. We can hear you. Is that  
17 Ms. Kaufman?

18 MS. KAUFMAN: Yes, it is. I am talking on the  
19 phone, so I'm going to close the meeting.

20

21 ELIZABETH KAUFMAN,  
22 produced as a witness, having been first duly sworn,  
23 was examined and testified as follows:

24 THE WITNESS: Yes.

25 THE COURT: Okay. And if you could please state

1 your first and last name, and spell them for our court  
2 reporter.

3 THE WITNESS: Elizabeth, old fashioned way,  
4 E-L-I-Z-A-B-E-T-H. And my last name is Kaufman,  
5 K-A-U-F-M-A-N.

6 THE COURT: So I would like the testimony to not  
7 be repetitious to any prior declaration, but maybe in  
8 response to the testimony that we have just heard.

9 Mr. Marshall or Ms. Beatty-Waters.

10 MS. BEATTY-WALTERS: Beatty-Walters, Your Honor.

11 Can I have the witness explain what her  
12 qualifications are and her professional background, just  
13 for the Court's benefit?

14 THE COURT: Yes.

15 THE WITNESS: I am a community and campaign  
16 organizer. I have worked on ballot measure campaigns,  
17 dozens of them, local and state levels in Oregon, and a  
18 few other states since 1986. And in the last six years I  
19 have directed three initiative campaigns that have  
20 qualified for the ballot.

21

22 DIRECT EXAMINATION

23 BY MS. BEATTY-WALTERS:

24 Q And you directed a declaration, just to be clear in  
25 this matter, submitted by the proposed intervenors in

1 this case, correct?

2 A I did. I am the campaign director for IP 44. This  
3 is an independent campaign. We're not connected with Our  
4 Oregon or Grow Oregon or any statewide existing  
5 coalition.

6 Q Okay. That was going to be my question. Thank you.

7 So you had a chance -- have you been listening to  
8 the entire hearing today?

9 A I have.

10 Q And have you had a chance to read the declarations  
11 that have been submitted by the plaintiffs in this  
12 matter?

13 A Yes, I have.

14 Q Okay. Do you have an opinion as to whether the IP 57  
15 could have qualified for the ballot, absent the pandemic?

16 A You know, I have to say after reading the  
17 declarations and witnessing the efforts by 57 over the  
18 last few months to qualify, I see no evidence of how they  
19 would have qualified. Part of that is because I know  
20 what we did in comparison, and part of it is that in  
21 their declaration I saw kind of a timeline of events as  
22 they transpired. I saw things that occurred in the  
23 political calendar, but I saw nothing that was a detailed  
24 week-by-week plan with goals and backup for goals if they  
25 weren't achieved.

1           You know, drafting a measure and qualifying it  
2 are two completely different things. It takes a great  
3 plan with contingencies for obstacles that always occur  
4 in these, and I didn't see that in here. I should  
5 mention that I saw no lack of resources and no lack of  
6 politically experienced people involved. There is  
7 considerable money coming from the Oregon business  
8 community, and very conservative interests, and very  
9 conservative politically affiliated consultants involved  
10 in IP 57.

11           But I saw no plan and no behavior of how they  
12 could have made it. Especially if they claim they  
13 couldn't raise the money.

14 Q    What would --

15 A    I should add that in the past -- I am sorry to  
16 interrupt you, but in the past we have started too late,  
17 as I would characterize the date that the initiative was  
18 filed for IP 57. And even with a rigorous plan and a  
19 ballot title challenge we barely made it to the ballot  
20 for just a statutory measure, and there was no Covid.

21           So I don't see how a campaign can start too late,  
22 have inadequate planning and resources, and qualify for a  
23 Constitutional measure.

24 Q    Can you talk for a minute about what you think --  
25 just before Covid hit here in Oregon, what do you think

1 they should have had ready to go, or been under way in  
2 their planning? What should they have had in place?

3 A Well, I can tell you what we had in place. You know,  
4 our key supporters committed from the beginning to make  
5 it to the ballot, no matter what. There was no kind of,  
6 let's see what happens. Our key supporters were aware of  
7 the budget they needed to get there, and we had an add-on  
8 budget. Which almost every serious campaign would have,  
9 just in case of obstacles in the collection process. We  
10 weren't going to leave anything to chance.

11 And that's how a ballot measure qualifies. So we  
12 saw the shutdown looming in late February, so we made a  
13 plan. And we made a plan, similar, that was several  
14 prongs. But part of it was how are we going to operate  
15 without in-person signature gathering, and part of it was  
16 just as soon as we think we can get in-person signature  
17 gathering back out there, how do we crank that up? And  
18 how do we do all of those things in multiple ways with  
19 experiments, so we could try something, see if it worked,  
20 if it had a good enough rate of return or good enough  
21 production of signatures, and if it didn't, try something  
22 else.

23 And it's interesting because we -- I mean, I  
24 could go through all of the myriad ways that we collected  
25 the signatures during Covid. I don't know if that's



1 appropriate. Including, I want to point out, that we  
2 were out on the street again on May 15th -- actually, we  
3 waited two days. May 15th was the first day for Phase 1,  
4 and we were out two days later in three counties; Central  
5 Oregon Bend, Deschutes County, Jackson County, and Lane  
6 County collecting.

7 And we did it with a small team, and we  
8 experimented in a couple of ways. We did some public  
9 places, we did some door-to-door, and we even tried  
10 door-to-door after having tapped an epidemiologist to  
11 help us write a health and safety protocol and establish  
12 a system during Covid of how we were going to do  
13 in-person signature gathering, we tested door-to-door  
14 with people in a lot of PPE, with extenders, or you might  
15 call them like extenders for giving baskets in church.

16 We had individually wrapped pens. We tested  
17 people that we were going to be coming through their  
18 neighborhood, and allowed them to opt out if they didn't  
19 want us to come to their door. We did not stop at any  
20 door of anyone over 60 years old, and we were able to  
21 collect quite a few signatures that way. And as more  
22 counties opened, we started to gather in other in-person  
23 circumstances. So we were ready when it was time to go  
24 back out to the doors.

25 Q And did you -- so there was in-person signatures

1 gathering for IP -- it was IP 44 that you were on the  
2 campaign for?

3 A Yes.

4 Q So you had in-person signature gathering. Were you  
5 trying -- at the very end of the time period for  
6 gathering signatures, were you trying to gather as many  
7 as you possibly could during that time?

8 A Yes. Yes.

9 Q How many did you need to gather, and did you make  
10 that goal?

11 A Well, it's a tough question. You need 112,020 to  
12 qualify for a statutory measure. If you have 70 or 80  
13 percent validity, you have to get close to 150,000. We  
14 didn't -- kind of never know, and because of the virus we  
15 didn't know about the duplicate rate, and what our  
16 viability really was. So we ended up submitting about  
17 170,000 signatures just to be sure.

18 MS. BEATTY-WALTERS: That's all the questions I  
19 have.

20 THE COURT: Mr. Elzinga.

21 Mr. Elzinga, do we have you?

22 MR. ELZINGA: I am sorry. I forgot mute. My  
23 apologies.

24 CROSS EXAMINATION

25 BY MR. ELZINGA:

1 Q Did IP 44 have anyone challenge its ballot title?

2 A We did not, but I have been involved with a ballot  
3 measure that has had a ballot title challenge, and that's  
4 no excuse for a bad plan. You have to know that's going  
5 to happen. You have to know you are going to need enough  
6 money --

7 THE COURT: Can we just answer the question,  
8 please?

9 THE WITNESS: I am sorry.

10 THE COURT: I am not sure what was so funny  
11 there, but go ahead. Next question.

12 Q BY MR. ELZINGA: How many signatures did IP 44 gather  
13 prior to the pandemic?

14 A Approximately 100,000.

15 Q And how many were gathered after the pandemic  
16 started?

17 A Well, between the pandemic starting and the date we  
18 submitted the signatures, our final batch on July 2nd, we  
19 submitted an additional 70,000.

20 THE COURT: So almost the same amount as were  
21 submitted by the petitioners here. Am I getting that  
22 correct, Ms. Johnson?

23 THE WITNESS: It's Kaufman, and apparently, yes.

24 THE COURT: So were they diligent or not?

25 THE WITNESS: Well --

1 THE COURT: They got the same number as you, and  
2 you are telling me they are doing something wrong that  
3 isn't diligent during a pandemic, period.

4 THE WITNESS: Let me answer it this way --

5 THE COURT: I want you to answer it, "yes" or  
6 "no"?

7 THE WITNESS: No.

8 THE COURT: No, they weren't diligent, although  
9 they got the same number of signatures that you received  
10 in the same time period during the pandemic?

11 THE WITNESS: I think what you are asking me is  
12 if I had been in their circumstances, would I have been  
13 able to gather more than that. And I believe that under  
14 my direction, yes. I didn't need to collect any more  
15 than 70,000 more. We stopped. We took our foot off the  
16 gas in the second week of June, because we were done.

17 THE COURT: Okay.

18 Q BY MR. ELZINGA: During the portion of the signature  
19 gathering during the pandemic, how many signatures did  
20 you gather by mail?

21 A I can't really -- I am going to -- approximately  
22 15,000. I would say somewhere between 12 and 20, and our  
23 rate of return on the mailing was, in fact, between 11  
24 and 12 percent. And I should mention that's because we  
25 did such an intensive chase of those. We called people

1 incessantly. We e-mailed them. We texted them.

2 Q So how many total -- how many total mail-ins did you  
3 send out?

4 A How many pieces of mail or --

5 Q Yes.

6 A Between the mail and the electronic download, so we  
7 did cold and warm mailers. So we did -- we mailed to a  
8 population of voters, similar to 57, that was -- we  
9 started with a test of about 10,000 and then we sent to  
10 an additional 50,000. And then we also mailed to people  
11 who had been asked to download the petition  
12 electronically, either by the campaign or one of the  
13 partner organizations, and if the person had no printer,  
14 we also mailed them a packet --

15 Q So of the 50,000 --

16 A -- so that would be another several thousand.

17 So I would say we mailed a total of 60,000.

18 Q Okay. So of the --

19 A And we stopped mailing them, and we stopped mailing  
20 because we knew we were planning to go back out in  
21 person. If we had not been able to go back out in  
22 person, we would have continued the mail.

23 Q Okay. So of the approximately 60,000 mailings, is  
24 that to 60,000 individual people, or would that include  
25 households that had more than one potential voter that

1 you are reaching more than 60,000 people?

2 A Oh, I am sure many homes had more than one voter.

3 Q Okay.

4 MR. ELZINGA: That's all the questions I have.

5 THE COURT: Thank you. Any additional witnesses  
6 from the defense?

7 MR. MARSHALL: Yes, Your Honor. The defense  
8 would like to call Summer Davis.

9 THE COURT: Ms. Davis, are you on the line?

10 THE WITNESS: I am.

11 SUMMER DAVIS,

12 produced as a witness, having been first duly sworn,  
13 was examined and testified as follows:

14 THE WITNESS: I do.

15 THE COURT: If you could go ahead and spell your  
16 first and last name for the reporter.

17 THE WITNESS: Summer, like the season,  
18 S-U-M-M-E-R. And my last name is Davis, D-A-V-I-S.

19 And if you can't hear me, please let me know. I  
20 am supposed to wear this mask while in the building.

21 THE COURT: We can hear you fine. Thank you.

22 MR. MARSHALL: Your Honor, if I can seek your  
23 clarification. I assume that you only want to hear a  
24 question that relates to the likelihood that IP 57 would  
25 be qualified for the ballot, but for Covid 19?

1 THE COURT: Right. And, you know, I think  
2 that's -- that's the same question is, was there  
3 reasonable diligence being pursued? I mean, and I think  
4 those two questions are kind of intertwined.

5 MR. MARSHALL: I understand. Ms. Davis could  
6 testify on some administrability issues, but I understand  
7 she's not being asked to do so.

8 THE COURT: Correct.

9  
10 DIRECT EXAMINATION

11 BY MR. MARSHALL:

12 Q Ms. Davis, do you have your declaration and exhibits  
13 in front of you?

14 A Yes.

15 Q Could you turn to Exhibit B, page 1?

16 A (Complies.)

17 Q It's the initiative No. 57, record of administrative  
18 action.

19 A I have it here.

20 Q First, I want to step back and ask you, how long have  
21 you worked for the Secretary of State's office?

22 A I have worked for the Secretary of State Elections  
23 Division since April 24, 2000.

24 Q And what is your role there?

25 A I am a lead worker over the initiative and referendum

1 process, as well as voter pamphlets, review of HAVA, and  
2 conduct of elections, among other things.

3 Q Do you happen to track the length of time it takes  
4 for the Oregon Supreme Court to decide ballot title  
5 challenges?

6 A I do.

7 Q Can you look at page 1 of Exhibit B that shows that  
8 the certified ballot title appeal deadline was  
9 February 13th, and the amended ballot title opinion came  
10 down on March 26, 2020?

11 A Yes.

12 Q Is that a shorter or longer time than is typical?

13 A That is fairly short.

14 Q Can you turn the page to page 2?

15 A (Complies.) Okay.

16 Q Page 2 says, On March 27th a judgment was received  
17 from the Supreme Court.

18 What happens in the process between then and the  
19 approval to circulate for a petitioner?

20 A We are directed by statute to create templates for  
21 the chief petitioners to use to gather their signatures.  
22 So once we receive a final ballot title from the Court or  
23 the ballot title challenge time period expires, we create  
24 cover and signature sheets to send to the chief  
25 petitioners so that they can create their signature



1 sheets exactly as they intend to circulate in order to  
2 seek approval to circulate.

3 Q In the instance of IP 57, how long did it take -- how  
4 many business days did it take for the Secretary of State  
5 to issue those templates?

6 A March 27th was a Friday. We submitted or sent to  
7 chief petitioners their templates that following Monday,  
8 March 30th.

9 Q What is the next step in the process?

10 A They would need to copy their cover and signature  
11 sheets back-to-back and submit them to us for approval to  
12 circulate. And if they had not yet opened their campaign  
13 account, they would need to file that paperwork and open  
14 up a dedicated bank account.

15 Q When were those steps completed for IP 57 and a  
16 submission made?

17 A There were two submissions made for IP 57. After,  
18 they had asked that we include a mailing return address  
19 on the form, and we did so on the cover sheet. The first  
20 submission happened on the 7th, and they did not -- they  
21 neglected to submit to us cover and signature sheets on  
22 white paper. Statute requires that signature sheets used  
23 by paid signature gatherers be a different color than  
24 those that are used by volunteers. And we have  
25 designated that white paper is to be used for volunteers.

1           On April 7th they only submitted those sheets to  
2 be used by paid circulators. On April 8th they came back  
3 and submitted both sheets, white and colored. And we  
4 approved them on the 9th.

5 Q    Can you look at paragraph 9 of your declaration?

6 A    Yes.

7 Q    You list there the two ballot measures in the last  
8 20 years, Constitutional initiatives in the last 20 years  
9 that started later. Do you recall anything in particular  
10 about measure 85 in 20-12, Protect Oregon's Priority 3,  
11 which was approved on April 17, 2012?

12 A    That particular measure had a large number of paid  
13 circulators. And that was -- it was constant. So it  
14 wasn't just a static registration of circulators. It was  
15 starting from the get-go, constant registration to  
16 maintain a high number of circulators. That is what I  
17 recall about that one. That, and it had a very low  
18 validity rate once it did qualify.

19           THE COURT: Do you know who the -- who was paid  
20 to gather the paid signatures? Was that the case  
21 Mr. Blaszak was talking about?

22           THE WITNESS: It's one of them, yes.

23           THE COURT: So Mr. Blaszak was the  
24 organization -- his organization was the one that got the  
25 signatures?

1 THE WITNESS: I believe so, yes.

2 THE COURT: All right.

3 Q BY MR. MARSHALL: With respect to -- how does the  
4 Secretary of State's office know how many paid  
5 circulators there would be?

6 A Under statute anyone who is being paid to gather  
7 signatures is required to register with our office. We  
8 maintain a list by petition of those individuals who have  
9 successfully registered as a paid circulator.

10 To register, an individual needs to complete  
11 paperwork. Chief petitioners have to -- or their  
12 authorized agents have to acknowledge that this person is  
13 authorized to act on their behalf, and a background check  
14 has to be completed, as well as a photograph submitted.

15 Q And with respect to measure 36 in 2004,  
16 Constitutional definition of marriage approved May 21,  
17 2004, do you remember anything in particular about that  
18 signature gathering effort?

19 A I remember quite a bit about that signature gathering  
20 effort. It was primarily volunteer, done very, very  
21 quickly after, I believe, Multnomah County had begun to  
22 issue marriage licenses to same sex individuals without  
23 any corresponding change to the law.

24 So people were very passionate about the issue,  
25 and the primary signature gathering effort, from what I

1 recall, happened in churches. They submitted almost  
2 twice the number of signatures that were required, and  
3 they had a higher validity rate.

4 MR. MARSHALL: No further questions.

5 THE COURT: Mr. Elzinga, do you have any  
6 questions?

7 MR. ELZINGA: Yes, Your Honor.

8  
9 CROSS EXAMINATION

10 BY MR. ELZINGA:

11 Q Ms. Davis, you mentioned earlier that the ballot  
12 title process for IP 57 was relatively short. In your  
13 experience, does the ballot title process get faster the  
14 further into an initiative cycle the ballot title process  
15 occurs?

16 A That is not something that I have actually done the  
17 analysis -- looked at the analytics about. I have not  
18 done that. My experience tends more to think about  
19 different Supreme Court justices, and how they move  
20 things through. So for example, when I first started it  
21 could take 18 months to get a ballot title back from the  
22 Oregon Supreme Court. And so that is how I think of  
23 things, as opposed to do I notice that things move  
24 quicker the further into the cycle that we go.

25 I also know that in 2018 there were some

1 initiative petitions that still had ballot title  
2 challenges at the Supreme Court when the cycle ended.

3 Q Weren't those ballot title challenges that were in  
4 the Supreme Court when it ended -- weren't those the ones  
5 where the firearms regulation that were filed -- filed,  
6 not just started the ballot title process, but actually  
7 filed in the spring of the election year?

8 A Unfortunately, that is a piece of information that  
9 escapes me. I do not recall.

10 Q Do you have in front of you Exhibit G to your  
11 declaration?

12 A Which one is that?

13 Q That e-mail chain between you and Ms. Teed?

14 A I got it.

15 Q I just want to make sure I am reading this right. So  
16 looks like page 1 there's an e-mail from Ms. Teed to you  
17 on May 7th where she said, I am very sorry. A very  
18 important clarification needed in my earlier response,  
19 not that signature gathering is prohibited, but in-person  
20 signature gathering would be.

21 Did I read that correctly?

22 A Uh-huh.

23 Q And so then if you go up, your response to her that  
24 day, the second sentence -- Well, I will just -- can you  
25 just go ahead and read that first paragraph?

1 A I don't think that would have come from anyone at our  
2 office. We don't have the authority to say whether any  
3 activity is permissible or not allowed under the  
4 governor's orders. Only she can do that.

5 Q Okay. And then later in the paragraph, in the second  
6 paragraph, it looks like the third line down you wrote,  
7 She mandated we stay home to the maximum extent possible,  
8 but I don't see any definition of what maximum extent  
9 possible means. To be very, very clear, I am not saying  
10 go out and circulate and you will be fine.

11 Did I read that correctly?

12 A Yes, you did.

13 MR. ELZINGA: No further questions.

14 THE COURT: I have a disconnected question you  
15 may or may not be able to answer, and that is, are there  
16 other petitions pending this cycle in front of the  
17 Secretary of State where signatures have been forwarded,  
18 either before or after the deadline, and they have not  
19 met the signature threshold? In other words, are there  
20 any other petitioners out there, other than this  
21 plaintiff, who has attempted to qualify a ballot measure  
22 that is short on its goals?

23 THE WITNESS: I would say, yes. But I don't have  
24 the exact number of those that have attempted to register  
25 or have successfully registered paid circulators. But

1 there are other petitions that have gone through the  
2 process and have been approved to circulate, so --

3 THE COURT: But the circulation period, we're  
4 done with the circulation period now?

5 THE WITNESS: Correct.

6 THE COURT: Has anybody sent you, Hey, here's  
7 20,000 signatures. We think we should qualify because of  
8 Covid issues?

9 THE WITNESS: No, no one has sent us signatures.  
10 No one has attempted to file signatures beyond IP 34, IP  
11 44, and IP 57.

12 THE COURT: Thank you. That's helpful. All  
13 right.

14 For the defendants, any additional witnesses?

15 MR. MARSHALL: No, we don't have any further  
16 witnesses to call.

17 THE COURT: Okay. All right. I guess I have a  
18 couple of questions primarily of the defendants, whether  
19 it's Ms. Beatty-Walters or Mr. Marshall. Here's what I  
20 don't want to do is decide I am going to grant relief and  
21 make things worse for everybody. Which I can see doing,  
22 the minute the courts step into something like this,  
23 right, I could all of a sudden I could do what the Idaho  
24 judge partially did, which was, I believe said, Well, you  
25 can either accept the number of petitions and put it on

1 the ballot, or allow additional time with electronic  
2 signatures.

3 It seems to me, what is the reality of that kind  
4 of relief? A short period of time accepting electronic  
5 signatures without any rule making in place to know what  
6 that looks like, or has there been at least some inquiry  
7 by the Secretary of State what that might look like?

8 MR. MARSHALL: Your Honor, I don't have a ranked  
9 order of the Secretary's preferences for different types  
10 of relief. We have put in quite a bit that explains why  
11 the relief, in particular, of moving the signature  
12 submission deadline to August 17th causes practical  
13 difficulties with a number of other election deadlines.  
14 I don't -- I know the Secretary would oppose relief that  
15 would allow electronic signatures to be gathered for a  
16 variety of reasons.

17 THE COURT: Do you know what relief the Idaho  
18 Secretary of State chose?

19 MR. MARSHALL: The only relief they chose was --  
20 they chose to go to the 9th Circuit. They refused to  
21 choose between the options presented to them by the  
22 District Court. I believe the District Court ordered the  
23 signature relief and an extension of the deadline  
24 effectively from the time that the relief was requested,  
25 specifically, of the Secretary of State and effectively



1 about the same amount of time. I am working from memory  
2 about what precisely that case held. And that amount of  
3 time would allow for electronic signature gathering. The  
4 District Court used that as the less drastic of the  
5 options between providing that relief or ordering the  
6 measure be placed on the ballot, which were the two  
7 options provided to the defendant in Idaho.

8 THE COURT: Mr. Elzinga, I mean, what relief are  
9 you realistically hoping for that is not going to put the  
10 Secretary of State's office into a complete tail spin  
11 trying to accommodate you an extension of time, signature  
12 gathering still in a time period that is remarkably  
13 limited, and may well even get more limited than our  
14 current Phase 1, Phase 2.

15 Our numbers are going up in almost every county.  
16 There's been a delay of Phase 2 in Multnomah, Washington,  
17 and Clackamas County.

18 What are you asking the Court to do? The idea of  
19 formulating an electronic signature process seems like it  
20 could backfire on all of us, because I don't know how you  
21 could get such an extensive process in place in such a  
22 short time. And then there are the other deadline issues  
23 around the voters pamphlet, around commentary into the  
24 voters pamphlet, and just getting you on the ballot let  
25 alone what the 9th Circuit is going to do in August.

1 I am not the final say in this. They are going  
2 to have a decision in August that would impact this case.  
3 So what is it you want me to do if I am to grant relief?

4 MR. ELZINGA: We believe that the most  
5 commonsense plan for relief at this point, which balances  
6 the Secretary's needs with that of the initiative is to  
7 reduce the signature threshold. And we believe the Court  
8 should follow the decision in the SawariMedia, LLC,  
9 versus Whitmer from Michigan, which was upheld by the 6th  
10 Circuit Court of Appeals. And that that is the most  
11 appropriate relief, because a reduction in the signature  
12 threshold did not create any logistical issues for the  
13 Secretary.

14 On the contrary, it actually helps the Secretary  
15 with validation of those signatures when the threshold is  
16 lower. And the rationale that the State presents for  
17 having an arbitrary number of 149,000 is just that,  
18 arbitrary. The policy behind the number is the idea that  
19 you have to have sufficient public support in order to  
20 get a place on the Oregon ballot.

21 And we believe that the campaign's herculean  
22 efforts under the circumstances of Covid, more than  
23 demonstrates that it has satisfied that threshold. And  
24 so we believe that the Court should follow the 6th  
25 Circuit and order a reduced threshold of signatures.

1           And the Secretary of State right now, since they  
2 have already certified the other two initiatives, and  
3 there are no other initiatives pending, they have the  
4 ability to begin the first stage of the signature  
5 verification process Monday if the Court were to order  
6 it. And we have the signature boxes, they have been  
7 segregated when they were turned in, 64,000. And they  
8 are in a separate location that is not accessible to the  
9 campaign, and we are prepared to bring them back to the  
10 Secretary of State's office on Monday.

11           In addition, in order to preserve the evidence of  
12 what was turned in on July 2nd, the signature deadline,  
13 we provided a flash drive with digital scans of every  
14 petition sheet that was submitted on July 2nd. And we  
15 offered that to the Elections Division and they declined  
16 to take it, but the Department of Justice did take a  
17 copy. They were very clear that they were not accepting  
18 it on behalf of the Secretary for any waiver issues, and  
19 we were not waiving any arguments. But it was for  
20 evidence preservation. And they do have that copy, so  
21 that can be confirmed exactly what signatures were  
22 submitted on July 2nd.

23           Additionally, my law firm had another flash drive  
24 with those same scans of all the petition sheets in our  
25 firm's safe. I do not have access to that safe. I have

1 never had access to that safe. And under written  
2 direction from my managing partner, I am not allowed to  
3 have access to that safe for the duration of this  
4 litigation. So there are two separate, securely stored  
5 digital copies of all of those signature sheets, in  
6 addition to the signature sheets themselves.

7 THE COURT: But back to my question,  
8 specifically, what are you asking in terms of reducing  
9 the amount of signatures to what?

10 MR. ELZINGA: Yes, Your Honor. We're looking for  
11 a reduction in two parts. First, we believe that the  
12 Constitution's referendum threshold, which is 4 percent  
13 instead of 8 percent is a reasonable threshold to use.  
14 And it's actually very interesting that a referendum only  
15 has 90 days under the law to gather signatures and it's  
16 done in a compressed timeline. So we believe that the  
17 reasonable substitute, given the significant change in  
18 the state regulations on petition gathering for this  
19 case, that also mirrors what the Court in Michigan did,  
20 which is a 50 percent reduction.

21 In addition, we would ask for one further  
22 adjustment beyond that, which is we would ask for an  
23 adjustment to use the base line from the 2018 election  
24 cycle in terms of the base line for the 2020 election  
25 cycle. And the reason for that is that the 2018 governor

1 election was the second highest turnout election in  
2 Oregon State history. And it surpassed even the amazing  
3 turnout when President Obama was elected, and other  
4 presidential election years -- all but one.

5 And so the State's interest in pointing to the  
6 threshold calculation that applies in 2020 really is  
7 untethered from any interest in establishing that the  
8 signature threshold shows that there was significant  
9 public support for the measure, and that's essentially  
10 the case when you have an initiative, as here, where the  
11 proponents of the initiative have established a broad  
12 coalition of everyone from the Progressive Party of  
13 Oregon to the Taxpayer's Association.

14 THE COURT: You are giving me a closing argument.  
15 You have all of that in your submissions. Okay. So you  
16 have talked about a 50 percent reduction of the  
17 gubernatorial election of what year again?

18 MR. ELZINGA: Using the same -- the same  
19 requirement as a referendum was required in 2018. And  
20 that is in our briefing, that number would be 58,789  
21 signatures.

22 THE COURT: So that is the threshold you want me  
23 to set it at, 58,789. And walk me through it. That's  
24 based on what?

25 MR. ELZINGA: Yes, Your Honor, that's based on

1 4 percent rate multiplied by the voter turnout -- sorry,  
2 the total votes cast in the 2014 governor's election.  
3 And that was the threshold that was used for the 2016  
4 election cycle, and the 2018 election cycle. So we're  
5 asking you to back up one cycle and reduce the number by  
6 50 percent.

7 THE COURT: But without any extension of  
8 signature gathering?

9 MR. ELZINGA: Your Honor, we also request  
10 extension of signature gathering, and we understand the  
11 incredible importance of not creating a backlog with all  
12 of the election deadline dates. And it's very important  
13 that we don't do anything that can interfere with the  
14 deadline to send ballots to overseas voters. That  
15 deadline is in September. The key deadline coming up is  
16 for voter's pamphlet submissions, which I believe is  
17 August 25th is the deadline.

18 So that's why we are requesting an extension  
19 until August 17th. And in our reply brief, if the Court  
20 chooses to allow that to come in, we will see the last  
21 section, we did analysis of the Secretary of State's  
22 verification of one of the initiatives this cycle. So  
23 you can see the actual impact under Covid 19  
24 circumstances.

25 And the Elections Division does live streaming of

1 all the signature verification. They are incredibly  
2 transparent. And we commend them for that transparency.  
3 And that allows the Court, if you want, to go back and  
4 check our work. But we looked at every video of  
5 signature verification over the entire process of that  
6 initiative. We totaled up the total number of video  
7 hours that were spent on signature verification, and if  
8 you look at that, you can see that the total number of  
9 hours -- a number of the working days there are only five  
10 hours spent on verification, or three hours or something  
11 like that.

12 So if you use a more focused effort of seven  
13 hours a day, which we do not believe is unreasonable,  
14 that significantly cuts the number of days it would have  
15 required the Elections Division to verify one of the  
16 cycles. The total time was 39 hours, 37 minutes and 7  
17 seconds. And during that time if you look at the videos,  
18 you will see that the Elections Division had between zero  
19 and four staff working.

20 We didn't watch all of the videos. We did not  
21 watch all 39 hours. We skimmed every 20 minutes or  
22 30 minutes, looking at what is going on. And it appear s  
23 to -- under the circumstances from looking at those  
24 videos, that there were significant portions of those  
25 39 hours that there was not a full contingent of four

1 staff members there. Sometimes there were zero,  
2 sometimes there were one, two, three, or four.

3 So if the Elections Division not only did a  
4 focused seven hours a day, per business day, work on  
5 this, but also add -- which would result in six business  
6 days for verification. If they had four staff working  
7 the entire time, instead of fluctuating between zero and  
8 four, we believe that could probably speed up the process  
9 by a day or two, getting it down to approximately four  
10 business days.

11 If they had done that for IP 44 -- and we  
12 recognize every verification is different. IP 57 will be  
13 different than IB 44. But I will note if the Court  
14 reduces the signature threshold, especially if it reduces  
15 it to the threshold we requested, then they will be  
16 verifying a significantly lower number of signatures  
17 until we would expect that they would at least be able to  
18 meet that six-business day length of time that they did  
19 when they had far more signatures to verify -- 163,000  
20 signatures they verified in that period of time. So we  
21 believe that six business days is incredibly reasonable.

22 And so then backing up from the August 25th  
23 deadline for submitting voter's pamphlet statements, it's  
24 in the State's interest that the public have an  
25 opportunity to know whether the initiative has qualified



1 or not prior to that deadline, so they know whether they  
2 need to submit statements for the voter's pamphlet.

3 We believe the court order will -- if the Court  
4 sides with petitioners, will provide public notice that  
5 they should begin drafting those. So we think, you know,  
6 working a week back, or a few days back should be  
7 sufficient if people know that it's been verified at  
8 least three or four days before the deadline.

9 If they already know that this is in the works, I  
10 am sure Our Oregon will probably begin drafting the  
11 opposition statements as soon as the Court enters its  
12 order. And so we're confident that that serves the  
13 public process.

14 And the other logistical issue raised by the  
15 State was the Financial Estimate Committee and the  
16 Explanatory Statement Committees, which that process is  
17 going on now. And I would just point out to the Court  
18 that if the Court looks at the 2018, the 2018 records,  
19 one of the petitions in that cycle was verified very  
20 close to the end of the verification window. I think it  
21 was towards the end of July 8th. Most of the work had  
22 already been done for that initiative even before it was  
23 verified whether it was going to qualify for the ballot  
24 or not.

25 So there's really no burden on the secretary to

1 do the physical analysis or the explanatory statements  
2 process starting now, even before they know for sure  
3 whether this initiative will qualify for the ballot.  
4 It's been done before in the last election cycle. And,  
5 you know, the petitioners have already named their two  
6 members to the Explanatory Statement Committee, and the  
7 Secretary of State has declined to name two members in  
8 opposition, but I am sure Our Oregon could provide a  
9 couple of suggestions so we could get that going, so  
10 there's really no burden to the State.

11 THE COURT: When is the 9th Circuit hearing oral  
12 argument on the Idaho case?

13 MR. ELZINGA: I can pull that up. Opening brief  
14 is due July 17th, answering brief July 29th, optional  
15 reply is August 3rd. They will provide no extensions,  
16 and the Court shall place this case on the calendar for  
17 August 2020. They have not set an exact time, but  
18 sometime in August, early August, I expect.

19 THE COURT: That could change everything.  
20 Defense position on the proposal by the plaintiff  
21 in regard to the remedy?

22 MR. MARSHALL: So I want to start by saying that  
23 remedy here is injurious to the State's interest for the  
24 simple fact of it going outside of the process to amend  
25 the Oregon Constitution. But I understand that the Court

1 understands that.

2 In terms of the -- in terms of the  
3 administrability concerns, and the Secretary -- that the  
4 Secretary of State has with extending the deadline of  
5 August 17th, first I want to point out that out of  
6 anything the State does, there's still the attack on  
7 opposing campaign in terms of the uncertainty.

8 But I understand that that is, you know, there  
9 are -- there's ways to address those concerns that  
10 Mr. Elzinga has suggested.

11 In terms of the State's official processes,  
12 there's expected deadlines to consider in the run-up that  
13 are totally unrelated to when signature verification  
14 begins. So that's the financial estimate, the  
15 Explanatory Statement Committee. We agree that those  
16 could move forward. I think that the quality of that  
17 process may be impacted by the uncertainty, because  
18 there's public comments involved. But those can go  
19 forward now.

20 In terms of the voter's pamphlet, in particular,  
21 the August 25th deadline is pretty inconsistent with the  
22 August 17th submission of signatures in order to be able  
23 to say that you have an endorser, you have to prove that  
24 this person has authorized that endorsement to make sure  
25 that the voters pamphlet is actually accurate. And I

1 think it will be very difficult for third parties to  
2 collect those in the context of uncertainty.

3 But this going to the signature verification  
4 piece, we strongly dispute the relevance of this YouTube  
5 analysis about this live streaming. So for the first  
6 reason is that it only looks at IP 44. It doesn't look  
7 at IP 34.

8 If you look at paragraph 31 of the Davis  
9 declaration, she notes that IP 44 took 12 days to verify.  
10 That's hands-on working on it. IP 34 took 27 days. So  
11 more than twice as long.

12 THE COURT: But you agree if the plaintiffs are  
13 to deliver the 64,000 signatures that they currently  
14 have, that process can begin now.

15 MR. MARSHALL: If the Court orders -- I will try  
16 to articulate this as clearly as possible. It's  
17 articulated more clearly in note 26 of -- note 26, page  
18 31 of our brief. If the Court orders a reduction in the  
19 signature verification -- sorry, the signature threshold,  
20 the signature verification could go forward now.

21 If they are under that threshold, under the  
22 Secretary of State's administrative rules and sampling  
23 methodology, the only ones that they have built and have  
24 figured out with a statistician is actually valid in  
25 terms of the comparison between the duplicates and

1 triplicates and so on and so forth, that they have not  
2 validated that process below -- if you turn in partial  
3 submissions that are below the threshold. So it could  
4 start now if that happened.

5 And a couple of more points on YouTube videos,  
6 that there were technical outages, so not even everything  
7 that was attempted to stream actually streamed.

8 And the second point is that some steps of the  
9 verification process were omitted from those videos  
10 intentionally; that includes organizing the petition and  
11 approving the data entry process. Those were not stages  
12 where a signature could be rejected. So I just dispute  
13 the relevance of that.

14 I think the Court should rely on paragraph 31, as  
15 well as paragraph 29 of the Davis declaration in  
16 explaining why no two signatures that are alike -- no two  
17 signature verification processes are alike.

18 In addition to those concerns, Ms. Davis' --  
19 paragraph 2 of Ms. Davis' declaration explains that she  
20 has responsibility for preparing the voters pamphlet.  
21 She also has responsibility for preparing what the ballot  
22 looks like. She is the head of the signature  
23 verification team. So if Mr. Elzinga thought that people  
24 were attending to too many other responsibilities during  
25 this period, I think that's going to be even a bigger

1 concern should we try to attempt this in mid August under  
2 Court order.

3 THE COURT: Well, Mr. Elzinga, he's working with  
4 a law firm where they bring on large groups of people,  
5 and I know State government has it limitations.

6 MR. MARSHALL: I can explain why, if that would  
7 be helpful, about why temp workers do not engage in this.

8 THE COURT: No, I can surmise why. I have notes  
9 all over in front of me. I want to -- I don't know -- I  
10 would like to get you a preliminary order today, with a  
11 written opinion next week. I think we're running out of  
12 time no matter what decision is made.

13 So what I would like to do is take a five-minute  
14 recess and maybe a little longer, put my notes together,  
15 and see if I can adequately put a preliminary order  
16 together from the bench so that people can be directed on  
17 where to go next. I think that piece is important. So  
18 we will be in recess for a little bit.

19 Thank you, folks.

20 (Brief recess taken from 5:01 p.m.  
21 to 5:13 p.m.)

22 THE COURT: It looks like we have everyone. All  
23 right. So what I would like to do with this issue today  
24 is a preliminary order. It is just that. We will do  
25 a -- a written opinion will follow. I hope to get it out

1 middle of next week, or we will try to get some work done  
2 over the weekend and get it done and to you as quickly as  
3 possible. The written opinion will supersede anything I  
4 say today, but I think it will be generally consistent  
5 with my ruling right now.

6 So -- and I will go slowly because my notes are a  
7 little disconnected here. I am looking at a number of  
8 different notes as I make this ruling. I want to start  
9 by thanking all of the parties. I know there was a lot  
10 of work that had to be done very quickly, and I think  
11 everyone responded very well, very professionally. I  
12 appreciate all the work that has been done --

13 MR. BERMAN: Your Honor, I apologize. This is  
14 Mr. Berman. I can't hear you right now.

15 THE COURT: Let's make sure we have you on -- can  
16 you hear me now? Mr. Berman, can you hear me now?

17 COURT CLERK: Mr. Berman, can you hear now? Can  
18 the other parties hear me?

19 Mr. Berman, are you not able to hear? Can you  
20 hear?

21 THE COURT: Can we put up a sign.

22 COURT CLERK: Could one of the other parties ask  
23 Mr. Berman if, perhaps, they can hear him, or he can hear  
24 you?

25 MR. ELZINGA: Mr. Berman. This is Steve Elzinga.

1 Are you able to hear me?

2 MS. BEATTY-WALTERS: Steve, can you hear me?

3 MR. ELZINGA: This is Steve Elzinga.

4 THE COURT: I think we're hearing Mr. Berman. He  
5 cannot hear us.

6 MS. ANDERSON-DANA: This is Lydia Anderson-Dana.  
7 I can go try to find him and give him the call-in number.

8 THE COURT: That would be great. I think he  
9 might be trying to call in now on his phone.

10 Can you hear me, Mr. Berman?

11 MR. BERMAN: I can hear now.

12 THE COURT: Thank you, Mr. Berman. I was just  
13 thanking all of the parties, including yourself, for all  
14 the work that went in in a very short time frame to get  
15 this matter to me.

16 It's an interesting issue. I really wish for all  
17 parties on an issue like this, I would have a long period  
18 of time to understand and discern the nuances, of which  
19 there are many. But I also think that what you folks  
20 need right now, quickly, is an opinion so I will give a  
21 preliminary order right now, followed by a written  
22 opinion. The written opinion will be controlling over  
23 anything that I say in the preliminary order.

24 So plaintiffs are a coalition of what they  
25 describe as government reform organizations seeking to



1 place an initiative before Oregon voters on the November  
2 2020 ballot that would amend the State Constitution to  
3 create an Independent Redistricting Commission. Such a  
4 commission would be in contrast to the redistricting  
5 scheme that is sometimes referred to as gerrymandering.

6 To qualify their initiative for the November  
7 ballot, the plaintiffs are required to submit a certain  
8 number of signatures collected from registered Oregon  
9 voters to the Secretary of State, Bev Clarno, the  
10 defendant in this case by July 2nd, 2020. That date  
11 obviously has come and gone, because today is the 10th.

12 As described in the Secretary of State's  
13 initiative and referendum manual, quote, The initiative  
14 and referendum process is a method of direct democracy  
15 that allows people to propose laws or amendments to the  
16 Constitution or to adopt or reject a bill passed by the  
17 legislature, closed quote.

18 In many ways this form of direct democracy Casey  
19 was the model for other states when Oregon voters passed  
20 initiative referendum process in 1902, creating what  
21 became referred to as "the Oregon system."

22 At that time Oregonians have been active  
23 participants in a Democratic process that touches every  
24 aspect of life within our state. These include, and  
25 there's a big list, but here are some of the issues

1 within our lives that are impacted by the initiative  
2 process: Women's suffrage; prohibition; compulsory  
3 education; hunting; environmental protections; the death  
4 penalty, multiple times, has been put before the voters;  
5 LGBTQ rights and discrimination; taxation; voter recall;  
6 the eight-hour workday; freight rates; wages; women  
7 jurors; suffrage; and the housing rights for people of  
8 color; jury trials and the composition of the jurors;  
9 victim's rights; gambling; tobacco; timber; health and  
10 safety; transportation; daylight savings time; compulsory  
11 retirement for judges -- that's one of my favorites;  
12 housing; nuclear power; marriage; physician assisted  
13 suicide; and marijuana legalization.

14           What makes Oregon unique, for better or worse, is  
15 its robust relationship with direct democracy. The  
16 initiative processes is core to our First Amendment  
17 freedoms in Oregon under the 1st and 14th Amendment of  
18 the United States Constitution. Direct democracy, of  
19 course, requires participation of the electorate. Before  
20 a petition can be placed on the ballot, its advocates  
21 must obtain and submit to the Secretary of State the  
22 signatures of voters who are in favor of the ballot four  
23 months before a general election, in numbers equal to  
24 8 percent of ballots cast in the most recent  
25 gubernatorial race. And the 8 percent applies

1 specifically to amendments to the Oregon Constitution,  
2 which this case is, as opposed to a referendum for a  
3 statute which is 4 percent.

4 Plaintiffs, through the declaration of Ted  
5 Blaszak, present evidence that they had the resources,  
6 the energy, and the funding and ability to qualify for  
7 the November ballot if they had begun traditional  
8 signature gathering at the beginning of April. I will  
9 speak more to their efforts in just a little bit.

10 Plaintiff's submit that the impact of Covid 19  
11 and the governor's executive orders in response to the  
12 slowing of the virus have created a situation in which  
13 they cannot comply with the deadlines and requirements  
14 of the initiative process. The traditional public forums  
15 at which they reasonably anticipated gathering signatures  
16 have disappeared, in part, for the reasonable safety  
17 measures taken by the governor, and in part from the very  
18 real fear people have of the pandemic around them.

19 As a result, they argue the signature  
20 requirements in Oregon law -- as a result, they argue  
21 that the signature requirements in Oregon State law  
22 restrict their First Amendment right to petition the  
23 government when applied to these plaintiffs in this  
24 unique set of circumstances. They ask the Federal Court  
25 to enjoin the Secretary of State from enforcing portions

1 of the Oregon Constitution laws and Administrative Rules,  
2 quote, requiring the submission of at least 149,360  
3 signatures by July 2nd, 2020, in order to place  
4 plaintiff's initiative on the 2020 general election  
5 ballot, closed quote. That is coming out of the motion  
6 for the TR0 at page 2.

7 For their part the defendants argue that the  
8 initiative requirements serve an important government  
9 interest, that the virus and not the government is  
10 responsible for what has occurred to the plaintiff's  
11 initiative efforts, and in hindsight the plaintiffs  
12 should have anticipated for emergencies and started  
13 collecting signatures much earlier.

14 Perhaps more compelling they argue that the  
15 plaintiff, by not bringing the suit sooner, has placed an  
16 undue burden on the government with regard to its ability  
17 to meet the timelines necessary to get the initiative  
18 properly verified, submitted to the voter's pamphlet for  
19 comment, and placed on the November ballot.

20 Finally, no less compelling, they offer a  
21 declaration of their own experts that even under the best  
22 of circumstances, the plaintiffs were not going to  
23 qualify their initiative for the November ballot. The  
24 Secretary of State certainly has a vital interest in  
25 regulating the petition process. And here I am citing

1 Purcell versus Gonzalez, 549 US 1, page 4, 2006 decision.

2 It is also important that Federal courts not take  
3 it upon themselves to rewrite State election rules,  
4 particularly on the eve of an election. Here, I am  
5 citing Republican National Committee versus the  
6 Democratic National Committee, 140 Supreme Court, 1205,  
7 2020 decision.

8 But when these rules collide with unprecedented  
9 conditions that burden First Amendment access to the  
10 ballot box, their application must temper in favor of the  
11 Constitution, because the right to petition the  
12 government is at the core of First Amendment protection.  
13 And this includes the right of initiative. And here I am  
14 citing City of Cuyahoga Falls versus Buckeye Community  
15 Help Fund. The current signature requirements found in  
16 Oregon law are unconstitutional as applied to these  
17 specific plaintiffs, seeking to engage in direct  
18 democracy under these most unusual times.

19 I am finding that plaintiffs are likely to  
20 succeed on the merits. They have established that their  
21 First Amendment rights have been compromised by the  
22 necessary steps the governor had to take to keep people  
23 home. I note that other governors have specifically  
24 exempted signature gathering from their executive orders.  
25 That did not occur here.

1 I am further finding that the plaintiffs here,  
2 unlike other organizations that might think they will  
3 automatically qualify for the ballot, exercised  
4 reasonable diligence throughout this process. Plaintiffs  
5 are a coalition of well-organized and well-funded  
6 nonprofit and business organizations who are familiar  
7 with the initiative process.

8 They had an organized and viable road map to  
9 qualify their petition. They raised over \$600,000 in  
10 funding. They had 600 endorsements. They had groundwork  
11 laid for an initiative that was in place well before the  
12 petition process. They had held a series of forums in  
13 Oregon as early as 2018. They drafted the initiative in  
14 2019. They began recruiting signature gatherers in early  
15 2020.

16 Early delays in signature gathering were  
17 attributed both to political challenges to the petition  
18 language, something that is not considered unusual or  
19 life threatening in this process. But despite the  
20 insurmountable setbacks they faced gathering signatures,  
21 once the stay-at-home order went out, they continued to  
22 seek creative ways to gather the necessary signatures.  
23 Significantly during that time they were able to gather  
24 60,000 signatures.

25 Now, perhaps they should have hired a different

1 campaign manager or campaign workers who could have  
2 gotten more, but the issue isn't did they -- are they the  
3 best at what they do? Is it the best run campaign? The  
4 legal issue is, were they reasonably diligent. And I am  
5 finding that they were based on the record before me.

6 This is not a plaintiff whose attempts at  
7 qualification for the ballot were merely speculative. I  
8 say this because, specifically, my belief if there are  
9 any other potential petitioners seeking relief, they  
10 would have to make a similar showing of reasonable  
11 diligence as the plaintiffs have here.

12 I don't believe that's the case. I don't believe  
13 there's some floodgate of possible petitioners who want  
14 their petition on the ballot, because they haven't had  
15 the same kind of organizational expertise, funding, and  
16 planning that the petitioners have here.

17 I am also finding that the defendant's failure to  
18 provide some type of accommodation to the signature  
19 gathering process has caused irreparable harm to the  
20 plaintiffs. I note that Courts have denied relief to  
21 similar plaintiffs in states that exempted signature  
22 gathering from similar stay-at-home type orders, or where  
23 large gatherings were curtailed for only a short time.  
24 That is not the case here.

25 This case looks much more like the Idaho and

1 Nevada cases where the courts have stepped in and said  
2 the First Amendment requires some accommodation for the  
3 petitioners, for the plaintiffs, by the Secretary of  
4 State.

5 So I am granting relief to the plaintiffs. The  
6 difficulty is making the relief viable. I do think I  
7 want to borrow a page from the Idaho Trial Court and give  
8 the Secretary of State some leeway in decision-making. I  
9 realize that if we -- if I simply extend the time frame  
10 and reduce the number of signatures, as requested by the  
11 plaintiff, that that will result in some burden on the  
12 Secretary of State's office in terms of timeline, in  
13 terms of manpower.

14 So I am ordering one of two things. I am  
15 ordering the Secretary of State to simply place the  
16 petition on the November 2020 ballot, finding that the 60  
17 some -- 64,000 signatures obtained by the plaintiffs do  
18 show a voter interest in this petition under this set of  
19 circumstances.

20 In the alternative, I am going to adopt the  
21 request of the plaintiffs, that the Secretary of State --  
22 the plaintiffs are allowed to present a signature count  
23 of 58,789, using -- and I realize all of these are  
24 somewhat random formulas. But going back to the prior  
25 gubernatorial cycles that were used in 2014, 2016, and



1 2018, and using a 4 percent, or 50 percent reduction in  
2 the amount of signatures, that would require 58,789 valid  
3 signatures with a deadline date of August 17th.

4 As part of that order -- and I will ask the  
5 plaintiffs and the defendants to maybe work out some of  
6 these details -- but I would order the plaintiffs to turn  
7 over the signatures that they have thus far gathered,  
8 64,000 roughly, so that verification process can begin.  
9 And then they -- over the course of the next number of  
10 weeks until August 17th, they submit on a weekly basis  
11 all of the signatures that are being collected from this  
12 date forward, or really from July 2nd forward, and get  
13 those to the Secretary of State's office on a weekly  
14 basis so that the verification process can be ongoing,  
15 rather than waiting until the August 17th deadline that I  
16 am setting for the plaintiffs.

17 So just to clarify, I am ordering the Secretary  
18 of State to do one of two things. One is simple. I  
19 mean, it's -- and I realize it may not be palatable, but  
20 it's simply put the petition on the ballot for November  
21 2020. The other is to reduce to 58,789 valid signature  
22 s -- 58,789 valid signatures with a deadline of  
23 August 17th.

24 The Court will not entertain a motion to stay  
25 this. We need to move forward. Certainly I understand

1 there would be an appeal, and it may be that you can get  
2 this case connected with the Idaho case before the 9th  
3 Circuit, and certainly any decision out of the 9th  
4 Circuit may well impact this decision today. And it may  
5 call for a motion for reconsideration. So that's where  
6 we are.

7 Any questions about how -- I would like the  
8 Secretary of State's office to notify the Court and the  
9 plaintiff how they wish to proceed under the order by  
10 5:00 on Monday. Is that reasonable? I don't know.

11 MR. MARSHALL: I can state, I do not know the  
12 schedule of the relevant decision makers in terms of the  
13 relief in the alternative. I can say that we can attempt  
14 to notify, and certainly give an interim update of that.

15 I want to make one question clarified with the  
16 Court. There's a pending challenge in State Court,  
17 unrelated to the requirement to qualify, in terms of the  
18 number of signatures and the deadline to submit them. We  
19 are -- the Secretary is vigorously defending that case  
20 and has submitted a substantial opposition to  
21 Ms. Uherbelau's challenge to that state. However, it is  
22 still pending in Marion Circuit Court.

23 Am I correct in understanding that the -- if the  
24 Secretary chooses the first option, the Court is not  
25 intending to enjoin other challenges to this ballot

1 measure on other grounds?

2 THE COURT: That's absolutely correct. And  
3 certainly if a State Court invalidates the petition, you  
4 would file a motion for reconsideration and -- well, it  
5 wouldn't be a motion for reconsideration. I think at  
6 that point my order would become moot, and it would be  
7 vacated. Certainly if the 9th Circuit makes a decision  
8 that impacts the decision I make here today, we will  
9 reconvene for a reconsideration immediately, and enter  
10 whatever orders we need to to remedy what the 9th Circuit  
11 may do.

12 MR. MARSHALL: I think I -- I am sorry, Your  
13 Honor.

14 THE COURT: No.

15 MR. MARSHALL: I think I understand the order.  
16 Ms. Beatty-Walters may have other questions.

17 THE COURT: Okay.

18 MS. BEATTY-WALTERS: No, Your Honor. I  
19 understand that you are not going to entertain a motion  
20 to stay, so that is taken care of.

21 THE COURT: I don't mean to cut off what would be  
22 a reasonable request, but for the kind of timelines that  
23 I'm putting you under, it just does not seem  
24 reasonable -- I will accept the fact that you are right  
25 now moving for a stay, and I am denying it. And we can

1 put that on the record, if you want to protect that  
2 piece.

3 MS. BEATTY-WALTERS: Thank you. I appreciate  
4 that.

5 THE COURT: We will put that in the way of a  
6 minute order, and then certainly do whatever you need to  
7 do with the 9th Circuit to try to reverse me. It doesn't  
8 hurt my feelings.

9 So I guess I would like the parties to confer  
10 late Monday. If it becomes impractical for the decision  
11 makers on the defense side to make a decision about the  
12 alternative order, I would like you just to agree on  
13 another time frame of an additional 24 or 48 hours.

14 But if I were the plaintiffs, you are ordered to  
15 get those signatures to the Secretary of State's office.  
16 I would get those to them sooner than later, and I would  
17 begin your signature gathering process, such as it is, to  
18 go forward.

19 I want to thank everybody. I will try my hardest  
20 to get my written opinion out so you have an appealable  
21 decision, but we will enter a preliminary order. It's  
22 past 5:00, and my guess is they will -- it will be  
23 entered into the ECF early Monday morning --

24 We will do a minute order tonight, I am told.  
25 Thank you, everybody. I appreciate your time.

1 MR. MARSHALL: Thank you, Your Honor.

2 MR. ELZINGA: Thank you, Your Honor.

3 MR. BERMAN: Thank you, Your Honor.

4 COURT CLERK: This Court is adjourned, and we  
5 will disconnect now.

6 (Proceedings concluded at  
7 5:38 p.m.)

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1 STATE OF OREGON )

2 ) ss

3 COUNTY OF YAMHILL)  
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5 I, Deborah L. Cook, RPR, Certified Shorthand  
6 Reporter in and for the State of Oregon, hereby certify  
7 that at said time and place I reported in stenotype all  
8 testimony adduced and other oral proceedings had in the  
9 foregoing hearing; that thereafter my notes were  
10 transcribed by computer-aided transcription by me  
11 personally; and that the foregoing transcript contains a  
12 full, true and correct record of such testimony adduced  
13 and other oral proceedings had, and of the whole thereof.

14 Witness my hand and seal at Dundee, Oregon,  
15 this 18th day of July, 2020.

16  
17 /s/ Deborah L. Cook, RPR, CSR

18 \_\_\_\_\_  
19 DEBORAH L. COOK, RPR  
20 Certified Shorthand Reporter  
21 OREGON CSR #04-0389  
22 CALIFORNIA CSR #12886  
23 WASHINGTON CSR #2992  
24  
25