No. 20-35630

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEOPLE NOT POLITICIANS OREGON; COMMON CAUSE; LEAGUE OF WOMEN VOTERS OF OREGON; NAACP OF EUGENE/SPRINGFIELD; INDEPENDENT PARTY OF OREGON; C. NORMAN TURRILL,

Plaintiffs-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of State,

Defendant-Appellant.

APPELLANT'S EXCERPTS OF RECORD
VOLUME I

Appeal from the United States District Court
for the District of Oregon

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APPELLANT'S EXCERPTS OF RECORD

Pursuant to Circuit Rule 30-1.6, appellee submits the following Appellant's Excerpts of Record, as indexed below.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PEOPLE NOT POLITICIANS OREGON, et al.,

Plaintiffs,

v.

BEVERLY CLARNO, in her official capacity as the Secretary of State of Oregon, et al.,

Defendants.

Civ. No. 6:20-cv-01053-MC

OPINION AND ORDER

MCSHANE, Judge:

INTRODUCTION

Plaintiffs are a group of organizations petitioning to place an initiative on the November 2020 ballot that would alter Oregon's redistricting process. But before a constitutional amendment is presented to the voters, petitioners must gather the requisite number of signatures from Oregon voters at least four months before the election. Plaintiffs argue that these requirements are unconstitutional as applied during the ongoing coronavirus pandemic and related government regulations that limit social interaction. Defendant Beverly Clarno, Oregon's Secretary of State, counters that the initiative requirements are constitutional and that pandemic-related regulations do not alter their constitutionality. Plaintiffs seek a preliminary injunction that would both lower the required signature threshold and postpone the deadline for when signatures must be filed.

The Court heard oral argument on Plaintiffs' motion and granted the requested preliminary injunction. ECF No. 22. Defendant was given until July 13, 2020, at 5:00 p.m. P.S.T. to decide to either allow Plaintiffs initiative on the ballot as presented, or lower the required signature threshold to 58,789 and extend the submission deadline to August 17, 2020. This written order provides more detail behind the Court's decision and, as stated on the record, controls.

BACKGROUND

As noted, Plaintiffs are a coalition of government reform organizations seeking to place an initiative before Oregon voters on the November 2020 ballot that would amend the state constitution to create an independent redistricting commission. Plaintiffs propose a commission that would diverge from the current redistricting scheme, a process routinely criticized on the grounds that it allows the political party in power to gerrymander districts into a remarkable jigsaw puzzle that best suits the party's needs by disproportionately impacting the voting power of certain communities.[1] *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2512 (2019) (Kagan, J., dissenting) ("At its most extreme . . . the practice [of partisan gerrymandering] amounts to 'rigging elections.'" (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring in judgment))). To qualify their initiative for the November ballot, Plaintiffs had to submit a certain number of signatures by July 2, 2020.

As described in the Secretary of State's Initiative and Referendum Manual, "the initiative and referendum process is a method of direct democracy that allows people to propose laws or amendments to the Constitution or to adopt or reject a bill passed by the legislature." OREGON ELECTIONS DIVISION, STATE INITIATIVE AND REFERENDUM MANUAL 3 ("INITIATIVE MANUAL")

[1] The criticism is often from the minority party, despite their own history of similar behavior when they stood in the majority.

(2020), *https://sos.oregon.gov/elections/Documents/stateIR.pdf*. In many ways, this form of direct democracy was a model for other states when Oregon voters passed the initiative and referendum process in 1902, creating what become known as "The Oregon System." *See generally* David Schuman, *The Origin of State Constitutional Direct Democracy: William Simon U'ren and "The Oregon System,"* 67 TEMP. L. REV. 947 (1994). Since that time, Oregonians have been active participants in a democratic process that touches every aspect of life within our state: women's suffrage, prohibition, compulsory education, hunting, environmental protections, the death penalty, LGBTQ+ rights and discrimination, marijuana legalization, taxation, voter recall, eight-hour work day, freight rates, wages, women jurors, suffrage and housing rights for people of color, jury trials, victim rights, gambling, tobacco, timber, health and safety, transportation, daylight savings time, compulsory retirement for judges, housing, nuclear power, and physician assisted suicide. Indeed, much what makes Oregon unique, for better or for worse, is its robust relationship with direct democracy.

Direct democracy, of course, requires the participation of the electorate. Before a constitutional initiative can be placed on the ballot, its advocates must obtain and submit to the Secretary of State the signatures of voters who support the initiative four months before a general election in a number equal to eight percent of ballots cast in the most recent governor's race. Or. Const. art. IV § 1(2)(c). But even before obtaining the required number of signatures to qualify for the ballot, petitioners must first file the petition with the Secretary of State with the language of the proposed amendment, submit at least 1,000 valid sponsorship signatures, receive a certified ballot title, and receive approval from Oregon's Election Division for the cover and signature sheet to be used when gathering signatures. Decl. of Summer S. Davis ("Davis Decl.") ¶ 4, ECF No. 16. This process may begin at the end of the last election cycle. *Id.* Once a

petitioner meets these requirements, the Election Division will approve their initiative for circulation. INITIATIVE MANUAL 5.

Plaintiffs filed their initiative with the Secretary of State in November 2019. Davis Decl. ¶ 12, Ex. B. Plaintiffs met all other requirements and the Attorney General then issued a ballot title a month later. *Id.* As soon as the ballot title was issued, Becca Uherbelau, *amici* here, appealed the Attorney General's ballot title. *Id.* The Oregon Supreme Court rejected this challenge and Plaintiffs initiative was approved for circulation.

By the time Plaintiffs could begin collecting signatures, a global pandemic had begun, upending all aspects of life. As of July 12, 2020, coronavirus has infected over 12.8 million people and killed over 560,000. *Coronavirus Resource Center*, JOHNS HOPKINS UNIV. & MED., https://coronavirus.jhu.edu/ (last visited July 12, 2020 at 8:38 pm). On March 8, Oregon Governor Kate Brown declared a state of emergency, currently in effect until September 4. Executive Order 20-30 (June 30, 2020), https://www.oregon.gov/gov/Document/executive_orders/eo_20-30.pdf. Fifteen days after declaring a State of Emergency, Governor Brown mandated social distancing and banned all social gatherings "if a distance of at least six feet between individuals cannot be maintained." Executive Order 20-12 (March 23, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf. While Executive Order 20-12 was eventually replaced by later Executive Orders and certain counties could partially reopen, Oregonians still had to maintain physical distance from each other. Executive Order 20-25 (May 14, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-25.pdf; Executive Order 20-27 (June 5, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-27.pdf.

Despite the state's requirements to maintain social distancing, Plaintiffs began attempting to collect the necessary 149,360 signatures by the July 2, 2020 deadline. Quickly realizing that traditional methods of in-person signature gathering were no longer available, Plaintiffs instead tried alternative methods that would not violate the Governor's Executive Orders. This included mailing out over 500,000 packets with the petition inside, to be mailed back after signing, and providing a link to voters where the petition could be printed out, signed, and returned. Decl. of C. Norman Turrill ¶ 25, ECF No. 5. Unsurprisingly, these methods produced a response rate far less than in-person solicitation. *Id.* Plaintiffs have informed the Court that they have collected 64,172 unverified signatures, well short of the required 149,360.

STANDARD OF LAW

A party seeking a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008). The mere possibility of irreparable harm is not enough. Rather, the plaintiff must establish that this harm is likely. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The standards for issuing a temporary restraining order are like those required for a preliminary injunction. *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Ca. 1995).

ANALYSIS

"A plaintiff seeking a preliminary injunction must establish that: 1) it is likely to succeed on the merits; 2) it is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance of equities tips in its favor; and 4) an injunction is in the public interest." *Reclaim Idaho*

v. Little, No. 1:20-CV-00268-BLW, 2020 WL 3490216, at *5 (D. Idaho June 26, 2020) (citing *Winter*, 555 U.S. at 20). The Court analyzes the *Winter* factors in turn.

I. Likelihood of Success on the Merits

Plaintiffs bring an as-applied challenge to Oregon's initiative requirements. They argue that the effect of COVID-19 and the Governor's Executive Orders in response to slowing the spread of the virus has created a situation in which they cannot comply with the deadlines and requirements of the initiative process. The public forums at which they reasonably anticipated gathering signatures have for the most part disappeared; in part through the safety measures taken by the Governor and in part from the very real fear people have of the pandemic around them. As a result, they argue the signature requirements restrict their First Amendment right to petition the government when applied to Plaintiffs in this unique set of circumstances. They ask the Court to enjoin the Secretary of State from enforcing portions of the Oregon Constitution, laws, and administrative rules "requiring the submission of at least 149,360 signatures by July 2, 2020 in order to place Plaintiffs' initiative on the 2020 general election ballot." Pl.'s Mot. for Prelim. Inj. 2, ECF No. 2.

For their part, Defendant argues that the initiative requirements serve an important government interest, that the virus and not the government is responsible for what has occurred to Plaintiffs' initiative efforts, and, in hindsight, that Plaintiffs should have anticipated for emergencies and started collecting signatures much earlier.[2] Perhaps more compelling, they argue that Plaintiffs, by not suing sooner, have placed an undue burden on the government regarding its ability to meet the timelines necessary to get the initiative properly verified, submitted to the voter's pamphlet for comment, and placed on the November 2020 ballot.

[2] When considering whether Plaintiffs acted diligently, the Court considered evidence presented by *amici curiae* Becca Uherbelau and Our Oregon, which allegedly showed that even under the best of circumstances, Plaintiffs were never going to qualify their initiative for the November 2020 ballot.

A. Constitutional Framework

The right to petition the government is at the core of First Amendment protections and this includes the right to present initiatives. *City of Cuyahoga Falls Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196 (2003); *see also Meyer v. Grant*, 486 U.S. 414, 421–22 (1988) (explaining that the circulation of ballot petitions is "core political speech"). "Courts generally apply the framework established in *Anderson v. Celebrezze*, as later refined in *Burdick v. Takushi* (the *Anderson-Burdick* framework) when considering the constitutionality of ballot access restrictions." *Reclaim Idaho*, 2020 WL 3490216, at *7 (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992)).

Plaintiffs argue that because they do not challenge the facial constitutionality of Oregon's initiative requirements, but only challenge them as applied during these unprecedented times, that the Court should instead apply the framework from *Angle v. Miller*, 373 F.3d 1122 (9th Cir. 2012). The Court follows other district courts in the Ninth Circuit in finding that analysis under the *Angle* framework is proper. *Reclaim Idaho*, 2020 WL 3490216, at *7; *Fair Maps Nevada v. Cegavske*, No. 3:20-cv-00271-MMD-WGC, 2020 WL 2798018, at *11 (D. Nev. May 29, 2020). In *Angle*, the Ninth Circuit explained that restrictions on the initiative process will burden core political speech if: (1) the regulations restrict one-on-one communication between petition circulators and voters; or (2) the regulations make it less likely that proponents can obtain the necessary signatures to place the initiative on the ballot. 673 F.3d at 1132. The Court analyzes each category in turn.

Even though Defendant claims otherwise, it is unquestionable that *Angle*'s first category applies. Def.'s Resp. to Pl's Mot. for Prelim. Inj. 19–20, ECF No. 18. The Governor's Executive Orders, issued to diminish the spread of coronavirus, also prevented any one-on-one

communication between petition circulators and Oregon voters. Defendant asks the Court to suspend belief in finding that because the Executive Orders did not explicitly ban petition gathering, Plaintiffs could somehow continue to solicit in-person signatures. Plaintiffs, like all Oregon citizens, were told to stay home and physically distance from others. By continuing to require Plaintiffs to meet a strict threshold and deadline in the middle of a pandemic, Plaintiffs' circulators were prevented from engaging in one-on-one communication with Oregon voters.

The Court now considers the second category and must decide whether Defendant's insistence on strictly applying the initiative requirements made it less likely that Plaintiffs could obtain the necessary signatures. Plaintiffs faced pandemic-related regulations that severely diminished their chances of collecting the necessary signatures by July 2, 2020. Defendant, even when requested, refused to lower the threshold or alter the turn-in deadline.[3] Pl.'s Mot. for Prelim. Inj. 14. "Therefore, the Court finds [that Defendant's] refusal to make reasonable accommodations during this time period made it less likely for [Plaintiffs] to get enough signatures to place [Plaintiffs'] initiative on the November 2020 ballot." *Reclaim Idaho*, 2020 WL 3490216, at *8. Plaintiffs, without an accommodation from Defendant, had an impossible task and can now only get their initiative on the November 2020 ballot with "an order of relief from this Court." *Id.*

Because the Court finds a burden on Plaintiffs core political speech, the Court must now decide what form of review to use when analyzing Defendant's conduct. *See Arizonans for Fair Elections v. Hobbs*, No. CV-20-00658-PHX-DWL, 2020 WL 1905747, at *8 (D. Ariz. Apr. 17, 2020). "Courts apply strict scrutiny when: (1) the proponents of the initiative have been

[3] This is even though the Secretary of State, in recognizing Governor Brown's Executive Orders and the health risks posed by coronavirus, suspended all in-person services normally offered by the Secretary of State. *See* Press Release, Oregon Secretary of State, News from the Secretary of State (Apr. 15, 2020), https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36377.

'reasonably diligent' as compared to other initiative proponents; and (2) when the restrictions significantly inhibit the proponents' ability to place an initiative on the ballot." *Reclaim Idaho*, 2020 WL 3490216, at *8 (quoting *Fair Maps Nevada*, 2020 WL 2798018, at *11). But if Plaintiffs cannot meet either prong, then the Court will apply a lesser form of scrutiny. *See Angle*, 673 F.3d at 1133.

1. Reasonable Diligence

Beginning with the first prong, the Court first determines whether Plaintiffs acted "reasonably diligent" as compared to other initiative proponents. *Id.* ("We have held that the burden on plaintiffs' rights should be measured by whether, in light of the entire statutory scheme regulating ballot access, reasonably diligent candidates can normally gain a place on the ballot, or whether they will rarely succeed in doing so." (quotations and citation omitted)). While Plaintiffs argue that they were reasonably diligent, Defendant and *amici curiae* disagree.

Defendant insists that Plaintiffs "bear the risk of their decision to wait to gather signatures." Def.'s Resp. to Pl's Mot. for Prelim. Inj. 19. Defendant notes that two measures qualified for the November 2020 ballot. Davis Decl. ¶ 6. Those two measures were approved for circulation in the fall of 2019, showing that they had begun the approval process earlier than Plaintiffs. *Id.* Defendants rely heavily on an Arizona District Court's decision to support their argument that Plaintiffs lacked diligence.

But the decision in *Arizonans for Fair Elections* is distinguishable from the facts here. In *Arizonans for Fair Elections*, while the petitioners waited until late 2019 to file the requisite paperwork, they were able to collect signatures prior to the enactment of coronavirus related guidelines. 2020 WL 1905747, at *2. Plaintiffs here were not so lucky. Instead, they had to gather signatures while Executive Orders specifically prohibited their ability to connect with

voters in person. Further, like petitioners in *Fair Maps Nevada*, Plaintiffs were delayed in their attempt to collect signatures by litigation brought by a third party. 2020 WL 2798018, at *12. Defendant asks the Court to find that Plaintiffs lacked diligence because they forgot to consult their crystal ball and predict a court challenge, a pandemic, and unprecedented societal upheaval.

The Court instead finds that Plaintiffs submitted considerable evidence reflecting that but-for the pandemic-related restrictions, they would have gathered the required signatures by the July 2 deadline. *See* Pl.'s Reply in Supp. of its Mot. for Prelim. Inj. 11–13, ECF No. 21 (detailing the organizational efforts undertaken by Plaintiffs). Plaintiffs also displayed considerable resilience in pivoting their initiative campaign to a process that still yielded over 60,000 signatures while adhering to Governor Brown's Executive Orders. This number carries additional significance because at oral argument Elizabeth Kauffman, campaign manager for one of the two qualified initiatives, testified that their campaign collected a similar number of signatures during the same time frame. [4]

To reiterate, Plaintiffs only needed to display reasonable diligence in comparison to other initiative proponents. *Angle*, 673 F.3d at 1133. The facts here indicate that Plaintiffs acted with reasonable diligence in their attempt to meet Oregon's initiative requirements.

2. Significantly Inhibit

Admittedly, the Court made clear at oral argument that only the first prong, whether Plaintiffs were reasonably diligent, was at issue. As explained earlier, Plaintiffs faced many restrictions that, when combined with Defendant's stringently applying the initiative requirements, "significantly inhibit[ed] [their] ability to place an initiative on the ballot."

[4] Ms. Kauffman's initiative, IP 44, had a lower signature threshold then Plaintiffs initiative because it proposes a statutory change, not a constitutional amendment. *See Detailed Information for Initiative Number 44*, Oregon Secretary of State: Elections Division, http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200044..LSCYYY. (last visited July 13, 2020).

Reclaim Idaho, 2020 WL 3490216, at *8. The Court does not question the significant regulatory interest Defendant has in maintaining adherence to the initiative requirements laid out in Oregon's constitution. *Id.* (citing *Angle*, 673 F.3d at 1135). But those interests must be considered against the First Amendment protections afforded to citizens petitioning their government. *City of Cuyahoga*, 538 U.S. at 196. "When an initiative fails to qualify for the ballot, it does not become 'the focus of statewide discussion.'" *Angle*, 673 F.3d at 1133 (quoting *Meyer*, 486 U.S. at 423). The Court adopts the reasoning in *Reclaim Idaho* in finding that Defendant's "refus[al] to make reasonable accommodation, during the unprecedented time of the pandemic, reduced the total quantum of speech on the public issue of [partisan gerrymandering]." 2020 WL 3490216, at *8 (quotation omitted).

B. Laches

Defendant also argues that Plaintiffs preliminary injunction request is barred by laches. Def.'s Resp. to Pl.'s Mot. for Prelim. Inj. 25–27. "Laches applies when there is both unreasonable delay and prejudice." *Arizona Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922 (D. Ariz. 2016). "Laches . . . requires denial of injunctive relief, including preliminary relief." *Id.*

But as noted by Plaintiffs, "it would have been difficult to file this as-applied constitutional challenge earlier and still met [their] burden of proof." Pl.'s Reply in Supp. of its Mot. for Prelim. Inj. 16. The Court agrees with Plaintiffs and finds that Defendant has failed to "prove both an unreasonable delay by [Plaintiffs] and prejudice to itself." *Evergreen Safety Council v. RSA Newtwork Inc.*, 697 F.3d 1221, 1226 (9th Cir. 2012) (quoting *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000)).

In sum, the Court finds that Plaintiffs are likely to succeed on the merits of their claim that Oregon's initiative requirements are unconstitutional as applied.

II. Irreparable Harm

Without a preliminary injunction, Plaintiffs' initiative will not appear on the November 2020 ballot. The Court therefore finds that Plaintiffs are likely to suffer irreparable harm in the absence of injunctive relief.

III. Balance of Equities

"The Court must also balance the relative hardships on the parties should it provide preliminary relief or decline the request." *Reclaim Idaho*, 2020 WL 3490216, at *10 (citing *Winter*, 555 U.S. at 20; *Univ. of Hawaii Prof. Asm. v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir. 1999)).

The Court recognizes Defendant's interest in "ensuring the efficient and orderly administration of its elections." Def.'s Resp. to Pl.'s Mot. for Prelim. Inj. 28. The Court also understands the strain that its decision may impose on Defendant's employees and staff as they verify additional signatures.[5] But this consideration must be balanced against the constitutional harm Plaintiffs confront.

When weighing the hardships each party faces, the First Amendment rights trump any concerns about the administration of the relief requested. *See Meyer*, 486 U.S. at 421–22 ("The circulation of a petition involves the type of interactive communication concerning political change that is appropriately describe as 'core political speech.'"). As a result, the balance of equities leans in Plaintiffs favor.

[5] Defendant also raised a concern that if the Court were to grant Plaintiffs' request, other initiatives would submit signatures in August. Def.'s Resp. to Pl.'s Mot. for Prelim. Inj. 30. For clarity, the Court's order today applies only to Plaintiffs' as-applied constitutional challenge. Further, the likely difference between Plaintiffs initiative campaign and others is the diligence showed by Plaintiffs here. If other initiatives seek to obtain similar relief, they will need to show the organizational wherewithal that Plaintiffs presented here.

IV. Public Interest

As explained above, the public interest leans in favor of granting injunctive relieve because such a remedy protects Plaintiffs' ability to place their initiative on the November 2020 ballot. The Court finds it worth noting that Oregon's voters will be the ones who ultimately decide whether Plaintiffs initiative will be enacted. Simply put, "issuing a preliminary injunction requiring [Defendant's] to make reasonable accommodation to protect [Plaintffs'] core political speech rights in the initiative process is in the public's interest." *Reclaim Idaho v. Little*, 2020 WL 3490216, at *10.

V. Remedy

There are considerable concerns raised when a federal court instructs a state on how to run their election process. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) ("This Court has repeatedly emphasized that lower federal could should ordinarily not alter the election rules on the eve of an election." (citations omitted)). "However, as the analysis herein explains, the First and Fourteenth Amendments do place some restrictions on [Defendant's] authority through the preservation of constitutional rights." *Reclaim Idaho*, 2020 WL 3490216, at *11.

In recognizing the potential disruptions any remedy may pose, the Court offers two alternative remedies to Defendant. First, because Plaintiffs have shown a likelihood of success under normal circumstances, Defendant may simply allow Plaintiffs on the ballot. Alternatively, Defendant may choose to reduce the signature threshold by 50%, which would equal 58,789 signatures, and allow Plaintiffs an extension until August 17. Other courts have granted similar relief. *See SawariMedia LLC v. Whitmer*, No. 20-cv-11246, 2020 WL 3097266, at *12 (E.D. Mich. June 11, 2020) (finding that Michigan's signature threshold was not narrowly tailored to

the present circumstances); *Fair Maps Nevada*, 2020 WL 2798018, at *15–16 (finding that enforcement of Nevada's signature deadline was not narrowly tailored to the present circumstances). As detailed in Plaintiffs motion, Plaintiffs' requested accommodations rely on data from previous elections and considered logistical issues defendant could face. *See* Pl.'s Mot. for Prelim. Inj. 32–37.

At oral argument, the Court informed Defendant that they would have until 5:00 p.m. P.S.T. on July 13, 2020 to choose between the two alternative remedies.

CONCLUSION

The Secretary of State has a vital interest in regulating the petition processes. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). It is also important that the federal courts not take it upon themselves to rewrite state election rules, particularly on the eve of an election. *Republican Nat'l Comm.*, 140 S. Ct at 1207. But when these rules collide with unprecedented conditions that burden First Amendment access to the ballot box, their application must temper in favor of the Constitution. Because the right to petition the government is at the core of First Amendment protections, which includes the right of initiative, *City of Cuyahoga Falls*, 538 U.S. at 196, the current signature requirements in Oregon law are unconstitutional as applied to these specific Plaintiffs seeking to engage in direct democracy under these most unusual of times. The Court therefore GRANTS Plaintiffs' motion for emergency injunctive relief.

IT IS SO ORDERED.

DATED this 13th day of June, 2020.

/s/ Michael McShane
Michael J. McShane
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I directed the Appellant's Excerpts of Record Volume I to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

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No. 20-35630

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEOPLE NOT POLITICIANS OREGON; COMMON CAUSE; LEAGUE OF WOMEN VOTERS OF OREGON; NAACP OF EUGENE/SPRINGFIELD; INDEPENDENT PARTY OF OREGON; C. NORMAN TURRILL,

Plaintiffs-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of State,

Defendant-Appellant.

APPELLANT'S EXCERPTS OF RECORD
VOLUME II

Appeal from the United States District Court
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APPELLANT'S EXCERPTS OF RECORD

Pursuant to Circuit Rule 30-1.6, appellee submits the following Appellant's Excerpts of Record, as indexed below.

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF OREGON, NAACP OF EUGENE/SPRINGFIELD, INDEPENDENT PARTY OF OREGON, and C. NORMAN TURRILL, Plaintiffs, v. BEVERLY CLARNO, OREGON SECRETARY OF STATE, Defendants.	Case No. 20-1053 **COMPLAINT**

NATURE OF ACTION

1. This action arises out the challenges faced by People Not Politicians (PNP) as it has attempted to qualify an initiative for the November 2020 ballot in the midst of the COVID-19 Pandemic ("the Pandemic"). PNP proposes to amend the Oregon Constitution to provide for the establishment of an independent redistricting commission to draw Oregon's electoral maps for the State Senate, State House and U.S. House of Representatives. Toward that end, PNP filed Initiative Petition 57 ("Initiative") on November 16, 2019. People Not Politicians, Initiative 2020-057 (Or. 2019). Since the Initiative was filed and People Not Politicians was cleared to begin signature gathering, however, the Pandemic has gripped our state and country.

2. In response, all levels of the government have issued social distancing requirements that preclude the interpersonal contact necessary to gather sufficient signatures to qualify the Initiative for the November General Election ballot using traditional means. While Oregon does not require signature gathering to take place only in-person, social distancing requirements during this pandemic dramatically limited People Not Politicians' ability to engage in the interpersonal contact traditionally necessary to collect the number of signatures required to qualify for the November 2020 ballot.

3. In an attempt to overcome this unprecedented barrier, PNP embarked on a novel signature gathering campaign that relies almost exclusively on mail and downloadable petition signature gathering methods. Despite these herculean alternative efforts, PNP has not (to date) been able to gather the required number of signatures to qualify for the ballot by the deadline specified by Oregon law. PNP has requested that the Secretary of State adjust both the signature [illegible] exceptional signature and implementation for the exceptional circumstances of the pandemic and the

public health restrictions effectively banning traditional signature-gathering methods for the entirety of PNP's signature-collection period. The Secretary of State refused to adjust its pre-Pandemic requirements to adjust for the barriers to PNP's democratic participation that arose during the pandemic.

4. Accordingly, Plaintiffs bring this as-applied challenge to Oregon's threshold and deadline for signature gathering to qualify for the November General Election ballot.

PARTIES

5. Plaintiff People Not Politicians Oregon (PNP) is a Petition Committee formed pursuant to Or. Rev. Stat. § 260.118. PNP's address is 960 Broadway St. NW, Suite 5, Salem, OR 97301. PNP drafted and filed the Initiative and is advocating for it to qualify for the November ballot and for its ultimate passage. PNP is responsible for circulating the initiative for signature and otherwise qualifying it for the ballot. The interests PNP seeks to protect in this action, in addition to the ability to place the initiative on the ballot, relate to the voting rights of all Oregonians, including its supporters and funders, and these interests are germane to PNP's purpose.

6. Plaintiff Common Cause was founded by John Gardner in 1970 as a nonpartisan "citizens lobby" whose primary mission is to protect and defend the democratic process and make government accountable and responsive to the interests of ordinary people, not merely to those of special interests. Common Cause is one of the Nation's leading democracy organizations and has over 1.1 million members nationwide and 35 state organizations. Common Cause has been a leading advocate of reforms designed to make redistricting a fairer, less

partisan, and more transparent process. This work has included drafting ballot initiatives, leading campaigns to pass reform, and engaging in litigation to end gerrymandering nationwide.

7. Plaintiff League of Women Voters of Oregon (LWVOR) is a grassroots, nonpartisan political organization that encourages informed and active participation in government. LWVOR's purposes are to influence public policy through education and advocacy on a wide range of democracy issues, including redistricting reform. LWVOR also works to encourage active and informed participation in government and to increase understanding of major policy issues. The League seeks to empower citizens to understand governmental issues and to participate in the political process.

8. Plaintiff Eugene/Springfield NAACP (NAACP) is a grassroots nonprofit organization located at 330 High St, Eugene, OR 97401. The mission of NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The organization's primary activities include implementation of education programs and events for public awareness and community building. The NAACP also coordinates institutional collaborations to increase cultural inclusion in all areas. NAACP believes that the process of redistricting creates the foundation to all other policy making and that a redistricting process that eliminates or minimizes the role of Oregonians of diverse backgrounds does not serve our state. NAACP is dedicated to ensuring that every Oregonian can participate in our political processes, regardless of race, zip code, socioeconomic status or level of formal education. NAACP is a member of the Executive Committee for PNP and is similarly dedicated to qualifying the Initiative for the November ballot, including asking their members to help with signatures, the petition, soliciting volunteers to help with signature gathering activities, and providing community education about the Initiative.

9. Plaintiff Independent Party of Oregon ("IPO") has more than 122,000 members and is the largest third party, by share of registered voters, in any state in the United States. IPO focuses on promoting policies to decrease partisanship, to support election reforms, and to increase transparency in state and local government. IPO believes that redistricting reform, like that introduced in the Initiative, can make Oregon more responsive to the needs of voters and the public good. IPO is a member of the Executive Committee of PNP and dedicates considerable volunteer time and resources to working to qualify the Initiative for the November ballot.

10. Plaintiff C. Norman Turrill is a Chief Petitioner for Initiative Petition 57. He has been a resident of the State of Oregon since 2001 and a member of the League of Women Voters (LWV) since the 1970s. He has engaged in ballot measure signature-gathering campaigns for decades. Turrill was planning to circulate petitions in support of IP 57 as he has in previous campaigns, by approaching people in the streets, in high-traffic public locations and at large public gatherings, with petitions on clipboards. However, Turrill falls into a part of the population that is most vulnerable to serious health repercussions if he contracts the coronavirus that causes COVID-19 disease. The Stay Home restrictions did not allow him to circulate the petition and collect signatures in public in support of IP 57. Turrill personally signed the petition and if the petition fails, he will be unable to vote for an initiative that he enthusiastically supports.

11. Defendant Beverly Clarno is the Oregon Secretary of State and is named as a Defendant in her official capacity. Secretary Clarno is the chief elections officer in the State of Oregon and is charged with receiving filed petitions and determining the sufficiency of

Or. Rev. Stat. signatures; Or. Const. art. IV, § 1, cl. 4(a); Or. Rev. Stat. § 246.110. [illegible] sign the petition; soliciting volunteers [illegible] Initiative [illegible] community education about the Initia

JURISDICTION AND VENUE

12. This is a civil rights action that raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

13. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 because this action arises under the U.S. Constitution and seeks equitable and other relief for the deprivation of constitutional rights under color of state law.

14. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

15. This Court has personal jurisdiction over Defendant, who is sued in her official capacity. Secretary Clarno is a state official who works in Salem, Oregon.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendants are State officials working in Oregon. A substantial part of the events giving rise to these claims occurred and continue to occur in this District, making venue also proper under 28 U.S.C. § 1391(b)(2).

FACTUAL BACKGROUND

A. The Initiative

17. On November 12, 2019, Plaintiff filed a prospective initiative petition pursuant to Or. Rev. Stat. § 250.045. If enacted, the Initiative will amend the Oregon State Constitution to provide for an independent citizens redistricting commission to draw electoral districts for the Oregon House of Representatives. The commission would be composed of twelve Oregonians who are free from conflicts of interest and represent the diversity of the

state. The commission would be charged with holding public hearings and providing for public input and required to draw maps in compliance with strict mapping criteria. *See* Initiative Petition 2020-057 (Or. 2019).

18. On December 5, 2019 sponsorship signatures were submitted for verification pursuant to Or. Rev. Stat. § 250.045. These signatures were collected over a 10-day period from November 25 through December 4, 2019, which included the Thanksgiving holiday, through a signature gathering firm that used in-person, on- the-street petition circulators. Pursuant to Or. Rev. Stat. § 250.045, no more than 2000 sponsorship signatures could be collected. On December 20, 2019, the Secretary of State verified 1,656 signatures submitted by PNP and began the ballot title draft process pursuant to Or. Rev. Stat. § 250.065 and Or. Rev. Stat. § 250.067

19. On March 27, 2020, the Oregon Supreme Court approved the final ballot title for Initiative Petition 57.

20. On April 9, 2020, the Secretary of State approved Initiative Petition 57 for circulation. PNP immediately began the process of gathering signatures electronically but did not begin in-person signature gathering because of the stay-at-home orders in place in Oregon, and the need to protect voters, volunteers and paid signature gatherers from potentially contracting the virus.

21. On March 27, 2020, Becca Uherbelau and Emily McClain filed a complaint in Circuit Court of the State of Oregon for the County of Marion alleging that Oregon Secretary of State Bev Clarno erroneously determined that Initiative Petition 57 complied with the procedural requirements of the Oregon Constitution. Complaint, *Uherbelu v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020). This matter is currently pending.

22. Pursuant to the Oregon Constitution, the number of signatures to be collected on a petition to place a constitutional amendment initiative on the ballot is eight percent of the total number of votes cast for candidates for Governor in the most recent election in the state. Or. Const. art IV, § 1, cl. 2(c). For the 2020 election cycle, this requires a petition to garner 149,360 signatures from qualified voters to get on the ballot. The Secretary of State is responsible for receiving the petitions and verifying the signatures of voters on the petition. Or. Rev. Stat. § 250.105.

23. The Oregon Constitution also mandates that a petition must be filed at least four months in advance of the election the initiative is meant to be voted on, which is July 2, 2020 for this election cycle. Or. Const. art IV, § 1, 2(e). If a petition fails to garner the adequate number of signatures to be placed on the ballot in the current election cycle, proponents of the initiative are required start the signature process again from the beginning for the next election cycle. Unger v. Rosenblum, 362 Or. 210, 223 (2017).

B. The Pandemic

24. The Pandemic has resulted in a near total cessation of public activity in Oregon. This necessary public health action is the result of the adoption of guidance by the federal government, adherence to legal directives issued by the Governor of the State of Oregon, as well as general public attitudes in response to an unprecedented global pandemic.

1. Effects of the Pandemic on National Policy

25. On January 30, 2020, the World Health Organization declared that the novel coronavirus (COVID-19) constitutes a Public Health Emergency of International Concern. Over the next two months, President Donald Trump, Congress, and the Centers for Disease Control

implemented various emergency declarations and public health guidance, including suggested restrictions for communities on the size of social gatherings, social distancing guidelines intended to reduce interpersonal contact, suggested guidelines on how to protect oneself from contracting Covid-19 and how to protect others if one became infected, and clear guidance to listen and follow the instructions of state and local officials.

2. Effects of the Pandemic on Oregon State Policy

26. Nearly simultaneously with the federal government, Oregon Governor Kate Brown issued an escalating series of Executive Orders aimed at protecting public health through the curtailing of public activities and in-person gatherings of unrelated individuals. These Executive Orders, while necessary for public health purposes, severely limited public gatherings that play a central role in signature gathering efforts.

27. On March 7, 2020, Oregon Governor Kate Brown issued Executive Order No. 20-03, declaring a State of Emergency pursuant to ORS 401.165 *et seq* finding that the novel infectious coronavirus has created a threat to public health and safety, and constitutes a statewide emergency under ORS 401.021(1). The Executive Order established that the state of emergency shall exist for sixty days unless extended or terminated by the Governor.

28. On March 12, 2020, Governor Brown issued Executive Order No. 20-05 Prohibiting Large Gatherings Due to Coronavirus (Covid-19) Outbreak in Oregon. The Executive Order banned gatherings larger than 250 people and ordered the statewide closure of K-12 schools. The Executive Order applied to community, civic, public, leisure, faith-based, and sporting events, concerts, conventions, fundraisers, and any similar events or activities if a minimum of three feet of space cannot be maintained between participants.

29. On March 17, 2020, Governor Brown issued Executive Order No. 20-07 Prohibiting On-Premises Consumption of Food or Drink and Gatherings of More Than 25 People. This Executive Order further restricted public movement, required additional social distancing measures, and bans all public gatherings of 25 or more people.

30. On March 23, 2020, Governor Brown issued Executive Order No. 20-12 Stay Home, Save Lives: Ordering Oregonians to Stay at Home, Closing Specified Retail Businesses, Requiring Social Distancing Measures for Other Public and Private Facilities, and Imposing Requirements for Outdoor Areas and Licensed Childcare Facilities. This Executive Order established mandatory social distancing requirements of at least six feet from any person who does not live in same household, with violations subject to penalties described in ORS 401.990. The order includes no end date, stating that it will remain in effect "until terminated by the governor."

31. On May 1, 2020, Governor Brown signed Executive Order No. 20-24, extending the state of emergency in response to Covid-19 for an additional 60 days through July 6, 2020.

32. On May 14, 2020, Governor Brown issued Executive Order No. 20-25: A Safe and Strong Oregon: Maintaining Essential Health Directives in Response to COVID-19, and Implementing a Phased Approach for Reopening Oregon's Economy. This order established criteria counties would have to meet before being allowed to move to a phased reopening of businesses and other facilities along with permitting gatherings of gradually increasing number of individuals in those counties.

33. On May 18, 2020, Baker County Circuit Court judge Matthew Shirtcliff suspended Governor Brown's Executive Order. The Oregon Supreme Court issued a stay on the same day blocking Judge Shirtcliff's order pending its own resolution of the case.

34. On June 12, 2020, the Oregon Supreme Court reversed Judge Shirtcliff and upheld Gov Brown's Stay-Home executive order. *Elkhorn Baptist Church v. Brown*, 366 Or. 506 (2020).

35. By June 19, 2020, Oregon's three most populous counties–Multnomah, Washington, and Clackamas–were granted Phase I reopening status. Aside from Lincoln County, which is also a Phase I county, all other Oregon counties have been granted Phase II status. Phases I and II of Oregon's gradual reopening, and thus restrictions that currently apply to the entire state, mandate physical distancing of at least six feet and significant restrictions on large gatherings.

3. Signature-gathering during the pandemic.

36. Following the rise of the COVID-19 Pandemic, state and local public health restrictions have largely barred the conduct and strategies on which pre-Pandemic signature collection typically relied. Under normal circumstances, signatures are gathered through a variety of methods, all of which rely on extensive in-person contact. Signature gatherers go out into public spaces, such as markets, public transportation nexuses, and other highly-trafficked areas. Signature gatherers approach strangers with a clipboard, petitions forms, pens, and campaign paraphernalia. The signature collection process typically requires signature gatherers to speak one-to-one with potential voters in close physical proximity. If a registered voter agrees to sign the petition form, the volunteer hands them the clipboard, the petition form, and a pen.

The volunteer may also give the voter campaign literature and paraphernalia. Naturally, this interaction involves passing items back and forth between the volunteer and voter. Volunteers repeat this type of interaction—in spaces far closer than six feet apart—with at least tens of voters in a typical canvassing "shift." This is exactly the type of activity Pandemic public health restrictions have prohibited.

37. The disruption of normal signature-collecting methods extends beyond social-distancing restrictions. Through shelter-in-place orders, Oregonians have been ordered under penalty of law to stay at home. Restaurants, government buildings, schools, and other establishments where Plaintiffs would traditionally have been able to gather signatures have been closed or access has been sharply limited. People also are prohibited from gathering in parks and other areas in substantial numbers. Even if traditional signature gathering methods were currently legally permissible, they would run counter to public health concerns and potentially pose risks to PNP's signature gatherers and potential voters.

38. Although Oregon does permit campaigns to mail petitions to voters for signature and permits voters to download, print, and sign petitions and then mail them back, these are typically used as supplemental signature gathering methods and do not produce the same number of signatures as quickly or efficiently as in person signature gathering. See *Meyer v. Grant*, 486 U.S. 414, 422 (1988) (striking down a prohibition against the use of paid petition circulators and calling direct one-on-one communication "the most effective, fundamental, and perhaps economical avenue of political discourse").

39. Accordingly, given the Pandemic's widespread disruption of the activity on which traditional signature gathering depends during the entirety of the period during which PNP was

authorized to collect signatures, it is implausible that PNP will be able to gather the required number of signatures or meet the signature submission deadline.

4. Oregon and other states have taken action to protect political speech in light of COVID-19

40. Oregon and other states, recognizing the Pandemic's extraordinarily disruptive effect on normal life, have taken affirmative steps to adjust their regulations and procedures to help protect and ensure continued political participation.

41. Typically, Oregonians can participate in public meetings in a variety of ways, including by attending meetings in person and providing in person testimony. Due to the pandemic, on April 15, 2020, Governor Brown issued an Executive Order requiring that public meetings in the state make available a method for the public to attend the meeting at the same time that it occurs, whether by telephone, video, or other electronic means. Or. Exec. Order No. 20-16 (Apr. 15, 2020).

42. Other jurisdictions in the United States have also taken steps to protect political speech during the Pandemic, including changing the rules for elections and initiatives. For example, sixteen states have either postponed their primary elections in response to the pandemic or moved their election to vote-by-mail, including Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia and Wyoming. Nick Corasantini & Stephanie Saul, 16 States Have Postponed Primaries During the Pandemic. Here's a List., N.Y. Times (May 27, 2020), https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html.

43. Additionally, several courts have granted relief in light of the impact of COVID-19 on signature gathering across the United States. A Virginia state court granted a preliminary injunction and ordered a reduction in the number of signatures needed for candidates to enter Virginia's primary election from 10,000 to 3,000. The court found that "the circumstances as they exist in the Commonwealth of Virginia and across the United States are not normal right now," and that the regulations requiring the signatures were not narrowly tailored because they "do[ ] not provide for emergency circumstances, like those that currently exist." *Faulkner v. Va. Dep't of Elections*, No. CL 20-1456, slip op. at 3 (Va. Cir. Ct. Mar. 25, 2020).

44. For candidates seeking access to the ballot in Massachusetts, the Massachusetts Supreme Judicial Court ordered a reduction in signature requirements by 50%, an extension of the deadline for filing signatures, and allowing electronic over wet-ink signatures. The court found that "these extraordinary times of a declared state of emergency arising from the COVID-19 pandemic create an undue burden on prospective candidate's constitutional right to seek elective office." *Goldstein v. Sec'y of Commonwealth*, 142 N.E.3d 560, 564 (Mass. 2020).

45. A federal court in Arkansas granted a motion for preliminary injunction made by the plaintiffs to allow collecting signatures outside of previous in-person requirements. *Miller v. Thurston*, No. 5:20-CV-05070 (W.D. Ark. May 26, 2020).

46. In Nevada, a federal court granted a preliminary injunction that extended the deadline for submitting a complete petition in light of the pandemic. The court agreed with the plaintiffs, finding that "as plaintiffs have no chance of getting their initiative on the ballot without an extension, their First Amendment rights have been violated." *Fair Maps Nevada v. Cegavske*, No. 3:20-cv-00271, slip op. at 27 (D. Nev. May 29, 2020).

47. A federal court in Michigan granted a motion for preliminary injunction that lowered the signature requirement to place an initiative on the ballot and delayed the deadline to file initiative petitions. The court determined that "the reality on the ground for Plaintiff and other candidates is that state action has pulled the rug out from under their ability to collect signatures." *SawariMedia LLC v. Whitmer*, No. 20-CV-11246, slip op. at 6 (E.D. Mich. June 11, 2020).

48. A Michigan state court suspended a ban on using signatures that are more than 180 days old. *Fair and Equal Michigan v. Benson*, No. 20-000095-MM (Mich. Ct. Cl. Jun. 10, 2020).

49. The 7th Circuit granted an extension of the petition submission deadline for third party candidates and lowered the number of required signatures. *Libertarian Party of Illinois v. Cadigan*, No. 20-1961 (7th Cir. June 21, 2020).

50. PNP approached the Oregon Secretary of State to request accommodations similar to those described above given the challenges faced by PNP, through no fault of its own, during the authorized signature collection period. Specifically, PNP requested that Oregon's signature submission deadline during this unique time be extended until August 17 and the 2018 threshold for referenda (58,789) be adopted as the most appropriate basis of demonstrating sufficient support in light of the pandemic-related orders prohibiting in-person signature gathering.

51. The Secretary of State refused PNP's request and made no adjustment to its pre-Pandemic requirements to account for the current exceptional circumstances and burdens on signature-gathering activities.

CAUSE OF ACTION

COUNT I – Undue Burden on Ballot Access and Rights to Freedom of Speech and Association Under the First and Fourteenth Amendments to the U.S. Constitution

52. Plaintiffs reallege and incorporate by reference all prior paragraphs as though fully set forth herein.

53. The First Amendment and Fourteenth Amendment to the United States Constitution secure the rights of Oregonians to speech and political expression free from government interference or hinderance. Circulation of petitions is core protected speech. *Prete v. Bradbury*, 438 F.3d 949, 961 (9th Cir. 2006); see also *Meyer v. Grant*, 486 U.S. 414, 420 (1988).

54. Regulations and restrictions on the right to vote and engage in political expression is assessed under the sliding-scale standards established by *Anderson v. Celebrezze*, 460 U.S. 780 (1984) and *Burdick v. Takushi*, 504 U.S. 428 (1992). If a severe burden on these rights are established, then strict scrutiny applies. *See, e.g.*, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966).

55. The challenged restrictions, Oregon's pre-Pandemic signature count requirement and submission deadline as applied to PNP during the Pandemic and related public health orders, impose a severe burden on the Plaintiffs' First and Fourteen Amendment rights by making it nearly impossible to place the initiative on the ballot. This severe burden earns strict scrutiny for the challenged regulations under the *Anderson/Burdick* standard. *Angle v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012).

56. Defendant's maintenance of both the pre-Pandemic number of signatures required as well as the deadline for submitting signatures cannot survive strict scrutiny in light of the

government regulations in response to the COVID-19 pandemic. The requirements as applied to PNP are not narrowly tailored to further a compelling government interest.

57. Moreover, Defendant has no compelling interest in effectively barring the Initiative from appearing on the ballot. The Defendant's interest in ensuring that the Initiative has enough verified public support before appearing on the ballot can be accomplished through less restrictive means.

58. Requiring the Initiative to be submitted for verification with 149,360 signatures by July 2, 2020 will likely unnecessarily preclude the Initiative from appearing on the ballot. More time can—and should be—allotted to collect and verify signatures and the signature threshold should be lowered to ensure Plaintiffs' right to engage in political speech is sufficiently protected. Doing so will not compromise the government's interest in ensuring that only verified initiatives are included on the ballot or that sufficient support for the initiative exists to place it on the 2020 ballot. Even if more time is allotted to gather the required signatures, the Defendant and her employees in the Secretary of State's office will have sufficient time to verify the Initiative. And even if fewer signatures are required to be submitted for verification, the Defendant and her employees will still be able to confirm the significant voter support for placing the matter on the ballot.

59. Absent relief from this Court, Plaintiffs will suffer irreparable harm. Plaintiffs have no adequate remedy at law. If the court does not order relief, Plaintiffs will be prevented from engaging in constitutionally protected speech in violation of the First and Fourteenth Amendments. In addition, Plaintiffs will be unable to place before the voters an option to change

how redistricting is conducted prior to the redistricting process that takes place only once each decade.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the application of Oregon Constitution Art. IV §§ 1(2)(e) and 1(4)(a), and all related laws, rules, or policies, as applied to the Initiative violates the U.S. Constitution by unduly burdening the initiative process.
2. Declare that the application of Oregon Constitution Art. IV § 1(2)(c), and all related laws, rules, or policies, as applied to the Initiative violates the U.S. Constitution by unduly burdening signature gathering efforts in support of the Initiative.
3. Enjoin enforcement of signature submission and verification deadlines, and all related laws, rules, or policies, as applied to the Initiative.
4. Enjoin enforcement of signature totals requirement, and all related laws, rules, or policies, as applied to the Initiative.

DATED: June 30, 2020

SHERMAN, SHERMAN, JOHNNIE & HOYT, LLP

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF OREGON, NAACP OF EUGENE/SPRINGFIELD, INDEPENDENT PARTY OF OREGON, and C. NORMAN TURRILL, Plaintiffs, v. BEVERLY CLARNO, OREGON SECRETARY OF STATE, Defendants.	Case No. 20-01053-MC **DECLARATION OF TED BLASZAK IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, TED BLASZAK, declare that:

1. I am the president and owner of Initiative and Referendum Campaign Management Services (IRCMS), and have been since 2000. I have been managing political campaigns since 1985. IRCMS has qualified 75 initiatives for the ballot in 14 states, including Oregon. Through IRCMS, I have qualified 20 measures for the ballot in Oregon. I have been active in Oregon politics and campaigns since 1998.

2. I began discussions in the summer of 2019 with the organizers of what became the People Not Politicians (PNP) campaign to qualify Initiative Petition (IP) 57 for the 2020 general election ballot.

3. From my experience in Oregon campaigns, I know that, to traditionally qualify a statewide ballot measure, its organizers must have public support, adequate financing, in-person access to potential petition signers, endorsers, donors, and volunteer support. As early as February 2020, all these factors were positive, or trending positive, for the PNP campaign. With these factors, I have facilitated and qualified several Oregon ballot measures whose signature-gathering efforts have begun later than April 9. Campaigns seeking to qualify their measures for the ballot by signature-gathering campaigns have successfully gathered and submitted qualifying signatures to the Oregon Secretary of State in shorter periods of time than the April 9-July 2, 2020, period available to the PNP campaign.

4. In a traditional signature-gathering campaign, petition circulators (signature gatherers)—armed with clipboards, petitions, and pens—typically operate in high-traffic public spaces. The most efficient locations for collection are those where a large number of people concentrated in a small area, such as public transit stations, shopping centers, farmers markets, libraries, fairs, rallies, parades, and concerts. Inevitably, in-person signature collection depends

on conversing with strangers in close quarters, while passing around clipboards, sheets, and pens. To qualify initiatives for the ballot, using paid circulators produces a superior result to the use of volunteer circulators, because paid circulators dedicate more time to this activity than volunteer circulators. Face-to-face, in-person communication with a potential petition signer is optimal.

5. In my opinion, the PNP campaign faced a perfect storm of adverse consequences starting in mid-March 2020, beginning with the Governor's Executive Orders successively restricting and then eliminating, for all practical purposes, the until-now standard, accepted, and successful method of collecting signatures in person.

6. PNP's 500,000-piece signature solicitation mailed in late May was one of the few that ever attempted this signature-gathering strategy for an initiative in Oregon. This strategy has never succeeded in Oregon political history for a statewide initiative.

7. In PNP's mail signature-soliciting campaign, the statistics were excellent—six percent of all households returned signatures on the five-line signature sheet included in the mailing, which also included a postage-paid preaddressed envelope (PPPAE). The returned PPPAE contained petitions with an average of two signatures.

8. Despite the Executive Orders, the PNP campaign's non-PPPAE returns were also good. I worked in a previous signature-gathering effort with partners and coalitions similar to PNP's—the American Association of University Women, the League of Women Voters, and Common Cause. In the prior campaign, those groups, without the hindrance of any Executive Orders comparable to those of the spring of 2020, were able to produce approximately 20,000 signatures. In the PNP campaign, measured by the number of non-PPPAE envelopes returned, the volunteer circulators produced approximately 4,000 signatures.

9. Based upon my experience in Oregon signature-gathering campaigns, using normal in-person signature collection efforts, my clients in Oregon ballot measure campaigns received an average of 15,000-20,000 signatures per week. Under normal signature-gathering circumstances, including adequate financial, public, and volunteer support, an initiative campaign could have collected and submitted to the Oregon Secretary of State at least 150,000 valid signatures between April 9 and July 2, 2020.

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

Dated: June 30, 2020

s/ Ted Blaszak

TED BLASZAK

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF OREGON, NAACP OF EUGENE/SPRINGFIELD, INDEPENDENT PARTY OF OREGON, and C. NORMAN TURRILL, Plaintiffs, v. BEVERLY CLARNO, OREGON SECRETARY OF STATE, Defendants.	Case No. 20-01053-MC **DECLARATION OF C. NORMAN TURRILL IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, C. NORMAN TURRILL, declare that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: June 30, 2020

s/ C. Norman Turrill

C. NORMAN TURRILL

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF OREGON, NAACP OF EUGENE/SPRINGFIELD, INDEPENDENT PARTY OF OREGON, and C. NORMAN TURRILL, Plaintiffs, v. BEVERLY CLARNO, OREGON SECRETARY OF STATE, Defendants.	Case No. 20-01053-MC **DECLARATION OF CANDALYNN JOHNSON IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, CANDALYNN JOHNSON, declare that:

1. I have been a resident of Oregon since 2005. I have been active in Oregon politics and campaigns since 2014.

2. I have been involved in the People Not Politicians (PNP) campaign to qualify Initiative Petition (IP) 57 for the 2020 general election ballot, and its predecessor efforts and activities, since August of 2018.

3. My duties of the PNP campaign since 2019 have included, and do include: Acting as official spokesperson for the campaign at events and speaking engagements; supporting and actively expanding the PNP coalition through outreach; management of logistical daily activities for the petition-processing office; recruitment and on-boarding of campaign volunteers; internal and third-party communications; administrative needs (including serving as the minutes-taker at all meetings of the PNP campaign's Executive Committee; I attended all Executive Committee meetings); community outreach; building and maintaining the campaign calendar for events; database management and communications with the public via email, social media, and speaking engagements.

4. My efforts included holding, from late 2018 into 2020, around the state, a series of forums and presentations on the need for redistricting reform, assisting in the drafting of the initiatives in 2019, and recruiting volunteer circulators for in-person signature collection in early 2020.

5. Among my initial duties as PNP deputy campaign manager starting in January 2020 were to seek out persons and entities who might be, or were, in favor of IP 57, and to

increase the number of coalition partners. In performing those functions, I have sought out, talked with, had meetings with, recruited, or made presentations throughout most of Oregon, to a minimum total of a thousand persons, and at least 30 entities (such as academic, service, civic, and professional groups) from as early as September 2018 to today. I know that other officers for the PNP campaign were similarly engaged on behalf of the campaign, because I was present at all meetings of the campaign's Executive Committee (usually held weekly, if not more frequently), and took notes of the meetings for the campaign. Before the Executive Orders shut down volunteer signature gathering, I had a list that include at least of 77 people who had volunteered to be circulators.

6. I was fully engaged in these activities until early March, when groups with whom I had scheduled meetings began cancelling them, telling me they were doing so because of fears of the COVID-19 virus. Further, in response to the Governor's Executive Orders and the restrictions therein commencing in mid-March, I had to greatly reduce, and finally eliminate, my live, in-person interactions with people on behalf of the PNP campaign. The PNP campaign was preparing to sponsor an appearance in April 2020 by some of the members of California's citizen redistricting commission, on which IP 57's commission was largely based; that event had to be cancelled because of the restrictive Executive Orders. Some groups with whom I had planned to meet in person, and now could not do so because of the Executive Orders, were unable to confer with me via various video platforms, because of lack of capability, access, or both.

7. Despite these tremendous challenges, PNP has engaged in a good faith effort to meet the qualifying signature requirements through the unconventional means of relying exclusively on downloadable and mail petition signature-gathering methods. However, with that

diminished access to voters, I could not produce the campaign results, in solicitation and adding coalition members, that I was able to do before the Executive Orders were issued. In my opinion, these restrictions greatly reduced the overall impact and efficacy of the PNP campaign, and my own ability to recruit, inspire, activate, and gather more supporters for the PNP campaign.

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

Dated: June 30, 2020

s/ Candalynn Johnson

CANDALYNN JOHNSON

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF OREGON, NAACP OF EUGENE/SPRINGFIELD, INDEPENDENT PARTY OF OREGON, and C. NORMAN TURRILL, Plaintiffs, v. BEVERLY CLARNO, OREGON SECRETARY OF STATE, Defendant.	Case No. 6:20-cv-01053-MC DECLARATION OF SUMMER S. DAVIS IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I, Summer S. Davis, declare under penalty of perjury:

Experience and Qualifications

1. I am a Compliance Specialist 3 with the Elections Division of the Oregon Secretary of State. I have been continuously employed by the Elections Division since April 24, 2000.

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2. Some of my job responsibilities include overseeing the initiative and referendum petitions process, including conducting signature verification. During my employment with the Elections Division, I have participated in signature verification for at least 87 different initiative petitions. I am also the Elections Divisions lead on the Conduct of Elections, the State Voters' Pamphlet, and compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), among other functions. As Conduct of Elections lead, I provide assistance on using the Oregon Centralized Voter Registration (OCVR) database to administer an election, certifying the ballot, creating the official abstract of votes and official voter registration and participation statistics, and coordinating the post-election hand-count process. I am also familiar with other aspects of the administration of Oregon elections.

3. I make this declaration from personal knowledge, to the best of my recollection, and based on records regularly maintained by the Elections Division in the ordinary course of business.

Initiative Petition Process

4. Before an initiative petition is approved for circulation, chief petitioners must take several initial steps: submit form SEL 310 for a prospective initiative petition including the text of the proposed legislation or constitutional amendment, submit at least 1,000 valid sponsorship signatures, receive a certified ballot title (which sometimes requires a decision of the Oregon Supreme Court), receive cover and signature sheet templates and use the templates to prepare cover and signature sheets exactly as they intend to circulate. Prospective initiative petitions may be submitted, and these initial steps completed, for future election cycles at any time. For the 2020 election cycle, 68 petitions took the initial step of filing a prospective initiative petition, beginning with Initiative Petition ("IP") 1 (2020) filed on February 6, 2018. As of July 7, 2020, eight prospective petitions have

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already been submitted for the 2022 ballot, beginning with IP 1 (2022) filed on March 1, 2019.

5. To ensure uniformity within a petition cycle and to avoid voter confusion, petitions may not be approved for circulation until after the deadline to submit signatures for the prior general election cycle. Initiative petitions that have completed the initial requirements listed in the paragraph above may be approved for circulation at any time after the prior cycle's petition deadline. For the 2020 general election, July 9, 2018, was the first day a petition could be approved for circulation. On October 17, 2018, IP 1 (2020) became the first petition approved for circulation for the 2020 cycle. For the 2022 general election, chief petitioners for IP 1 (2022) have already submitted 1,000 sponsorship signatures and received a certified ballot title. Beginning July 6, 2020, the IP 1 (2022) chief petitioners could seek approval to circulate their petition by completing the final pre-circulation step: submitting cover and signature sheets to the Elections Division for review and approval to circulate.

6. Two initiative petitions qualified for the 2020 general election ballot by submitting a sufficient number of valid signatures by the July 2, 2020 deadline: IP 34, which was approved for circulation on September 26, 2019, and IP 44, which was approved for circulation on November 26, 2019.

7. As of July 2, 2020, seven initiative petitions had not yet submitted signatures but remained eligible to do so. Three of those petitions were IP 57, IP 58, and IP 59; IP 58 and IP 59 proposed similar constitutional amendments to IP 57 and were submitted by the same chief petitioners. The other four initiative petitions (IP 1, IP 10, IP 46, and IP 60) were unrelated. All seven petitions are no longer eligible for certification for the 2020 ballot because a sufficient number of signatures was not submitted for verification by July 2 at 5 p.m.

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8. Historically, multiple initiative petitions qualify for the ballot each election cycle, but typically fewer than half the number of initiative petitions that are approved for circulation ultimately qualify. The following table summarizes the number of initiative petitions filed with the Secretary of State, the number of initiative petitions approved for circulation, the number of initiative petitions that submitted sufficient valid signatures by the deadline to qualify for the ballot, the number of qualified petitions that proposed constitutional amendments, and the latest date a proposed constitutional amendment that qualified for the ballot was approved for circulation for each election cycle since 2010:

Election Year	IPs Filed	IPs Approved To Circulate	IPs Qualified	Constitutional IPs Qualified	Latest Circulation Qualified Const. IP
2020	68	11	2	0	n/a
2018	45	12	4	3	3/7/2018
2016	82	16	4	0	n/a
2014	59	20	4	1	12/20/2013
2012	45	18	7	3	4/17/2012
2010	83	20	4	1	2/19/2010

9. Of the 30 initiative petitions proposing constitutional amendments that have qualified for the ballot from the 2000 election to present, all but two of the petitions were approved for circulation no later than March of the election year. The two exceptions were Measure 85 in 2012 (Protect Oregon's Priorities III, approved April 17, 2012) and Measure 36 in 2004 (Constitutional Definition of Marriage, approved May 21, 2004).

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Initiative Petition 57

10. The Elections Division posts a record of administrative actions taken on initiative petitions in the Initiative, Referendum, and Referral database on the Secretary of State's public website.

11. A copy of the record of administrative actions for Initiative Petition 5 for the 2020 election, which proposed a constitutional amendment to change the redistricting process, is attached as Exhibit A to this declaration. That record shows that on June 19, 2018, chief petitioners for Initiative Petition 5 filed a prospective petition and withdrew it on October 31, 2019.

12. A copy of the record of administrative actions for Initiative Petition 57 ("IP 57") for the 2020 election is attached as Exhibit B to this declaration. That record shows that on November 12, 2019, chief petitioners for IP 57, C. Norman Turill and Sharon K. Waterman, filed a prospective petition. On December 5, 2019, the petitioners submitted sponsorship signatures submitted for verification, which were verified on December 20, 2019. The Attorney General filed a draft ballot title on December 30, 2019. After public comment, the Attorney General filed a certified ballot title on January 30, 2020. The ballot title was appealed to the Supreme Court on February 13, which approved the ballot title with no changes on March 27. IP 57 was approved for circulation on April 9.

13. The Initiative, Referendum, and Referral database also includes the complete text of IP 57, which is attached as Exhibit C to this declaration, and the ballot title, which is attached as Exhibit D to this declaration.

14. Individuals gathering signatures may be paid to do so, or may gather signatures as a volunteer. Any circulator who is being paid to gather signatures must register with the Elections Division. Only five people registered to gather the 1,000 sponsorship signatures for IP 57. No person has registered as a paid circulator for IP 57 since the petition was approved to circulate.

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15. At approximately 4 p.m. on July 2, 2020, the chief petitioners for IP 57 submitted signature sheets to me at the Elections Division. According to the SEL 339 accompanying the submission, it included 64,172 signatures. I rejected the submission because it did not contain the number of signatures required to qualify for the ballot.

COVID-19

16. Beginning in March 2020, the Elections Division received numerous requests by phone and email to change the requirements for initiative petitions, including an extension of the submission deadline, a reduction in the number of signatures required, acceptance of digital signatures or non-original signature sheets, and amendment to the Elections Date specified by chief petitioners on the SEL 310. These petition requirements are established by the Oregon Constitution or by statute and the Secretary of State does not have the authority to make changes. Lacking any authority, the Elections Division did not make any changes to the petition requirements.

17. The most formal request for a change of the petition requirements was made by Rebecca Gladstone and Norman Turrill, which the Elections Division received on March 13, 2020. A copy of that request is attached as Exhibit E to this declaration. On June 9, 2020, the Elections Division formally responded to the request. A copy of that response is attached as Exhibit F to this declaration.

18. On May 7, 2020, I exchanged emails with Rebecca Tweed, an authorized agent of the chief petitioners for IP 57. A copy of those emails is attached as Exhibit G to this declaration.

19. The State Initiative and Referendum Manual provides guidelines for circulation of petitions, including statutory requirements, and the Elections Division may provide informal guidance to petitioners regarding these requirements. A different organization circulating initiative petitions informed me of its process to continue soliciting voter

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signatures within the Governor's executive orders. I took no action to discourage that organization from going forward with its plans.

20. IP 34 submitted for verification 31,209 signature lines collected from May 22, 2020 to June 29, 2020. IP 44 submitted for verification 26,133 signature lines for verification collected from May 22, 2020 to June 30, 2020.

Petition Signature Verification Process

21. The signature verification process for initiative petitions is governed by statutes and administrative rules. Although there are various statutes and rules that apply, the key statute is ORS 250.105, and the key administrative rules are OAR 165-014-0030, OAR 165-014-0270, and OAR 165-014-0275, as well as the 2020 Initiative and Referendum Manual, which was adopted by OAR 165-014-0005.

22. After signatures are submitted to the Elections Division for verification, but before determining the validity of the signatures contained within the submittal, each signature sheet is reviewed for compliance with the requirements of statutes and administrative rules. This review determines if individual signature sheets will be "accepted for verification" and what signature lines will be included in the pool of signatures which the statistical sample will be drawn from. The sample is not generated until a sufficient number of signature lines have been accepted for verification for an initiative to qualify for the ballot.

23. Next, samples are drawn from the signature lines accepted for verification. If petitioners make multiple submissions, samples must be separately drawn from each complete submittal: (i) a sample of 5.01% of the primary signature submissions (which is divided between a sub-sample of 1,000 signatures and a sub-sample of the remaining signatures), and (ii) a sample of 5.01% of each subsequent submission of signatures accepted for verification or 250 signatures, whichever is greater.

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24. For each signature line in the random sample, Elections Division staff must identify the person who signed the line, locate the signer's registration record in the OCVR database (sometimes after several searches), and compare the signature provided on the petition sheet to signatures contained in the voter's registration record. To be counted as valid, the signer must have been an active registered voter at the time they signed the petition and the Elections Division must be able to match the handwriting characteristics of the signature on the sampled signature line to the handwriting characteristics of the signatures contained in the voter's registration record.

25. A statistical sampling formula developed by a statistician and adopted by rule by the Secretary of State is used to determine if the petition contains the required number of signatures. The formula is applied to the number of signatures in a sample determined to be valid and is used to calculate an estimate for the number of duplicate or triplicate signatures in the petition. If the total number of valid signatures less the estimate for duplicate or triplicate signatures is equal to or greater than the number of signatures necessary, the Secretary of State certifies that the initiative petition has qualified for the ballot. The Elections Division first verifies the signatures in the 1,000-signature-line sub-sample. If, using the formula adopted by rule, the results of the initial sub-sample shows that the petition has sufficient signatures to qualify for the ballot with an assumed 8% duplication rate required by statute, and at a 95% or greater level of confidence, the petition is deemed qualified and the Division conducts no further verification of the signatures for that petition. Otherwise, the Elections Division verifies the remainder of the 5.01% sample to determine whether a sufficient number of valid signatures have been submitted to qualify for the ballot.

26. A video depicting the signature-verification process is available at https://www.youtube.com/watch?v=qWdJ4TJEl5Q&feature=youtu.be. It fairly and accurately describes the processes the Elections Division uses to verify signatures.

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27. The percentage of initiative petition signatures submitted for verification that are determined to be valid varies widely from petition to petition. Under the current sampling formula adopted in 2007, the highest percentage of valid signatures was 86.22% (IP 22 in 2018) and the lowest percentage of valid signatures was 53.68% (IP 24 in 2012). The Elections Division has completed verifications for two initiative petition submissions in 2020. For IP 44, the Elections Division determined 74.75% of the signatures accepted for verification were valid. For IP 34, the Elections Division determined 82.30% of the signatures accepted for verification in its combined early and supplemental submittals were valid.

28. In 2018, all four initiative petitions that qualified for the ballot, including IP 31, were deemed qualified after verification of the 1,000 signature sub-sample. Verification of the 1,000 signature sub-sample for IP 31 was completed after work conducted on ten different days, including days in which sorting and data entry were conducted before the initial submission was complete.

29. I cannot reliably estimate the length of time for the Elections Division to determine whether a particular petition has submitted a sufficient number of signatures. The average time it takes to determine the validity each signature varies significantly from petition to petition. Factors affecting the average time to verify a signature on a given petition include but are not limited to: the legibility of the signature sheets, the percentage of signers who are not registered to vote, and the percentage of signers who signed more than once. The more signatures petitioners submit for verification, the longer the verification reviewing a 5.01% sample of the signatures submitted will take, other things equal.

30. The Elections Division has adapted its signature review operations to allow appropriate social distancing between employees to minimize the risk of exposure to COVID-19. In addition to the risk COVID-19 poses to the health of individual workers, if the illness

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were to spread among the Elections Division's small staff it could make it exceedingly difficult to meet our obligations to administer the 2020 General Election. To ensure the physical security of the petitions and facilitate public observation, the review of petition signatures is conducted in a single room. Only four employees, including me, can simultaneously work safely in that space. In past years, up to eight employees worked simultaneously to verify petition signatures.

31. Three verifications of initiative petitions have been conducted under these conditions. It took 12 days of work, dedicated almost entirely to signature verification, to verify IP 44's initial submission of 163,473 signatures. The verification of IP 34's initial submission of 135,573 signatures took 21 days of work, again dedicated almost entirely to signature verification despite the other business needs of the Elections Division. The verification of IP 34's supplemental submission of 31,209 signatures took 6 days of work, again focused almost entirely on signature verification. Dedicating staff time nearly entirely to signature verification during the work day presents challenges to completing the other work of the Elections Division. This is particularly true when trying to meet statutory or other legal deadlines that co-exist or come due at the same time.

Ballot Design, Printing, and Mailing

32. Under ORS 254.085, the Elections Division issues a directive no later than 61 days before a general election (this year, September 3) that includes the Official Ballot Statements, and provides instructions county officials must use to design and print ballots. The Official Ballot Statement for candidates lists the federal and state contests to appear on the ballot, including the exact language to be printed on the ballot for each contest and the order in which contests and candidates must be listed. For state ballot measures, the Official Ballot Statement specifies the ballot title and financial estimate language to be printed on the ballot. Attached as Exhibit H to this declaration is a copy of the Secretary of State's directive issued for the 2018 general election, which follows the

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same form as prior years. I expect the Secretary of State's directive for the 2020 general election will follow a similar form.

33. After receiving the directive, each county must then design the ballots for the election, combining the federal and state contests with contests for counties, special districts, and other localities. Page 25 of the Secretary of State's Vote By Mail Procedures Manual provides guidance to county officials to encourage design choices to minimize voter confusion. County officials must design multiple unique ballot styles so each voter receives a ballot listing only the local races in which he or she is eligible to vote based on district and precinct boundaries. I expect there to be more than 2,500 ballot styles across the state for the 2020 general election. I expect Clackamas, Multnomah and Washington Counties to have the most ballot styles (approximately 275 ballot styles in each county), and Harney, Jefferson and Malheur Counties to have the fewest ballot styles (approximately 6 ballot styles in each county).

34. After designing ballots, county officials must print the ballots and assemble the initial mailing. Although I have never served as a county official, I am generally familiar with the manner in which county officials direct the printing of ballots. The counties' methods of printing ballots vary, but many counties contract with private vendors to print ballots. Based on my experience with vendors that print election related materials during the COVID-19 emergency, vendors now have less capacity and longer turnaround times than in past years.

35. Counties also vary in their approach to mailing ballots, with some counties relying on vendors while others directly employ permanent and temporary workers to assemble the mailing. County officials have modified and are expected to continue to modify their mailing processes to ensure their staff and vendors take appropriate precautions against COVID-19.

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36. Under federal law, county election officials must send general election ballots to military and overseas voters by September 19, 2020. A military or overseas voter could be sent any one of the ballot styles available, because the ballot style sent to a military or overseas voter depends on the Oregon address where the voter is registered. I believe the time allowed between the directive and the military and overseas mailing deadline is necessary to give the counties time to design, print, assemble, and mail these ballots. Based on my experience the 16 days provided between September 3 and September 19 is sufficient for this purpose.

37. Based on the information provided to the public by the U.S. Postal Service, international mail delivery has slowed due to COVID-19. The Elections Division intends to encourage county election officials to mail military and overseas ballots as soon as they are able to do so, including mailing ballots before the September 19 federal deadline, so military and overseas voters receive their ballots as soon as possible. In the 2018 general election, 77 military and overseas ballots were rejected because they were returned to county elections offices after the return deadline.

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

EXECUTED on July 9, 2020.

SUMMER S. DAVIS

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Oregon Secretary of State
Elections Division
Initiative, Referendum, and Referral Search

Detailed Display: 1 records

Search Date: Sunday 07/05/2020

Election Year	Keyword	Active	Qualified	Rejected	Withdrawn	Approved to Circulate	Will Pay Circulators	Statutory	Constitutional
2020	..	..	..	..	..	..	..	Y	Y

Detailed Information For : 5/2020

Initiative Number	Date Filed	Will Pay Petitioners	Statutory/ Constitutional	Signatures Required	Approved For Circulation	Current Status	Ballot Measure Number
5	06/19/2018	Yes	Constitutional	149,360		Active	Not Certified

Chief Petitioner Details

Name	Kevin Mannix	Name	Michele Fletchall	Name	Charles Lee
Address	2007 State St. Salem, OR 97301	Address	4262 Bison Ct NE Salem, OR 97305	Address	6316 Hogan Dr N Keizer, OR 97303
Contact Information	Phone: (503)364-1913 Fax:()-	Contact Information	Phone: ()- Fax:()-	Contact Information	Phone: ()- Fax:()-

Ballot Titles

Subject (Provided by chief petitioners) (view complete text of Initiative)
Establish Citizen Commission for Legislature Redistricting
Draft Ballot Title (view complete title received: 12/05/2018, or comments deadline: 12/19/2018)
Amends Constitution: Creates commission for legislative redistricting, changes redistricting requirements; commissioners represent areas with very unequal populations
Certified Ballot Title (view complete title and AG letter received: 01/07/2019) (appeal deadline: 01/22/2019)
Amends Constitution: Transfers legislative redistricting to commission; commission over-represents rural areas; changes redistricting requirements; limits judicial review

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Amended Ballot Title (view complete title received: 09/04/2019) or (supreme court opinion received: 06/06/2019)
Amends Constitution: Repeals redistricting process performed by legislature; creates new redistricting commission; membership weighted toward rural areas

06/19/2018 Prospective petition filed. To begin the ballot title drafting process, chief petitioners must submit 1,000 sponsorship signatures.
11/09/2018 Sponsorship signatures submitted for verification.
11/27/2018 Signature verification of sponsorship signatures completed. Petition contains 1,294 signatures.
01/22/2019 Appealed to Supreme Court.
09/04/2019 Judgement Received. Certified Ballot Title modified by Attorney General.
10/31/2019 Withdrawn by Chief Petitioners.

END OF SEARCH

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Oregon Secretary of State
Elections Division
Initiative, Referendum, and Referral Search

Detailed Display: 1 records

Search Date: Sunday 07/05/2020

Election Year	Keyword	Active	Qualified	Rejected	Withdrawn	Approved to Circulate	Will Pay Circulators	Statutory	Constitutional
2020	..	..	..	..	..	..	..	Y	Y

Detailed Information For : 57/2020

Initiative Number	Date Filed	Will Pay Petitioners	Statutory/ Constitutional	Signatures Required	Approved For Circulation	Current Status	Ballot Measure Number
57	11/12/2019	Yes	Constitutional	149,360	04/09/2020	Active	Not Certified

Chief Petitioner Details

Name	C. Norman Turrill	Name	Sharon K. Waterman		
Address	3483 SW Patton Rd. Portland, OR 97201	Address	87518 Davis Creek Ln. Bandon, OR 97411		
Contact Information	Phone: (503)807-4863 Fax:()-	Contact Information	Phone: (541)347-3453 Fax:()-		

Ballot Titles

Subject (Provided by chief petitioners) (view complete text of Initiative)
People Not Politicians
Draft Ballot Title (view complete title received: 12/30/2019, or comments deadline: 01/14/2020)
Amends Constitution: Repeals legislative redistricting process; creates congressional/state redistricting commission; equal representation of Democrats, Republicans, others
Certified Ballot Title (view complete title and AG letter received: 01/30/2020) (appeal deadline: 02/13/2020)
Amends Constitution: Repeals legislative redistricting process; creates congressional/state redistricting commission; equal number of Democrats, Republicans, others
Amended Ballot Title (supreme court opinion received: 03/26/2020)
Certified Ballot Title approved without changes

Notes

11/12/2019 Prospective petition filed. To begin the ballot title drafting process, chief petitioners must submit 1,000 sponsorship signatures.
12/05/2019 Sponsorship signatures submitted for verification.
12/20/2019 Signature verification of sponsorship signatures completed. Petition contains 1,656 signatures.
12/30/2019 Revised text submitted.
02/13/2020 Appealed to Supreme Court
03/27/2020 Judgement Received from Supreme Court. Ballot Title approved with no changes.
03/30/2020 Official templates issued.
04/09/2020 Approved to circulate on canary paper stock for any petition sheet that will be circulated by paid circulators.
04/09/2020 Approved to circulate on white paper stock for any petition sheet that will be circulated by volunteer circulators.

END OF SEARCH

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RECEIVED
DEC 27, 2019 2:50pm
Elections Division

OREGON REDISTRICTING BALLOT MEASURE
LEGISLATIVE AND CONGRESSIONAL FINDINGS

Whereas Election Day is when Oregonians exercise their right to vote and make their voice heard, and the people of Oregon need an independent commission to draw fair and impartial districts so that every vote matters; and

Whereas under current law, Oregon politicians draw the boundaries for their own state and congressional districts, a serious conflict of interest that harms voters; and

Whereas state and national level districting and redistricting rules should be determined by a politically neutral entity; and

Whereas Oregon state legislators draw district boundary maps every 10 years based on national census data; and

Whereas in the 2020 census, Oregon is projected to gain another U.S. congressional seat due to population growth, making fair districts more important than ever; and

Whereas 96.3% percent of incumbent politicians were re-elected in the districts they had drawn for themselves year after year; and

Whereas current law allows politicians to draw districts to serve their interests, not those of our communities, dividing places like Clackamas, Salem and Eugene into multiple oddly shaped districts to protect incumbent legislators; and

Whereas the people of Oregon in many communities have no political voice because they have been split into as many as four different districts to protect incumbent legislators; and

Whereas the people of Oregon believe in fairness, accountability and transparency in political processes; and

Whereas fully one in three Oregonians are not registered as either Democrats or Republicans, and have no representation in the Oregon State Assembly or United States Congress; and

Whereas Oregon legislative and congressional districts should be drawn to represent voters from all party affiliations, income levels, backgrounds, identities, and all corners of Oregon; and

Whereas voters across the country – from Arizona to California to Colorado to Michigan – have been moving to reject partisan gerrymandering, adopting reforms to make the redistricting process open and impartial so it is controlled by people, not partisan politicians; and

Whereas an independent Oregon Citizens Redistricting Commission provides a greater opportunity for under-represented communities like low-income Oregonians, persons of color, rural Oregonians and seniors to have a voice in their representation; and

Whereas the people of Oregon, find it necessary to create an independent Citizens Redistricting Commission to draw the state legislative and congressional districts in an impartial and fully transparent manner, that will promote inclusion and representation of all Oregonians; and

Whereas the people of Oregon find it necessary to reform Oregon's congressional redistricting process to account for the projected addition of a new sixth congressional seat with a fair, open, multi-partisan commission to draw districts that represent all voters; and

Whereas the people of Oregon, find it necessary to give otherwise-affiliated voters—whose voices are under-represented in the Oregon State Assembly and the United States Congress—an equal voice and vote on the commission alongside Democrats and Republicans; and

Whereas the people of Oregon, find it necessary to require the independent Citizens Redistricting Commission to draw state legislative and congressional districts based on strict, nonpartisan rules designed to ensure fair representation, and to propose reform that will take redistricting out of the partisan battles of the Oregon Legislative Assembly and guarantees redistricting will be carried out by a group of impartial Oregonians, in open public meetings, without favor to incumbents or parties, and for every aspect of this process to be open to scrutiny by the public and the press; and

Whereas the people of Oregon, find it necessary to create an independent Citizens Redistricting Commission because we believe Oregon voters should choose their representatives—representatives should not choose their voters; and now, therefore,

POLICY AND PURPOSES

PARAGRAPH 1. The Constitution of the State of Oregon is amended by repealing sections 6 and 7, Article IV, and by adopting the following new sections 6 and 7 in lieu thereof, such sections to read:

Sec. 6. (1) The Citizens Redistricting Commission is established. The commission shall consist of twelve commissioners and be created no later than March 15, 2021, and thereafter no later than December 31 in each year ending in the number zero.

(2) The Secretary of State shall adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of subsections (3) and (5) of this section by the Office of the Secretary of State.

QUALIFICATIONS, DISQUALIFICATIONS

(3)(a) By December 3, 2020, and thereafter August 15 in each year ending in the number nine, the secretary shall initiate a process for individuals to apply for membership on the commission. The process must promote a diverse and qualified applicant pool.

Qualifications

(b) An individual may serve on the commission if the individual:

(A) Is registered to vote in this state;

(B) For the three years preceding the initiation of the application process has been registered in Oregon with the same political party or unaffiliated with a political party; and

(C) Voted in at least two of the three most recent general elections or has been a resident of Oregon for at least the previous three years.

Disqualifications

(c) Notwithstanding paragraph (b) of this subsection, an individual may not serve on the commission if the individual is or, within four years of the initiation of the application process, was:

(A) A holder of or candidate for federal, state, county or other elective office for which the holder receives compensation other than for expenses;

(B) An officer, employee or paid consultant of a political party;

(C)(i) An officer, director or employee of a campaign committee of a candidate for or holder of a federal or state office; or

(ii) A paid contractor or member of the staff of a paid contractor of a campaign committee of a candidate for or holder of a federal or state office.

(D) A member of a political party central committee;

(E) A registered federal, state or local lobbyist;

(F) A paid congressional or legislative employee;

(G) A member of the staff of a holder of a federal or state office;

(H) A legislative or campaign contractor, or staff of the contractor, to a holder of a federal or state office;

(I) An individual who has contributed $2,700 or more in a calendar year to any single candidate for federal or state office; or

(J) A spouse, parent, child, sibling, in-law or cohabitating member of a household of an individual described in subparagraphs (A) to (I) of this paragraph;

(d) For purposes of this subsection, "state office" means the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, state Senator, state Representative, judge or district attorney.

REVIEW PANEL

(4)(a) No later than December 3, 2020, and thereafter January 5 of the year ending in zero, the Chief Administrative Law Judge of the Office of Administrative Hearings or its successor agency, shall designate a Review Panel composed of three administrative law judges to review the applications identified in subsection (5)(a) of this section. Notwithstanding any state law, the chief administrative law judge shall appoint individuals who are reflective of the diversity of this state, including but not limited to racial, ethnic, geographic, and gender diversity, and who possess the most relevant qualifications, including, but not limited to, relevant legal knowledge and decision-making experience, an appreciation for the diversity of the state and an ability to be impartial and promote consensus on the review panel.

(b) The review panel shall include only administrative law judges who have been registered to vote in Oregon and continuously employed by the office of administrative hearings for at least the two years prior to their appointment, who shall be appointed as follows:

(A) One administrative law judge must have been registered for at least the previous two years with the political party with the largest registration in this state.

(B) One administrative law judge must have been registered for at least the previous two years with the political party with the second largest registration in this state;

(C) One administrative law judge must not have been registered for at least the previous two years with either of the two largest political parties in this state.

(c) An administrative law judge may not serve on the review panel if the administrative law judge is an individual described in subsection (3)(c) of this section.

APPLICANT POOL

(5)(a) No later than January 1, 2021, and thereafter March 15 in each year ending with the number zero, after removing applicants with conflicts of interest from the applicant pool as described in subsection (3)(c) of this section, the secretary shall publicize the names of the individuals in the applicant pool in a manner that ensures widespread public access and provide the applications to the review panel.

(b) If the pool of qualified applicants is greater than or equal to 900, the review panel shall randomly select by lot from all of the eligible applicants the names of 300 applicants affiliated with the largest party, 300 applicants affiliated with the second largest party and 300 applicants affiliated with neither of the two largest parties. If any individual sub-pool of eligible applicants contains fewer than 300 applicants, no random selection shall occur for that sub-pool.

(c) No later than February 8, 2021, and thereafter May 15 in each year ending in the number zero, the review panel shall present to the secretary the names of 150 individuals from the applicant pool who possess the most relevant analytical skills, have the ability to be impartial and promote consensus on the commission and demonstrate an appreciation for and are reasonably reflective of the diversity of this state, including but not limited to racial, ethnic, geographic and gender diversity.

(d) The review panel shall choose the individuals for the applicant pool by unanimous vote, with three sub-pools of applicants chosen as follows:

(A) Fifty individuals must be registered with the largest political party in this state;

(B) Fifty individuals must be registered with the second largest political party in this state; and

(C) Fifty individuals must be registered with neither of the two largest political parties in this state.

(e) If fewer than fifty qualified individuals within each sub-pool have applied, the Review Panel shall choose all of the qualified individuals within such sub-pool.

(f) The members of the review panel may not communicate with a member of the Legislative Assembly or the United States Congress, or their agents, about any matter related to the selection of commissioners prior to the presentation of the 150-member applicant pool to the secretary.

RANDOMLY-SELECTED COMMISSIONERS

(6) No later than February 15, 2021, and thereafter July 5 in each year ending in the number zero, at a time and place accessible to members of the public, the secretary shall randomly select by lot six individuals to serve on the commission from the individuals presented under subsections (5)(c) to (e) of this section as follows:

(a) Two individuals must be from the sub-pool of individuals registered with the largest political party in this state;

(b) Two individuals must be from the sub-pool of individuals registered with the second largest political party in this state; and

(c) Two individuals must be from the sub-pool of individuals who are registered with neither of the two largest political parties in this state.

COMMISSIONER-SELECTED COMMISSIONERS

(7)(a) No later than March 15, 2021, and thereafter August 15 in each year ending in the number zero, the six commissioners under subsection (6) of this section shall review the remaining names in the sub-pools and select six additional commissioners. The commissioners shall, without the use of specific ratios or formulas, select additional commissioners who possess the most relevant analytical skills, have the ability to be impartial and promote consensus on the commission and demonstrate an appreciation for and are reasonably reflective of the diversity of this state, including but not limited to racial, ethnic, geographic and gender diversity. When selecting the six additional commissioners, the commissioners may take into account the additional commissioners' experience in organizing, representing, advocating for, adjudicating the interest of or actively participating in groups, organizations or associations in Oregon. The selection shall occur as follows:

(A) Two individuals must be from the sub-pool of individuals registered with the largest political party in this state;

(B) Two individuals must be from the sub-pool of individuals registered with the second largest political party in this state; and

(C) Two individuals must be from the sub-pool of individuals who are registered with neither of the two largest political parties in this state.

(b) Approval of the six additional commissioners requires four affirmative votes of the six initial commissioners, including at least one vote cast by a commission member registered with the largest political party in this state, one vote cast by a commission member registered with the second largest political party in this state and one cast by a commission member who is registered with neither of the two largest political parties in this state.

REMOVAL

(8) The Governor may remove a member of the commission in the event of a substantial neglect of duty or gross misconduct in office, or if a commission member is unable to discharge the duties of the office.

(a) To remove a member, the Governor must:

(A) Serve the member with written notice;

(B) Provide the member with an opportunity to respond; and

(C) Obtain concurring votes from two-thirds of the members of the Senate, which shall convene in special session if necessary.

(b) The member may contest the removal by means of an evidentiary hearing in circuit court in an action in the manner of an action for a declaratory judgment. The circuit court's determination shall take precedence over other matters before the circuit court. Any party may appeal the decision of the circuit court directly to the Supreme Court, which shall accord the highest priority to the matter.

(c) The removal, if contested by the member, shall not be effective until judicial review is concluded.

VACANCY

(9)(a) If a position among the first six randomly selected commissioners on the commission becomes vacant, the commission shall fill the vacancy within 30 days by randomly selecting an appointee from the same sub-pool from which the vacating member was selected. If a position among the final six appointed commissioners becomes vacant, the commission shall fill the vacancy within 30 days by a vote of a simple majority of the remaining commissioners, with at least one commissioner affiliated with each of the two largest political parties in this state and one cast by a commissioner who is registered with neither of the two largest political parties in this state.

(b) If no individual in the applicable sub-pool is available to serve, the review panel shall establish a new sub-pool as provided in subsection (5)(d) of this section, and the commission shall fill the vacancy from the new sub-pool.

HIRING; COMPENSATION; REIMBURSEMENT

(10)(a) The commission shall make all purchasing and hiring decisions and shall hire commission staff, legal counsel and consultants as needed. The commission shall establish clear criteria for the hiring and removal of individuals, conflicts of interest, communication protocols and a code of conduct. A member of the staff or a contractor of the commission or the secretary may not serve the commission or the review panel designated under subsection (4) of this section if the staff member or contractor is an individual described in subsection (3)(c) of this section other than by virtue of the individual being an employee or contractor of the secretary.

(b) The secretary shall provide staff and office support to the commission and the commission staff as needed.

(c)(A) For each day a member is engaged in the business of the commission, the member shall be compensated at a rate equivalent to the amount fixed for per diem allowance that is authorized by the United States Internal Revenue Service to be excluded from gross income without itemization.

(B) For each day a member of the review panel or a member of the commission is engaged in the business of the commission, the member shall receive mileage and reimbursement for other reasonable travel expenses.

(d)(A) An employer may not discharge, threaten to discharge, intimidate, coerce or retaliate against any employee by reason of the employee's service as a commissioner or staff of commission.

(B) If the employment of a member of the commission is interrupted because of the performance of official duties as a member of the commission, the member's employer shall restore the member to the employment status the member would have enjoyed if the member had continued in employment during the performance of the official duties.

(C) Subparagraph (B) of this paragraph does not apply if the employer is a small business. As used in this subparagraph, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $1 million for construction firms or $300,000 for nonconstruction firms over the last three years.

(D) Prior to the initiation of the process for individuals to apply for membership on the commission in each year ending with the number nine, the dollar amounts specified in subparagraph (C) of this paragraph shall be increased or decreased by the secretary based upon any increase or decrease in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding 10-year period. The amount determined under this subparagraph shall be rounded to the nearest $1,000.

TERM OF SERVICE

(11)(a) Commissioners shall serve a term of office that expires upon the appointment of the first member of the succeeding commission. Other than activities expressly authorized by this section and section 7 of this Article, the commission shall only expend funds if there is active litigation or other ongoing commission business.

(b) During the term of office of the commissioners or for a period of three years after resignation or removal, a member of the commission may not:

(A) Hold, or be a candidate for, federal, state, county or other elective office for which the holder receives compensation other than expenses;

(B) Serve in an office for which the holder is appointed or selected by the Legislative Assembly or Congress or a member, committee or house of the Legislative Assembly or Congress;

(C) Receive compensation for serving as a consultant or advisor to a candidate for the Legislative Assembly or Congress or to a member, or committee or house of the Legislative Assembly or Congress; or

(D) Receive compensation for lobbying the Legislative Assembly or Congress.

BUDGET; DATABASE

(12) The Legislative Assembly shall:

(a) Appropriate the funds necessary to permit the commission to fulfill the commission's obligations. For the first year of the redistricting process, the Legislative Assembly shall dedicate funds

for the commission from general tax revenues otherwise available for the operation of the Legislative Assembly. For the first year of the redistricting process, the Legislative Assembly shall appropriate or allocate funds to the commission in an amount not less than the Legislative Assembly appropriates or allocates to the legislative branch for redistricting in the 2019 – 21 biennium. In all future redistricting cycles, the appropriation may not be less than the amount appropriated in the previous redistricting cycle. If new expenditures are required, the dedicated funding source for the commission shall be the income tax. If, after the conclusion of any litigation involving the redistricting, the appropriations to the commission exceed the expenses of the commission, the commission shall return the excess to the General Fund.

(b) Make available a complete and accurate computerized database and precinct shapefiles, for redistricting to the commission.

(13) Except for an Act appropriating monies in a manner described in subsection (12) of this section, the Legislative Assembly may enact an Act that directly impacts the functioning of the commission only when:

(a) The commission recommends by a vote meeting the requirements set forth in paragraph (c) of subsection (2) of section 7 of this Article that the Legislative Assembly enact an Act in order to enhance the ability of the commission to carry out the purposes of the commission;

(b) The commission provides language for the Act to the Legislative Assembly; and

(c) The Legislative Assembly enacts the exact language provided under paragraph (b) of this subsection.

Sec. 7. (1) The Citizens Redistricting Commission shall:

(a) Conduct an open and transparent process enabling full public participation, including public consideration of and comment on the drawing of state legislative and congressional district lines.

(b) Draw district lines according to the redistricting criteria specified in this section.

(c) Conduct all business of the commission with integrity, impartiality and fairness in a manner that reinforces public confidence in the integrity of the redistricting process, including adopting rules that further these purposes.

QUORUM; CHAIR; VOTING

(2)(a) Seven commissioners constitutes a quorum for the conduct of business.

(b) The commission shall select, by a majority vote, one member to serve as chair and one member to serve as vice chair. The chair and vice chair may not be of the same political affiliation.

(c) Official action by the commission requires an affirmative vote by seven or more commissioners.

(d) Approval of the final redistricting maps described in subsection (6) of this section requires seven or more affirmative votes, including at least one vote cast by a commission member registered with the largest political party in this state, one vote cast by a commission member registered with the second

largest political party in this state and one cast by a member who is registered with neither of the two largest political parties in this state.

(e) No more than three commissioners may discuss the business of the commission other than in a public meeting.

TRANSPARENCY; PUBLIC INPUT

(3)(a) The commission shall provide at least 14 days' public notice for each meeting or hearing, except that meetings held within 15 days of August 15, in the year ending in the number one may be held with three days' notice. In the event that the commission must re-convene following a court order according to subsection (7)(d) of this section, meetings and hearings may be held with three days' notice.

(b)(A) The records of the commission pertaining to redistricting and all data considered by the commission in redistricting are public records.

(B) The commission must post records and data in a manner that ensures immediate and widespread public access.

(c) A member of the commission or commission staff or commission consultant may not communicate with an individual who is not a member of the commission or commission staff or commission consultant about redistricting other than in a public hearing. Any written communications regarding redistricting received by a member of the commission or commission staff or a commission consultant shall be considered a public record and shall be made available in a manner that ensures widespread public access.

MAPPING CRITERIA

(4)(a) The commission shall use a mapping process to establish districts for the state Senate and House of Representatives and congressional districts, using the following criteria, to:

(A) Comply with provisions of the United States Constitution and the federal Voting Rights Act (42 U.S.C. 1971 et seq.) or its successor law.

(B) Achieve population equality as nearly as practicable using the total population of Oregon as determined by the decennial census preceding the redistricting process.

(C) Be geographically contiguous.

(D) To the extent practicable, and if possible without conflicting with the criteria set forth in subparagraphs (A), (B) and (C) of this paragraph, respect the geographic integrity and minimize the division of a city, county, local neighborhood, government jurisdiction or community of interest or other contiguous population that shares common social and economic interests and is cohesive for purposes of its effective and fair representation.

(E) To the extent practicable, and if possible without conflicting with the criteria set forth in subparagraphs (A), (B) and (C) of this paragraph, achieve competitiveness.

(b) The commission shall determine and adopt a measure or measures of competitiveness, as defined in paragraph (d) of this subsection, prior to any vote or discussion regarding any legislative or

congressional district plans or proposals. The commission shall then apply such measure or measures when adopting legislative or congressional district plans or proposals.

(c) When establishing districts under this subsection, the commission may not:

(A) Consider the place of residence of a holder of or candidate for public office;

(B) Favor or discriminate against a holder of or candidate for public office or a political party; or

(C) Create a district for the purpose of or with the effect of diluting the voting strength of any language or ethnic identity group.

(d) As used in this subsection:

(A) Common social and economic interests are those common to an urban area, a rural area, an industrial area or an agricultural area and those common to areas in which individuals share similar living standards, use the same transportation facilities, reside in the same watershed, have similar work opportunities or have access to the same media of communication relevant to the election process. Common social and economic interests do not include relationships with political parties, incumbents or political candidates.

(B) Competitiveness means that voting blocs, including partisan and non-affiliated voters, must be substantially and similarly able to translate their popular support into representation in an elected body and that such representation is substantially and similarly reflective of shifts in the electorate's preferences.

HEARINGS

(5)(a) The commission shall hold at least 10 public hearings at locations throughout the state prior to proposing a redistricting plan.

(b) In addition to the hearings required under paragraph (a) of this subsection, the commission shall:

(A) Hold at least five public hearings after a redistricting plan is proposed, but before the plan is adopted; and

(B) Conduct the hearings required under this subsection in each congressional district of this state, specifically at least one hearing in each of Oregon's regions, including coastal, Portland, Willamette Valley, southern, central, and east of the Cascades.

(c) The adoption of a redistricting plan may not be delayed by the impracticability of holding one or more of the hearings required under this subsection.

(d) In holding the hearings required under paragraphs (a) and (b) of this subsection, the commission must:

(A) Provide appropriate public notice of the time and location of each hearing in a manner that ensures widespread public access;

(B) Hold at least one hearing required under paragraph (a) of this subsection and one hearing required under paragraph (b) of this subsection in areas that have experienced the largest shifts in population since the previous redistricting and prioritize holding additional public hearings in these areas; and

(C) Permit and make provision for individuals at remote sites throughout the state to provide public testimony at the hearings through the use of video technology.

ADOPTION OF FINAL MAPS – TIMING, REPORT

(6)(a) No later than August 15 in each year ending in the number one, the commission shall approve final maps that separately set forth the district boundary lines for congressional districts and district boundary lines for the Senate and the House of Representatives.

(b) The commission shall issue, with the final maps, a report that includes an explanation of the basis on which the commission established the districts, responded to public input, and achieved compliance with the criteria listed in subsection (4) of this section and definitions of the terms and standards used in drawing each final map.

(c) If the commission does not approve a final map under subsection (2) of this section, any group of four or more commissioners including at least one commissioner from each sub-pool may submit a map to the Supreme Court by August 29.

COURT REVIEW

(7)(a) The Supreme Court shall adopt rules of procedure for review of redistricting maps. The Supreme Court's review shall take precedence over other matters before the Supreme Court.

(b) Any voter registered in this state may file with the Supreme Court a petition for review of final maps approved by the commission. The petition must be filed on or before September 1.

(c) If the Supreme Court determines that a map approved by the commission under subsection (6)(a) of this section substantially complies with the criteria set forth in subsection (4) of this section, the Supreme Court shall approve the map, which shall go into effect.

(d) If the Supreme Court determines a map approved by the commission under subsection (6)(a) of this section does not substantially comply with the criteria set forth in subsection (4) of this section, the Supreme Court shall remand the map to the commission for correction. The commission shall submit a corrected map within 14 days of the issuance of the remand. If the Supreme Court approves the corrected map, the corrected map shall go into effect. If the Supreme Court does not approve the corrected map, the Supreme Court shall remand the map to the commission for correction. The process of correction and approval or remand shall repeat until the Supreme Court approves a corrected map.

(e) To assist the Supreme Court in reviewing maps, the Supreme Court may appoint a special master and vest the special master with the powers needed to assist the Supreme Court. The powers of the special master shall not include the development of alternative maps.

(f) If one or more maps are submitted under subsection (6)(c) of this section, the Supreme Court shall:

(A) Establish a process for interested persons to become parties;

(B) Review all submitted maps for compliance with the criteria set forth in subsection (4) of this section; and

(C) Select the submitted map that best complies with the criteria set forth in subsection (4) of this section.

(g)The map selected by the Supreme Court shall go into effect without any further action by the commission.

(h) The Supreme Court must complete review or selection of redistricting maps by December 31 of the year in which the maps are due to be certified by the commission under subsection (6) of this section.

(i) Notwithstanding any other law, the Supreme Court has original and exclusive jurisdiction in all proceedings in which a certified final map is challenged.

SUPERSEDENCE, SEVERABILITY

(8) The provisions of this amendment supersede any section of this Constitution with which the provision may conflict. If any provision of this amendment is held to be invalid, the court shall sever the provision and the remaining provisions shall remain in full force and effect.

vote!
RECEIVED
DEC 27, 2019 2:50pm
Elections Division

Certified by Attorney General on January 30, 2020.
/s/ Benjamin Gutman
Solicitor General

BALLOT TITLE

Amends Constitution: Repeals legislative redistricting process; creates congressional/state redistricting commission; equal number of Democrats, Republicans, others

Result of "Yes" Vote: "Yes" vote repeals constitutional provisions requiring state legislative redistricting by legislature; creates commission to draw congressional/state legislative districts; equal number of Democrats, Republicans, others.

Result of "No" Vote: "No" vote retains the current redistricting process, in which the elected legislature draws the boundaries of congressional and state legislative districts.

Summary: Amends Constitution. Oregon Constitution requires legislature to reapportion state legislative districts every ten years. Legislature also draws congressional districts. Measure repeals current state constitutional/legislative processes; creates twelve-member commission to draw both congressional and state legislative districts. Commission membership restricted based on length of residence/party affiliation, recent political work, political contributions, or family members who engaged in certain political activity. Secretary of State randomly selects first six members from applicant group; other members chosen by first six. Four members must be registered with each of largest two political parties, four unaffiliated or from other parties. At least one member from each group must agree for commission to approve map or take other action. Changes redistricting criteria. Other provisions.

RECEIVED
JAN 30, 2020 4:16pm
Elections Division

Secretary of State
Of the State of Oregon

In the Matter of the Requested Promulgation of a Rule Relating to the Implementation Of Amended ORS 250.052(6)(c) Concerning the Use of Electronic Signature Sheets for Initiative Petitions	)))))	Petition for Rulemaking (per ORS 183.390; OAR 137-001-0070)

1. Petitioners' names and addresses are Rebecca Gladstone, 2713 Fairmount Blvd., Eugene, OR 97403, and Norman Turrill, 3483 SW Patton Road, Portland, OR 97201.

2. Petitioners are the President and Governance Coordinator respectively of the League of Women Voters of Oregon. To comply with the requirements of ORS 250.052(6)(c), as amended by SB 761 (Chapter 681), of the 2019 Regular Session of the Oregon General Assembly, electors may believe they have certain duties suggested by the language of the statute.

3. Under ORS 250.052(6)(c), prospective signers of petitions to qualify an initiative for the 2020 general election ballot who wish to sign electronically as permitted by ORS 250.052(6) may be required to print out, or request that another person print out for them, dozens of pieces of paper containing the proposed text of the initiatives, as opposed to having the opportunity to simply view the text in an online version and, if so desired, download and print only the signature page. Petitioners contend that without specificity, the most recent amendments to ORS 250.052 could be interpreted to require that an elector signing an electronic template would be required for either option, by the elector or someone else, to print out and return many pages of text for the initiatives.

4. Proponents for many initiatives proposed for the 2020 general election are currently circulating petitions to gather, by the July deadline, the required 149,360 or 112,020 valid signatures of Oregon registered voters to qualify their measures for the ballot. Petitioners assert that the ambiguities created for the effective use of electronic petitions will discourage supporters of many possible ballot measures, from using electronic petitions effectively in the signature-gathering process.

5. Petitioners propose that an Oregon Administrative Rule be adopted to clarify and make certain that ORS 250.052(6)(c)(B) not be interpreted to require that any voter

signing an electronic signature sheet must physically print and return the electronic signature page with the full text of the proposed initiative.

6. Therefore, petitioners recommend that a rule be considered and adopted providing the following:

   An elector may sign and return an electronic signature sheet if the elector has personally printed, or requested that a separate person print a copy of the electronic signature sheet specifically for the requesting elector, even if the elector, or person of whom the elector made the request, does not print, give, or return a full and correct copy of the text of the proposed initiative with the electronic signature sheet.

7. Persons who may have a particular interest in a proposed rule would be those legislators who voted for or against passage of SB 761, and those witnesses who spoke in favor of or against the bill at public hearings considering SB 761, as well as Chief Petitioners of initiatives in circulation for signatures who would like to use electronic signature sheets.

8. The proposed rule is not unusually or unnecessarily complex, but the requirements added to 250.052(6) could be construed as creating duties and obligations of electors that are not, in fact, part of the language of the bill.

9. The rule does not overlap, duplicate, or conflict with any state, federal, or local regulation that petitioners have identified.

10. The Secretary of State's office confirmed in written testimony opposing SB 761 during the Legislative Assembly's 2019 consideration of the bill that, in 2016 and 2018, their data showed that electronic initiative signatures had rates of validity at least ten percent higher than signatures gathered by paid or unpaid circulators.

11. There is a need for this rule in order to implement fairly the Legislative Assembly's past efforts to implement contemporary technology allowing Oregon electors without easy and prompt access to physical petition circulators to participate in the initiative qualifying process by enabling electronic access to the process. Improved electronic access to this process would reduce costs to campaigns and enhance the opportunity for more Oregonians to express their feelings on proposed public policies.

12. Furthermore, in the context of the current global pandemic, petition signature gathers and voters who would want to sign petitions, would not want to come into close contact, therefore inhibiting the right of voters to petition their government. This makes the usage of downloadable electronic signature sheets even more important for the health of Oregon citizens.

Wherefore, petitioners request the Secretary of State to promulgate the proposed rule and expedite the rule as an emergency temporary administrative rule to be followed by a permanent administrative rule.

Dated: March 16, 2020.

Rebecca L. Gladstone

Rebecca Gladstone
President
League of Women Voters of Oregon

Norman Turrill

Norman Turrill
Governance Coordinator
League of Women Voters of Oregon

E. R. - 84

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE

ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

June 9, 2020
Sent via USPS and by email to: lwvor@lwvor.org

Rebecca Gladstone
2713 Fairmount Blvd.
Eugene, OR 97403

Norman Turrill
3483 SW Patton Rd.
Portland, OR 97201

Dear Ms. Gladstone and Mr. Turrill:

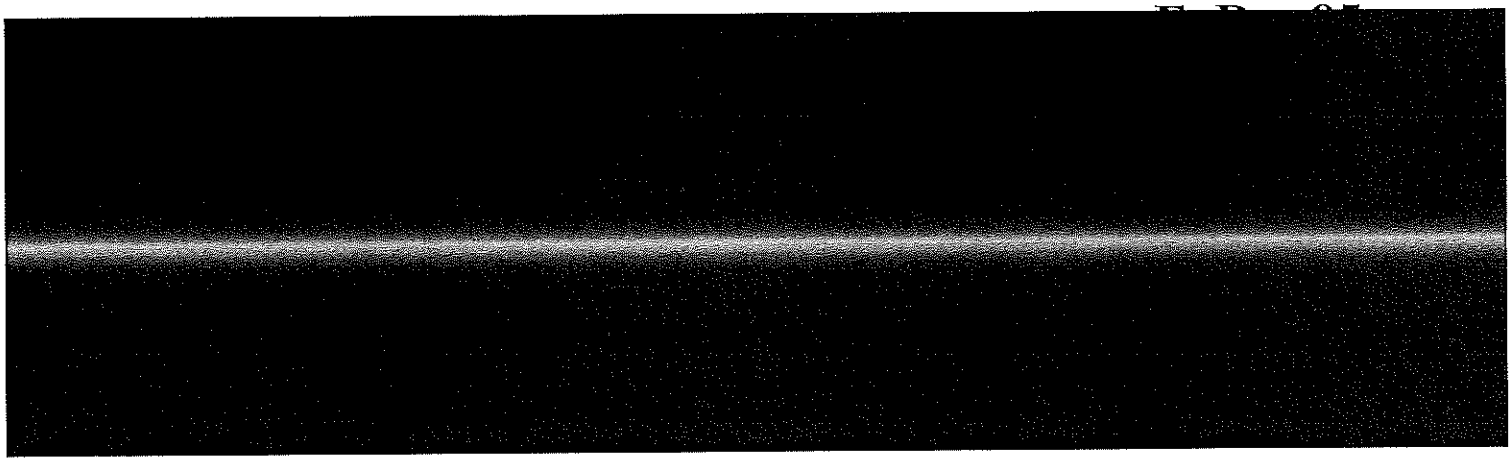
This is in response to the Petition for Rulemaking you submitted on March 13, 2020.

The Elections Division declines to initiate rulemaking because a new rule is not necessary, and no apparent ambiguity exists that must be remedied by an administrative rule.

Thank you for your interest in Oregon elections.

Sincerely,

Stephen N. Trout
Director



From: DAVIS Summer S * SOS
Sent: Thursday, May 7, 2020 2:06 PM
To: Rebecca Tweed <Rebecca@groworegon.com>
Subject: RE: Stay-at-home, signature gathering

Rebecca

I don't think that would have come from anyone at our office. We don't have the authority to say whether any activity is permissible or not allowed under the Governor's order. Only she can do that.

Out of curiosity I just read Executive Order 20-12 and would be interested in knowing under what provision, or what under what previous executive order, would prohibit signature gathering. She didn't shutter businesses, just restaurants and bars. She mandated we stay home to the maximum extent possible, but I don't see any definition of what maximum extent possible means. To be very, very clear, I am not saying go out and circulate and you'll be fine. I'm merely curious to know what led people to believe they can't circulate in person.

Summer

From: Rebecca Tweed [mailto:Rebecca@groworegon.com]
Sent: Thursday, May 7, 2020 1:48 PM
To: DAVIS Summer S * SOS <Summer.S.DAVIS@oregon.gov>
Subject: RE: Stay-at-home, signature gathering

Hi Summer,

Sorry, a very important clarification needed in my earlier response – not that signature gathering is prohibited, but that in-person signature gathering would be.

Thank you,

Rebecca Tweed
Grow Oregon | Executive Director
1100 SW Sixth Avenue, Suite 1608
Portland, OR 97204
Mobile 503.860.6033
rebecca@groworegon.com

From: DAVIS Summer S * SOS <Summer.S.DAVIS@oregon.gov>
Sent: Thursday, May 07, 2020 1:41 PM

E. R. - 86

To: Rebecca Tweed <Rebecca@groworegon.com>
Subject: RE: Stay-at-home, signature gathering

Rebecca,

I have gotten this question once or twice.

The majority of initiative petition requirements are in the Oregon Constitution and ORS. Those laws haven't changed and we can't override them by adopting rules.

So from our perspective the signature gathering process has not changed. You can rely on the information in the State Initiative and Referendum Manual (rev. 3/2020) posted on the website.

If you decide to solicit signatures using a method of distribution not outlined in the manual we would be happy to review the proposal to ensure the method complies with the requirements in ORS chapters 246 through 260. Whether the method would comply with the Governor's order is not something we would be able to answer with any authority.

Summer

From: Rebecca Tweed [mailto:Rebecca@groworegon.com]
Sent: Thursday, May 7, 2020 9:27 AM
To: DAVIS Summer S * SOS <Summer.S.DAVIS@oregon.gov>
Subject: Stay-at-home, signature gathering

Hi Summer,

I know this is likely out of both our realms since it's an Executive Order of the Governor, but I'm sure the conversation has come up once or twice on your end like it has on mine. I'm curious if there have been any discussions about scenarios related to signature gathering efforts and how they may or may not change with the every changing environment.

The very obvious stipulation to my inquiry is that we'd have to be aware of what those measures may be and any specifics to signature gathering that would relate, as well as where any may be lifted, none of which we know at the moment. I know there's a press conference today on this at 11am so we may get an answer.

I'm just curious what, if anything, you could share up to this point.

Thanks,

Rebecca Tweed
Grow Oregon | Executive Director
1100 SW Sixth Avenue, Suite 1608
Portland, OR 97204
Mobile 503.860.6033
rebecca@groworegon.com

OFFICE OF THE SECRETARY OF STATE

DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS, PhD
DEPUTY SECRETARY OF STATE

ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

MEMORANDUM

TO: All County Elections Officials

FROM: Eric Jorgensen, Deputy Director of Elections EJ

DATE: September 6, 2018

SUBJECT: 2018 General Election Directive 2018-3

Attached is a copy of Directive 2018-3 for the 2018 General Election. Please review this Directive carefully. Please use the attached ballot statements to proof ballots. Thoroughly review the statements to ensure you include on your ballot all offices that apply to your county and that they are in the correct order.

Feel free to contact us if you have any questions or concerns.

OFFICE OF THE SECRETARY OF STATE

DEPELECTIONS DIVISION

Directive of the Secretary of State	Subject: Official Ballot Statements, General Election November 6, 2018	Directive Issued at the Request of: Secretary of State	Date: September 6, 2018	Number: 2018-3

The Secretary of State in carrying out the duties of the office shall issue detailed directives necessary to maintain uniformity in the application, operation and interpretation of Oregon election laws. (ORS 246.110 & 120). The information provided here is an official directive of the Secretary of State.

This directive incorporates the attached instructions for processing the official Ballot Statements issued for the 2018 General Election.

The instructions provide information regarding:

- Ballot Label Style
- Color of Ballots
- Ballot Arrangement
- Numbering System for Candidates and Measures
- Random Ordering of Candidate Names
- Printing Candidate Names
- Multiple Party Nominations
- Judicial Candidates "Incumbent" Designation
- County Nonpartisan Candidates
- Lines for Candidate Write-In Votes
- Ballot Measure Formatting

The provisions of ORS 254.108, 254.125, 254.135, 254.145, 254.155 and ORS 260.675 should be reviewed prior to preparing the official ballot.

DENNIS RICHARDSON
Secretary of State

By:
Eric Jorgensen
Deputy Director of Elections

OFFICE OF THE SECRETARY OF STATE

DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS, PhD
DEPUTY SECRETARY OF STATE

ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

DATE: September 6, 2018

TO: ALL COUNTY ELECTION OFFICIALS

FROM: Stephen N. Trout, Director of Elections

SUBJECT: Official Ballot Statements for the General Election on November 6, 2018, Directive 2018-3

Included with this directive are the Official Ballot Statements for the 2018 General Election. We have also included a list of open offices for the 2018 General Election. Study this list to ensure you have every office on your ballot that applies to your county. These Statements will serve as a guide in preparing your county's ballot. The state Official Ballot Statements consist of:

1. Partisan Candidates
2. Nonpartisan Candidates
3. Measures

The Secretary of State directs the following:

BALLOT LABEL STYLE

The official General Election Ballot shall be styled as:

"Official Ballot", name of county and date of the election.

See ORS 254.135 for further requirements.

COLOR OF BALLOTS

Pursuant to ORS 254.195(1), all Official General Election ballots shall be printed in black ink on good quality white paper.

BALLOT ARRANGEMENT

The offices must be arranged in the following order.

1. Federal
2. Statewide partisan
3. State Senate
4. State Representative
5. County - if partisan
6. City - if partisan
7. Nonpartisan
   a. State judicial offices are listed on the Nonpartisan Candidate Ballot Statement in the following sequence:
      i. Contested Supreme Court, Pos. ;
      ii. Contested Court of Appeals, Pos. ;
      iii. Tax Court;
      iv. Contested Circuit Court positions; and
      v. Uncontested Circuit Court positions
   b. District Attorney
   c. County Judge
   d. Nonpartisan County Candidates (*such as County Clerk, County Assessor, County Surveyor, County Treasurer, Sheriff and Justice of the Peace*)
   e. Nonpartisan City Candidates
   f. Special District Candidates - if any
8. Measures
   a. State
   b. County
   c. City
   d. Multi-County Special District
   e. Single County Special District

If this ballot arrangement will cause you undue administrative or printing problems, please contact Eric Jorgensen for further advice.

RANDOM ORDERING OF CANDIDATE NAMES

The names of the candidates shall be ordered as provided for in ORS 254.155. On August 29, 2018, this office sent a memo to all County Election Officials giving the random ordering of the letters of the alphabet for candidates on the ballot for the November 6, 2018, General Election. The Ballot Statement for state candidates has been prepared by the Secretary of State using the random sequence.

The random ordering of the letters of the alphabet for which candidate's names will be placed on the ballot for the November 6, 2018, General Election is as follows:

Random Ordering of Candidate Names (cont. next page)

1. Z	6. Q	11. K	16. F	21. X	26. H
2. R	7. L	12. E	17. B	22. N	
3. J	8. A	13. T	18. U	23. V	
4. O	9. W	14. P	19. S	24. I	
5. Y	10. G	15. C	20. D	25. M	

For candidates whose last names begin with the same letter(s) of the alphabet, or whose names are identical etc., follow the procedure contained in OAR 165-010-0090.

ORS 254.135(3)(e) requires if two or more candidates for the same office have the same or similar surnames, the location of their places of residence shall be printed with their names to distinguish one from another.

CANDIDATE NAMES

The names of candidates shall be printed on the official ballot as indicated in the Ballot Statement. Office titles, candidate names and political parties must be printed in **bold face, mixed case type** rather than in all upper case, for the purpose of better readability. Mixed case means the first letters of these names shall be upper case with the rest lower case (unless within the name an upper case letter is specified by the candidate, such as McVan).

Candidate names must not contain any periods, even after a Jr or Sr. For example, a candidate name should be formatted as Jonathan J Smith, Jr – with **no periods** (commas are allowable).

ORS 249.031(1)(a) allows for a candidate to use a nickname in parentheses. ORS 254.145(2) provides that no title or designation may be included in the candidate's name (such as Dr, Mr, PhD, Senior Vice President, etc.). Designations such as Jr, Sr, III, IV, etc. are allowable if it is actually part of the name by which the candidate is commonly known.

Note: If no candidate has filed for an office, the ballot must include "No Candidate Filed."

MULTIPLE PARTY NOMINATIONS

ORS 254.135(3)(a) allows for candidates nominated by multiple political parties to have up to three parties printed with their name. If the candidate was nominated by the party they are a member of, list that party first, followed by no more than two other parties in the order specified by the candidate. If the candidate failed to specify which parties and in which order those parties should appear on the ballot, print in alphabetical order, the first three parties the candidate filed a certificate of nomination for. The correct party order for state candidates is included in the Partisan Candidate Ballot Statement.

JUDICIAL CANDIDATES "INCUMBENT" DESIGNATION

ORS 254.135(3)(c) requires the word "Incumbent" to be printed with the name of each candidate designated by the Secretary of State under ORS 254.085(2), for the offices of Supreme Court, Court of Appeals, Tax Court and Circuit Court. The Nonpartisan Candidate Ballot Statement includes this designation.

Note: Do not print the word "Incumbent" with the names of candidates for the offices of justice of the peace, county judge and municipal court.

COUNTY NONPARTISAN CANDIDATES

Review ORS 249.091 to determine if county nonpartisan candidates (sheriff, county treasurer or county clerk, or candidates to fill a vacancy in a nonpartisan office) are required to be listed on the general election ballot.

WRITE-IN CANDIDATE VOTE LINES

As required by ORS 254.145(3), one blank line must be included for each position on the ballot to allow for write-in votes. An office with multiple positions that are not listed separately, e.g. "Vote for Three," must have one blank line for each available position. In this case, you would provide three blank lines following the list of candidates for that office. Blank lines shall not be numbered.

Offices that have been certified as "No Candidate Filed" must still appear on the ballot with the appropriate number of write-in lines. "No Candidate Filed" may be shown on what would have been the candidate name line.

BALLOT MEASURE NUMBERING

The number assigned to each local (county, city and district) measure must be preceded by a unique county prefix number (*i.e.*, Baker County is number 1, Benton is number 2, and so forth, numbered consecutively in alphabetical order until Yamhill County, which is number 36).

If a district or city is located in more than one county, the county elections officer who is the filing officer shall immediately certify the district or city measure and number to the county clerk of any other county in which the district or city is located. The same measure number shall be used in all counties in which the election is conducted for that measure.

BALLOT MEASURE FORMATTING

State ballot measures must be formatted as shown on the attached Ballot Measure Statement. The state ballot measure headers and the ballot title captions must be printed in **bold face, mixed case type** rather than in all upper case, for the purpose of better readability. Mixed case means the first letters of a phrase or sentence and only certain words within a sentence may be upper case with the rest lower case.

This directive applies to state ballot measures and does not require you to use the same formatting for local measures. However, we encourage consistent formatting, as this would ensure better readability for the voters.

If you have any questions, please contact our office.

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

US Representative, 1st District	Vote for one
Drew A Layda	Libertarian, Pacific Green
Suzanne Bonamici	Democrat, Independent
John Verbeek	Republican

US Representative, 2nd District	Vote for one
Mark R Roberts	Independent
Greg Walden	Republican
Jamie McLeod-Skinner	Democrat, Working Families

US Representative, 3rd District	Vote for one
Marc W Koller	Independent, Pacific Green, Progressive
Earl Blumenauer	Democrat
Gary Lyndon Dye	Libertarian
Michael Marsh	Constitution
Tom Harrison	Republican

US Representative, 4th District	Vote for one
Art Robinson	Republican, Constitution
Richard R Jacobson	Libertarian
Mike Beilstein	Pacific Green
Peter DeFazio	Democrat, Independent, Working Families

US Representative, 5th District	Vote for one
Mark Callahan	Republican
Dan Souza	Libertarian
Marvin Sandnes	Pacific Green
Kurt Schrader	Democrat, Independent

E. R. - 94

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

Governor	Vote for one
Aaron Auer	Constitution
Nick Chen	Libertarian
Kate Brown	Democrat, Working Families
Knute Buehler	Republican
Patrick Starnes	Independent
Chris Henry	Progressive

State Senator, 1st District (2 Year Unexpired Term)	Vote for one
Shannon Souza	Democrat, Working Families
Dallas Heard	Republican

State Senator, 3rd District	Vote for one
Jeff Golden	Democrat, Working Families, Progressive
Jessica Gomez	Republican, Independent

State Senator, 4th District	Vote for one
Scott Rohter	Republican, Constitution
Frank L Lengele Jr	Libertarian
Floyd Prozanski	Democrat, Independent, Working Families

State Senator, 6th District	Vote for one
Lee L Beyer	Democrat
Robert Schwartz	Republican

State Senator, 7th District	Vote for one
James I Manning Jr	Democrat, Working Families, Independent

State Senator, 8th District	Vote for one
Sara A Gelser	Democrat, Working Families, Independent
Bryan Eggiman	Libertarian
Erik S Parks	Republican

E. R. - 95

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

State Senator, 10th District	Vote for one
Jackie F Winters	Republican, Independent
Deb Patterson	Democrat, Working Families
State Senator, 11th District	Vote for one
Greg Warnock	Republican, Independent
Peter Courtney	Democrat, Working Families
State Senator, 13th District	Vote for one
Sarah Grider	Democrat, Working Families
Kim Thatcher	Republican, Independent, Libertarian
State Senator, 15th District	Vote for one
Chuck Riley	Democrat, Working Families
Alexander Flores	Republican, Independent
State Senator, 16th District	Vote for one
Betsy Johnson	Democrat, Independent, Republican
Ray Biggs	Constitution
State Senator, 17th District	Vote for one
Elizabeth Steiner Hayward	Democrat, Independent, Republican
State Senator, 19th District	Vote for one
Rob Wagner	Democrat, Working Families
David C Poulson	Republican, Independent
State Senator, 20th District	Vote for one
Alan R Olsen	Republican, Independent
Charles Gallia	Democrat, Working Families
Kenny Sernach	Libertarian

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

State Senator, 24th District	Vote for one
Shemia Fagan	Democrat, Independent, Working Families
State Senator, 26th District	Vote for one
Chrissy Reitz	Democrat, Working Families
Chuck Thomsen	Republican, Independent
State Senator, 30th District (2 Year Unexpired Term)	Vote for one
Solea Kabakov	Democrat
Cliff Bentz	Republican
State Representative, 1st District	Vote for one
Eldon Rollins	Democrat
David Brock Smith	Republican, Independent
State Representative, 2nd District	Vote for one
Gary Leif	Republican
Megan Salter	Democrat
State Representative, 3rd District	Vote for one
Carl Wilson	Republican, Independent
Jerry Morgan	Democrat
State Representative, 4th District	Vote for one
Duane A Stark	Republican, Democrat, Independent
State Representative, 5th District	Vote for one
Sandra A Abercrombie	Republican
Pam Marsh	Democrat, Independent, Working Families

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

State Representative, 6th District	Vote for one
Kim Wallan	Republican, Independent
Michelle Blum Atkinson	Democrat, Working Families
State Representative, 7th District	Vote for one
Christy Inskip	Democrat, Working Families
Cedric Hayden	Republican, Independent
State Representative, 8th District	Vote for one
Martha Sherwood	Libertarian
Paul R Holvey	Democrat, Working Families
State Representative, 9th District	Vote for one
Teri Grier	Republican, Independent, Libertarian
Caddy McKeown	Democrat
State Representative, 10th District	Vote for one
David Gomberg	Democrat, Independent, Working Families
Thomas M Donohue	Republican
State Representative, 11th District	Vote for one
Marty Wilde	Democrat, Working Families, Progressive
Mark F Herbert	Republican, Independent
State Representative, 12th District	Vote for one
John Lively	Democrat, Working Families, Independent
State Representative, 13th District	Vote for one
Nancy Nathanson	Democrat, Independent, Working Families

E. R. - 98

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

State Representative, 14th District	Vote for one
Rich Cunningham	Republican
Julie Fahey	Democrat, Independent, Working Families

State Representative, 15th District	Vote for one
Jerred Taylor	Democrat, Working Families
Shelly Boshart Davis	Republican
Cynthia Hyatt	Independent, Progressive

State Representative, 16th District	Vote for one
Dan Rayfield	Democrat, Working Families, Independent

State Representative, 17th District	Vote for one
Renee Windsor-White	Democrat, Progressive, Working Families
Sherrie Sprenger	Republican, Independent

State Representative, 18th District	Vote for one
Rick Lewis	Republican, Independent
Barry Shapiro	Democrat

State Representative, 19th District	Vote for one
Mike Ellison	Democrat, Working Families, Progressive
Denyc Nicole Boles	Republican, Independent

State Representative, 20th District	Vote for one
Paul Evans	Democrat, Working Families
Selma Pierce	Republican, Independent

State Representative, 21st District	Vote for one
Jack L Esp	Republican
Brian Clem	Democrat, Independent, Libertarian

E. R. - 99

Secretary of State Elections Division
255 Capitol St NE, Ste 501, Salem, Oregon 97310

Candidate Ballot Statement
2018 General Election

September 06, 2018

State Representative, 22nd District	Vote for one
Teresa Alonso Leon	Democrat, Working Families
Marty Heyen	Republican, Independent

State Representative, 23rd District	Vote for one
Danny Jaffer	Democrat, Pacific Green, Independent
Mark Karnowski	Libertarian
Mike Nearman	Republican

State Representative, 24th District	Vote for one
Ron Noble	Republican, Independent
Ken Moore	Democrat, Working Families

State Representative, 25th District	Vote for one
Bill Post	Republican, Independent, Libertarian
Dave McCall	Democrat

State Representative, 26th District	Vote for one
Courtney Neron	Democrat
Tim E Nelson	Libertarian
Rich Vial	Republican, Independent

State Representative, 27th District	Vote for one
Brian Pierson	Independent, Republican
Katy Brumbelow	Libertarian
Sheri Malstrom	Democrat, Working Families

State Representative, 28th District	Vote for one
Jeff Barker	Democrat, Independent, Republican
Lars D H Hedbor	Libertarian

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Candidate Ballot Statement
2018 General Election

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State Representative, 29th District	Vote for one
William A Namestnik	Libertarian
David Molina	Republican, Independent
Susan McLain	Democrat, Working Families

State Representative, 30th District	Vote for one
Janeen Sollman	Democrat, Independent, Working Families
Kyle Markley	Libertarian
Dorothy Merritt	Republican

State Representative, 31st District	Vote for one
Brad Witt	Democrat
Brian G Stout	Republican, Independent

State Representative, 32nd District	Vote for one
Vineeta Lower	Republican
Randell Carlson	Libertarian
Tiffiny K Mitchell	Democrat, Working Families
Brian P Halvorsen	Independent, Progressive

State Representative, 33rd District	Vote for one
Elizabeth Reye	Republican, Libertarian
Mitch Greenlick	Democrat, Independent

State Representative, 34th District	Vote for one
Joshua Ryan Johnston	Libertarian
Michael Ngo	Republican
Ken Helm	Democrat, Independent

State Representative, 35th District	Vote for one
Margaret Doherty	Democrat, Working Families
Bob Niemeyer	Republican, Independent

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State Representative, 36th District	Vote for one
Jennifer Williamson	Democrat, Working Families
State Representative, 37th District	Vote for one
Rachel Prusak	Democrat, Working Families
Julie Parrish	Republican, Independent
State Representative, 38th District	Vote for one
Andrea Salinas	Democrat, Independent, Republican
State Representative, 39th District	Vote for one
Elizabeth Graser-Lindsey	Democrat, Independent
Christine Drazan	Republican, Libertarian
State Representative, 40th District	Vote for one
Mark Meek	Democrat, Working Families
Josh Hill	Republican
State Representative, 41st District	Vote for one
Karin Power	Democrat, Independent, Republican
State Representative, 42nd District	Vote for one
Bruce Alexander Knight	Libertarian
Rob Nosse	Democrat, Working Families, Independent
State Representative, 43rd District	Vote for one
Tawna Sanchez	Democrat, Independent, Working Families

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State Representative, 44th District	Vote for one
Manny Guerra	Libertarian
Tina Kotek	Democrat, Working Families

State Representative, 45th District	Vote for one
Barbara Smith Warner	Democrat, Working Families

State Representative, 46th District	Vote for one
Alissa Keny-Guyer	Democrat, Working Families, Independent

State Representative, 47th District	Vote for one
Diego Hernandez	Democrat, Independent, Working Families

State Representative, 48th District	Vote for one
Jeff Reardon	Democrat
Sonny Yellott	Republican

State Representative, 49th District	Vote for one
Heather Ricks	Libertarian
Chris Gorsek	Democrat, Working Families
Justin Hwang	Republican, Independent

State Representative, 50th District	Vote for one
Carla C Piluso	Democrat, Working Families, Independent

State Representative, 51st District	Vote for one
Lori Chavez-DeRemer	Republican, Independent, Libertarian
Janelle S Bynum	Democrat, Working Families

E. R. - 103

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Candidate Ballot Statement
2018 General Election

September 06, 2018

State Representative, 52nd District	Vote for one
Anna Williams	Democrat, Working Families
Jeff Helfrich	Republican, Independent

State Representative, 53rd District	Vote for one
Jack Zika	Republican, Independent
Eileen Kiely	Democrat

State Representative, 54th District	Vote for one
Amanda La Bell	Working Families, Progressive
Nathan K Boddie	Democrat
Cheri Helt	Republican, Independent

State Representative, 55th District	Vote for one
Karen Rippberger	Democrat, Working Families
Mike McLane	Republican, Independent

State Representative, 56th District	Vote for one
E Werner Reschke	Republican, Libertarian, Independent
Taylor Tupper	Democrat

State Representative, 57th District	Vote for one
Greg Smith	Republican, Democrat, Independent

State Representative, 58th District	Vote for one
Skye Farnam	Independent
Greg Barreto	Republican, Democrat

State Representative, 59th District	Vote for one
Darcy Long-Curtiss	Democrat, Working Families
Daniel G Bonham	Republican, Independent

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State Representative, 60th District — Vote for one

Lynn P Findley — Republican, Democrat, Independent

Judge of the Supreme Court, Position 5 — Vote for one

Adrienne Nelson — **Incumbent**

Judge of the Court of Appeals, Position 2 — Vote for one

Bronson D James — **Incumbent**

Judge of the Court of Appeals, Position 4 — Vote for one

Robyn Ridler Aoyagi — **Incumbent**

Judge of the Court of Appeals, Position 7 — Vote for one

Steven R Powers — **Incumbent**

Judge of the Oregon Tax Court — Vote for one

Robert Manicke — **Incumbent**

Judge of the Circuit Court, 1st District, Position 4 — Vote for one

Charles Kochlacs
Laura Cromwell — **Incumbent**

Judge of the Circuit Court, 1st District, Position 9 — Vote for one

David J Orr
Joe Davis

Judge of the Circuit Court, 3rd District, Position 5 — Vote for one

Daniel Wren
Anthony (the Bear) Behrens

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Candidate Ballot Statement
2018 General Election

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Judge of the Circuit Court, 4th District, Position 30 — Vote for one

Bob Callahan
Benjamin N Souede — **Incumbent**

Judge of the Circuit Court, 10th District, Position 2 — Vote for one

Wes Williams (La Grande)
Mona K Williams (Joseph) — **Incumbent**

Judge of the Circuit Court, 14th District, Position 5 — Vote for one

Matthew G Galli
Matt Corey

Judge of the Circuit Court, 23rd District, Position 1 — Vote for one

Michael Wynhausen
Fay Stetz-Waters — **Incumbent**

Judge of the Circuit Court, 23rd District, Position 3 — Vote for one

Rachel Kittson-MaQatish
Teri L Plagmann

Judge of the Circuit Court, 25th District, Position 2 — Vote for one

Jennifer Chapman
Lisl Miller

Judge of the Circuit Court, 2nd District, Position 1 — Vote for one

Debra E Velure — **Incumbent**

Judge of the Circuit Court, 4th District, Position 10 — Vote for one

Katharine von Ter Stegge — **Incumbent**

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Candidate Ballot Statement
2018 General Election

September 06, 2018

Judge of the Circuit Court, 4th District, Position 15 — Vote for one

Christopher A Ramras — **Incumbent**

Judge of the Circuit Court, 4th District, Position 27 — Vote for one

Patricia L McGuire — **Incumbent**

Judge of the Circuit Court, 5th District, Position 2 — Vote for one

Ann Lininger — **Incumbent**

Judge of the Circuit Court, 5th District, Position 7 — Vote for one

Todd L Van Rysselberghe — **Incumbent**

Judge of the Circuit Court, 5th District, Position 9 — Vote for one

Ulanda L Watkins — **Incumbent**

Judge of the Circuit Court, 14th District, Position 3 — Vote for one

Robert S Bain — **Incumbent**

Judge of the Circuit Court, 15th District, Position 2 — Vote for one

Andrew E Combs — **Incumbent**

Judge of the Circuit Court, 20th District, Position 10 — Vote for one

Danielle J Hunsaker — **Incumbent**

Judge of the Circuit Court, 22nd District, Position 3 — Vote for one

Daina A Vitolins — **Incumbent**

District Attorney, Crook County — Vote for one

Wade L Whiting

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Candidate Ballot Statement
2018 General Election

September 06, 2018

District Attorney, Malheur County — Vote for one

David M Goldthorpe

County Judge, Gilliam County — Vote for one

Elizabeth A Farrar
Steven Shaffer

County Judge, Sherman County — Vote for one

Mike Smith
Joe Dabulskis

E. R. - 108

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Ballot Measure Statement

2018 General Election

September 06, 2018

Referred to the People by the Legislative Assembly

Measure 102

Amends Constitution: Allows local bonds for financing affordable housing with nongovernmental entities. Requires voter approval, annual audits

Result of "Yes" Vote: "Yes" vote allows local governments to issue bonds to finance affordable housing with nongovernmental entities. Requires local voters' approval of bonds, annual audits, public reporting. **Yes**

Result of "No" Vote: "No" vote retains constitutional prohibition on local governments raising money for/ loaning credit to nongovernmental entities; no exception for bonds to pay for affordable housing. **No**

Summary: Amends Constitution. The constitution currently prohibits most local governments from raising money for, or loaning credit to, or in aid of, any private entity. Measure allows local governments to issue general obligation bonds to finance the cost of constructing affordable housing including when the funds go to a nongovernmental entity. Measure requires that local authorizing bonds be approved by local voters and describe affordable housing to be financed. The jurisdiction authorizing bonds must provide annual audits and public reporting on bond expenditures. Measure limits jurisdiction's bonded indebtedness for capital costs of affordable housing to one-half of one percent of the value of all property in the jurisdiction.

Estimate of Financial Impact: This measure amends Article XI, section 9 of the Oregon Constitution to allow local governments to issue general obligation bonds to finance the cost of constructing affordable housing when partnering with a nongovernmental entity. The measure also requires that proposed bonds be approved by local voters and the jurisdiction authorizing the bonds must provide annual audits and public reporting on bond expenditures.

There is no financial impact to state revenue or expenditures.

There is no financial impact on local government revenue or expenditures required by the measure. The revenue and expenditure impact on local governments is dependent on decisions by local governments to propose bonding for affordable housing and voter approval of the proposed bonds.

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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 103

Amends Constitution: Prohibits taxes/fees based on transactions for "groceries" (defined) enacted or amended after September 2017

Result of "Yes" Vote: "Yes" vote amends Constitution; prohibits state/local taxes/fees based on transactions for "groceries" (defined), including those on sellers/distributors, enacted/amended after September 2017. **Yes**

Result of "No" Vote: "No" vote retains state/local government authority to enact/amend taxes (includes corporate minimum tax), fees, on transactions for "groceries" (defined), including on sellers/distributors. **No**

Summary: Amends Constitution. Currently, state/local governments may enact/amend taxes/fees on grocery sales, including state corporate minimum tax, local taxes. Measure prohibits state/local governments from adopting, approving or enacting, on or after October 1, 2017, any "tax, fee, or other assessment" on sale/distribution/purchase/receipt of, or for privilege of selling/distributing, "groceries", by individuals/entities regulated by designated food safety agencies, including restaurants, or operating as farm stand/farmers market/food bank. Measure prohibits "sales tax, gross receipts tax, commercial activity tax, value-added tax, excise tax, privilege tax, and any other similar tax on sale of groceries." "Groceries" defined as "any raw or processed food or beverage intended for human consumption." Alcoholic beverages, marijuana products, tobacco products exempted. Other provisions.

Estimate of Financial Impact: The financial impact is indeterminate.

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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 104

Amends Constitution: Expands (beyond taxes) application of requirement that three-fifths legislative majority approve bills raising revenue

Result of "Yes" Vote: "Yes" vote expands "bills for raising revenue," which require three-fifths legislative majority, to include (beyond taxes) fees and changes to tax exemptions, deductions, credits. **Yes**

Result of "No" Vote: "No" vote retains current law that bills for raising revenue, which require three-fifths legislative majority, are limited to bills that levy/increase taxes. **No**

Summary: The Oregon Constitution provides that "bills for raising revenue" require the approval of three-fifths of each house of the legislature. The constitution does not currently define "raising revenue." Oregon courts have interpreted that term to include bills that bring money into the state treasury by levying or increasing a tax. Under that interpretation, a bill imposing a fee for a specific purpose or in exchange for some benefit or service is not included. Nor is a bill that reduces or eliminates tax exemptions. Proposed measure amends constitution and defines "raising revenue" to include any tax or fee increase, including changes to tax exemptions, deductions, or credits. Measure expands three-fifths legislative majority requirement to also apply to such bills.

Estimate of Financial Impact: *State Government:* The financial impact to state revenue and expenditures is indeterminate.

Local Government: The financial impact to local government revenue and expenditures is indeterminate.

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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 105

Repeals law limiting use of state/local law enforcement resources to enforce federal immigration laws

Result of "Yes" Vote: "Yes" vote repeals law limiting (with exceptions) use of state/local law enforcement resources for detecting/apprehending persons suspected only of violating federal immigration laws. **Yes**

Result of "No" Vote: "No" vote retains law limiting (with exceptions) use of state /local law enforcement resources for detecting/apprehending persons suspected only of violating federal immigration laws. **No**

Summary: Measure repeals ORS 181A.820, which limits (with exceptions) the use of state and local law enforcement money, equipment and personnel for "detecting or apprehending persons whose only violation of law" pertains to their immigration status. Current exceptions allow using law enforcement resources to:

- Detect or apprehend persons accused of violating federal immigration laws who are also accused of other violations of law;
- Arrest persons "charged by the United States with a criminal violation of federal immigration laws" who are "subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate";
- Communicate with federal immigration authorities to verify immigration status of arrested persons or "request criminal investigation information with reference to persons named in records of" federal immigration officials.

Estimate of Financial Impact: The financial impact is indeterminate.

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Ballot Measure Statement
2018 General Election

September 06, 2018

Proposed by Initiative Petition

Measure 106

Amends Constitution: Prohibits spending "public funds" (defined) directly/indirectly for "abortion" (defined); exceptions; reduces abortion access

Result of "Yes" Vote: "Yes" vote amends constitution, prohibits spending "public funds" (defined) directly/indirectly for any "abortion" (defined), health plans/insurance covering "abortion"; limited exceptions; reduces abortion access. **Yes**

Result of "No" Vote: "No" vote retains current law that places no restrictions on spending public funds for abortion or health plans covering abortion when approved by medical professional. **No**

Summary: Amends Constitution. Under current law, abortions may be obtained, when approved by medical professional, under state-funded health plans or under health insurance procured by or through public employer or other public service. Measure amends constitution to prohibit spending "public funds" (defined) for "abortion" (defined) or health benefit plans that cover "abortion." Measure defines "abortion," in part, as "purposeful termination of a clinically diagnosed pregnancy." Exception for ectopic pregnancy and for pregnant woman in danger of death due to her physical condition. Exception for spending required by federal law, if requirement is "found to be constitutional." No exception for pregnancies resulting from rape/incest unless federal law requires. Effect on spending by public entities other than state unclear. Measure reduces access to abortion. Other provisions

Measure 106 (cont. next page)

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Ballot Measure Statement
2018 General Election

September 06, 2018

Measure 106 (cont.)

Estimate of Financial Impact: Ballot Measure 106 amends the Oregon Constitution by prohibiting the expenditure of public funds on abortions, except for those deemed to be medically necessary, required by the federal government, or to terminate a clinically diagnosed ectopic pregnancy.

The financial impact of the measure is anticipated to result in a net annual expenditure increase of $19.3 million in public funds administered by state government. This increase is based on two factors: 1) an estimated decrease in state government expenditures of $2.9 million resulting from the prohibition on spending public funds for abortions not exempted under the measure; and 2) an estimated increase of $22.2 million in state government expenditures resulting from an estimated increase in births and corresponding utilization of health care, food, and nutrition services provided by state government programs. The net expenditure increase of $19.3 million represents the estimated impact for the first year of the measure and would be a recurring expense each year thereafter at a level dependent on program caseloads and cost of providing services.

The net financial impact on state funds is expected to be a cost of $4.8 million in the first year and will compound in future years. The future compounded costs are indeterminate.

The measure is also expected to increase annual federal matching funds received by state government by an estimated $14.5 million to support the additional health care, food, and nutrition services. As with the estimated net increase in state government expenditures, the increase in federal revenue represents the estimated impact during the first year of the measure and would recur each year thereafter at a level dependent on program caseloads and cost of providing state government services.

The financial impact on local government is indeterminate.

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 curb-side 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 ballots 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

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

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

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

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

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

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

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

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

in 2012 where circulation began in February.

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

Any further witnesses, Mr. Elzinga?

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

DIRECT EXAMINATION CONTINUING

BY MR. ELZINGA:

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

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

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

MR. ELZINGA: Thank you.

THE COURT: Okay. Any further witnesses?

MR. ELZINGA: Your Honor, I would like to call 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?

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

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

Did I read that correctly?

A Yes, you did.

MR. ELZINGA: No further questions.

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

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

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

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

THE WITNESS: Correct.

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

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

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

For the defendants, any additional witnesses?

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

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

Are you able to hear me?

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

MR. ELZINGA: This is Steve Elzinga.

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

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

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

Can you hear me, Mr. Berman?

MR. BERMAN: I can hear now.

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

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

So plaintiffs are a coalition of what they 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 LGBQT 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 TRO 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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STATE OF OREGON)
)ss
COUNTY OF YAMHILL)

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

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

/s/ Deborah L. Cook, RPR, CSR

_____
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Attorneys for Defendant Secretary Beverly Clarno

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF OREGON, NAACP OF EUGENE/SPRINGFIELD, INDEPENDENT PARTY OF OREGON, and C. NORMAN TURRILL, Plaintiffs, v. BEVERLY CLARNO, OREGON SECRETARY OF STATE, Defendant.	Case No. 6:20-cv-01053-MC DEFENDANT'S NOTICE IN RESPONSE TO COURT ORDER

Defendant Secretary of State files this Notice in response to the Court's oral ruling on July 10 and its written ruling today, July 13, requiring the Secretary to select between two alternative remedies to be entered as the Court's preliminary injunction. The Secretary objects to the Court's ruling and its order that she select among remedies as inappropriate and inconsistent with the United States Constitution as well as the principles of federalism and equity that counsel federal courts to avoid ordering states to revise their election processes at the eleventh hour before an election. *See, e.g.*, *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020).

Subject to those objections, the Secretary declines to place Initiative Petition 57 on the ballot without the submission of signatures that the Oregon Constitution requires. Given that decision, the Secretary understands that the Court's Opinion and Order directs the Secretary to deem Initiative Petition 57 qualified for the ballot if its chief petitioners submit 58,789 valid signatures by August 17, 2020.[1]

The Secretary further provides notice that compliance with the Court's order may require the Secretary to adjust (and request the Court order the adjustment of) other deadlines under Oregon law as applied to Initiative Petition 57 as a consequence of its ruling. *See, e.g.*, Or. Const. art. IV, § 1(4)(a) (requiring signature verification within 30 days of the submission deadline of the Oregon Constitution); Or. Rev. Stat. § 251.205(4) (requiring the Secretary to appoint opponents of a ballot measure to the explanatory statement committee by July 8). The Secretary intends to confer with the Plaintiffs regarding such deadlines as soon as possible and to file a joint status report within a reasonable time reflecting the deadlines that the parties will

[1] The Court's Opinion and Order refers to this number as a 50 percent reduction of the number required to qualify a constitutional initiative under the Oregon Constitution. Order at 13. However, 58,789 signatures is in fact equal to 50% of the number of signatures required for a constitutional initiative to have qualified for placement for the *2018* General Election. *See* Plaintiffs' Motion for a TRO at 33–34. A 50% reduction of the 2020 election's initiative petition 149,360-signature threshold would be 74,680. *See* State Initiative and Referendum Manual at 5.

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jointly (or, short of agreement, the Secretary will propose) the Court order to apply to Initiative Petition 57.

DATED July 13, 2020.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Christina L. Beatty-Walters

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Preliminary Injunction Appeal

Form 1. Notice of Appeal from a Judgment or Order of a United States District Court

Name of U.S. District Court: District of Oregon, Eugene Division

U.S. District Court case number: 6:20-cv-01053-MC

Date case was first filed in U.S. District Court: June 30, 2020

Date of judgment or order you are appealing: July 13, 2020

Fee paid for appeal? *(appeal fees are paid at the U.S. District Court)*

◉ Yes ○ No ○ IFP was granted by U.S. District Court

List all Appellants *(List each party filing the appeal. Do not use "et al." or other abbreviations.)*

Beverly Clarno, Oregon Secretary of State

Is this a cross-appeal? ○ Yes ◉ No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case? ○ Yes ◉ No

If Yes, what is the prior appeal case number?

Your mailing address:

1162 Court Street NE

City: Salem State: OR Zip Code: 97301

Prisoner Inmate or A Number (if applicable):

Signature /s/ Benjamin Gutman **Date** 7/15/2020

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 6. Representation Statement

Instructions for this form: http://www.ca9.uscourts.gov/forms/form06instructions.pdf

Appellant(s) *(List **each** party filing the appeal, do not use "et al." or other abbreviations.)*

Name(s) of party/parties:

Beverly Clarno, Oregon Secretary of State

Name(s) of counsel (if any):

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Is counsel registered for Electronic Filing in the 9th Circuit? ◉ Yes ○ No

---

Appellee(s) *(List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)*

Name(s) of party/parties:

People Not Politicians Oregon; Common Cause; League of Women Voters of Oregon; NAACP of Eugene/Springfield; Independent Party of Oregon; C. Norman Turrill

Name(s) of counsel (if any):

Stephen Elzinga

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To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ○ Yes ○ No

Appellees

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

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Name(s) of counsel (if any):

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Email(s):

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

APPEAL

U.S. District Court
District of Oregon (Eugene (6))
CIVIL DOCKET FOR CASE #: 6:20-cv-01053-MC

People Not Politicians Oregon et al v. Clarno
Assigned to: Judge Michael J. McShane
Case in other court: 9th Circuit, 20-35630
Cause: 42:1983 Civil Rights Act

Date Filed: 06/30/2020
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

Plaintiff

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Plaintiff

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Plaintiff

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V.

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ATTORNEY TO BE NOTICED

Lydia Anderson-Dana
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/30/2020	1	Complaint. Filing fee in the amount of $400 collected. Agency Tracking ID: AORDC-6919967 Jury Trial Requested: No. Filed by People Not Politicians Oregon, C. Norman Turrill, Common Cause, NAACP of Eugene/Springfield, Independent Party of Oregon, League of Women Voters of Oregon against Bev Clarno. (Elzinga, Stephen) (Entered: 06/30/2020)
06/30/2020	2	Motion for Preliminary Injunction . Expedited Hearing requested. Filed by All Plaintiffs. (Elzinga, Stephen) Modified on 7/2/2020 per order 12 (cp). (Entered: 06/30/2020)
06/30/2020	3	Declaration of Ted Blaszak *in Support of Plaintiff's Motion for a Temporary Restraining Order*. Filed by All Plaintiffs. (Related document(s): Motion for Temporary Restraining Order 2 .) (Elzinga, Stephen) (Entered: 06/30/2020)
06/30/2020	4	Declaration of Candalynn Johnson *in Support of Plaintiff's Motion for a Temporary Restraining Order*. Filed by All Plaintiffs. (Related document(s): Motion for Temporary Restraining Order 2 .) (Elzinga, Stephen) (Entered: 06/30/2020)
06/30/2020	5	Declaration of C. Norman Turrill *in Support of Plaintiff's Motion for a Temporary Restraining Order*. Filed by All Plaintiffs. (Related document(s): Motion for Temporary Restraining Order 2 .) (Elzinga, Stephen) (Entered: 06/30/2020)
07/01/2020	6	Civil Cover Sheet regarding Complaint, 1 . Filed by All Plaintiffs. (Elzinga, Stephen) (Entered: 07/01/2020)
07/01/2020	7	Notice of Case Assignment to Judge Michael J. McShane and Discovery and Pretrial Scheduling Order. **NOTICE: Counsel shall print and serve the summonses and all documents issued by the Clerk at the time of filing upon all named parties in accordance with Local Rule 3-5**. Discovery is to be completed by 10/29/2020. Joint Alternate Dispute Resolution Report is due by 11/30/2020. Pretrial Order is due by 11/30/2020. Ordered by Judge Michael J. McShane. (bd) (Entered: 07/01/2020)
07/01/2020	8	Waiver of Service of Summons Returned Executed by All Defendants. Filed by All Plaintiffs. (Elzinga, Stephen) (Entered: 07/01/2020)
07/01/2020	9	Waiver of Service of Summons Returned Executed by All Defendants. Filed by All Plaintiffs. (Elzinga, Stephen) (Entered: 07/01/2020)
07/01/2020	10	Notice of Appearance of Christina L. Beatty-Walters appearing on behalf of Beverly Clarno Filed by on behalf of Beverly Clarno. (Beatty-Walters, Christina) (Entered: 07/01/2020)

07/01/2020	11	Notice of Appearance of Brian Simmonds Marshall appearing on behalf of Beverly Clarno Filed by on behalf of Beverly Clarno. (Marshall, Brian) (Entered: 07/01/2020)
07/02/2020	12	Scheduling Order by Judge Michael J. McShane regarding Motion for Preliminary Injunction 2 . Based upon the communications from the parties, the Court will treat the pending motion 2 as a Motion for Preliminary Injunction. The Court also adopts the parties proposed briefing schedule. Defendant's Response is due by 01:00PM on 7/8/2020. The Court will hold Oral Argument on 7/9/2020 at 03:00PM in Eugene by telephone before Judge Michael J. McShane. The Court will provide the parties with the conference call-in number by separate email. Ordered by Judge Michael J. McShane. (cp) (Entered: 07/02/2020)
07/07/2020	13	Scheduling Order by Judge Michael J. McShane: Based upon the request of the parties, the Oral Argument set for 7/9/2020 regarding Motion for Preliminary Injunction 2 is reset for 7/10/2020 at 02:00PM in Eugene by telephone before Judge Michael J. McShane. Sur-Response is due by 7/9/2020. The parties are to use the previously emailed conference call-in number. Ordered by Judge Michael J. McShane. (cp) (Entered: 07/07/2020)
07/09/2020	14	Scheduling Order by Judge Michael J. McShane: The Oral Argument regarding Motion for Preliminary Injunction 2 set for 7/10/2020 at 02:00PM will be by videoconference before Judge Michael J. McShane. The Court will provide the parties the videoconference information by separate email. Ordered by Judge Michael J. McShane. (cp) (Entered: 07/09/2020)
07/09/2020	15	Response to Motion for Preliminary Injunction 2 . Filed by Beverly Clarno. (Beatty-Walters, Christina) (Entered: 07/09/2020)
07/09/2020	16	Declaration of Summer S. Davis *in Opposition to Motion for Preliminary Injunction*. Filed by Beverly Clarno. (Related document(s): Motion for Preliminary Injunction 2 .) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H) (Beatty-Walters, Christina) (Entered: 07/09/2020)
07/09/2020	17	Motion to Intervene *or in the Alternative Appear as Amici Curiae*. Oral Argument requested. Filed by Becca Uherbelau, Our Oregon. (Attachments: # 1 Exhibit A - Becca Uherbelau and Our Oregons Opposition to Plaintiffs Motion for a Temporary Restraining Order or Preliminary Injunction, # 2 Exhibit B - Declaration of Becca Uherbelau, # 3 Exhibit C - Declaration of Ben Unger, # 4 Exhibit D - Declaration of Elizabeth Kaufman) (Anderson-Dana, Lydia) (Entered: 07/09/2020)
07/09/2020	18	Corrected Response *(with Table of Authorities Added)* to Motion for Preliminary Injunction 2 . Filed by Beverly Clarno. (Beatty-Walters, Christina) (Entered: 07/09/2020)
07/09/2020	19	Motion for Leave *to File Reply in Support of Plaintiff's Motion for Preliminary Injunction*. Filed by All Plaintiffs. (Attachments: # 1 Plaintiff's Reply in Support of Its Motion for Preliminary Injunction) (Elzinga, Stephen) (Entered: 07/09/2020)
07/09/2020	20	Supplemental Declaration of Ted Blaszak *in Support of Plaintiff's Motion for Preliminary Injunction*. Filed by All Plaintiffs. (Related document(s): Motion for Leave 19 .) (Elzinga, Stephen) (Entered: 07/09/2020)
07/10/2020	21	Corrected Motion for Leave *File Reply in Support of Plaintiff's Motion for Preliminary Injunction*. Filed by All Plaintiffs. (Attachments: # 1 Plaintiff's Reply in Support of Its Motion for Preliminary Injunction) (Elzinga, Stephen) (Entered: 07/10/2020)
07/10/2020	22	**MINUTES of Proceedings:** Video Motion Hearing Held. Witnesses sworn and evidence adduced. Witnesses: Edward Blaszak; Normal Turrill; Candalynn Johnson; Elizabeth Kaufman; Summer Davis. Order Granting Motion for a Preliminary Injunction 2 as stated

		on the record. Formal order in writing to follow. Order Granting in Part and Denying in Part Motion to Intervene or in the Alternative Appear as Amici Curiae 17 to the extent that movants are allowed to appear as amici curiae. Order Denying defendant's oral Motion for Stay. Stephen Elzinga present as counsel for plaintiffs. Christina Beatty-Walters; Brian Marshall present as counsel for defendant. Steven Berman; Lydia Anderson-Dana present as counsel for amici curiae. (Court Reporter Deborah Cook.) Judge Michael J. McShane presiding. (plb) (Entered: 07/10/2020)
07/13/2020	23	Opinion and Order: The Secretary of State has a vital interest in regulating the petition processes. Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). It is also important that the federal courts not take it upon themselves to rewrite state election rules, particularly on the eve of an election. Republican Natl Comm., 140 S. Ct at 1207. But when these rules collide with unprecedented conditions that burden First Amendment access to the ballot box, their application must temper in favor of the Constitution. Because the right to petition the government is at the core of First Amendment protections, which includes the right of initiative, City of Cuyahoga Falls, 538 U.S. at 196, the current signature requirements in Oregon law are unconstitutional as applied to these specific Plaintiffs seeking to engage in direct democracy under these most unusual of times. The Court therefore GRANTS Plaintiffs' motion for emergency injunctive relief 2 . Signed on 7/13/2020 by Judge Michael J. McShane. (cp) (Entered: 07/13/2020)
07/13/2020	24	Notice re Opinion and Order,,,, 23 *in Response to Court Order* Filed by Beverly Clarno. (Related document(s): Opinion and Order,,,, 23 .) (Beatty-Walters, Christina) (Entered: 07/13/2020)
07/14/2020	25	Order: Based on the Defendant's Notice 24 regarding the Court's Opinion and Order 23 , the Court issues this Minute Order clarifying how it came to the reduced signature number. The Court adopts Plaintiffs' requested remedy of 58,789 signatures. 58,789 required signatures is equal to 50% of the number of signatures required for a constitutional initiative to qualify the 2018 General Election, rather than the 2020 General Election because of the large jump in voter turnout. *See Pl.'s Mot. for a Prelim. Inj. 33-34* 2 . Ordered by Judge Michael J. McShane. (cp) (Entered: 07/14/2020)
07/15/2020	26	Notice of Appeal to the 9th Circuit Filing fee $505 collected; Agency Tracking ID: AORDC-6987259. Filed by Beverly Clarno. (Gutman, Benjamin) (Entered: 07/15/2020)
07/15/2020	27	Transcript Designation and Order Form for the hearing held on July 10, 2020 before Judge Michael J. McShane. Court Reporter: Deborah Cook. regarding Notice of Appeal - Preliminary Injunction 26 *Expedited.* Filed by Beverly Clarno. Transcript is due by 8/14/2020. (Gutman, Benjamin) (Entered: 07/15/2020)
07/15/2020		USCA Case Number and Notice confirming Docketing Record on Appeal re Notice of Appeal - Preliminary Injunction 26 . **Case Appealed to 9th Circuit Case Number 20-35630** assigned. (bd) (Entered: 07/15/2020)

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I directed the Appellant's Excerpts of Record Volume II to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman
BENJAMIN GUTMAN #160599
Solicitor General
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Attorney for Defendant-Appellant
Beverly Clarno, Oregon Secretary of State

BG2:kw5/10354387