

**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX A TO OPPOSITION TO APPLICATION FOR STAY**

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Declaration of C. Norman Turrill in Support of  
Plaintiffs' Motion for a Temporary Restraining Order  
*People Not Politicians Oregon et al. v. Clarno*, No. 6:20-cv-01053-MC (D. Or.)

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EUGENE/SPRINGFIELD, INDEPENDENT  
PARTY OF OREGON, and C. NORMAN  
TURRILL

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

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

Plaintiffs,

v.

BEVERLY CLARNO, OREGON  
SECRETARY OF STATE,

Defendants.

Case No. 20-01053-MC

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

I, C. NORMAN TURRILL, declare that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: June 30, 2020

s/ C. Norman Turrill

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C. NORMAN TURRILL

**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX B TO OPPOSITION TO APPLICATION FOR STAY**

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Declaration of Candalynn Johnson in Support of  
Plaintiffs' Motion for a Temporary Restraining Order  
*People Not Politicians Oregon et al. v. Clarno*, No. 6:20-cv-01053-MC (D. Or.)

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EUGENE/SPRINGFIELD, INDEPENDENT  
PARTY OF OREGON, and C. NORMAN  
TURRILL

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

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

Plaintiffs,

v.

BEVERLY CLARNO, OREGON  
SECRETARY OF STATE,

Defendants.

Case No. 20-01053-MC

**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

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CANDALYNN JOHNSON

**In the Supreme Court of the United States**

---

BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX C TO OPPOSITION TO APPLICATION FOR STAY**

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Order Certifying Ballot Title

*Uherbelau v. Rosenblum*, No. S067451 (Or.)

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*Counsel for Respondents*

IN THE SUPREME COURT OF THE STATE OF OREGON

BECCA UHERBELAU,  
Petitioner,

v.

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


S067451

**APPELLATE JUDGMENT**

Upon consideration by the court.

Petitioner's argument that the Attorney General's certified ballot title for Initiative Petition No. 57 (2020) does not comply substantially with ORS 250.035(2) is not well taken.

The court certifies to the Secretary of State the Attorney General's certified ballot title for the proposed ballot measure. A copy of the Attorney General's certified ballot title is appended to this order.

  
MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
3/26/2020 10:27 AM

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

No costs allowed

Appellate Judgment Effective Date:  
March 27, 2020

SUPREME COURT



c: C Norman Turrill  
Steven C Berman  
Benjamin Gutman  
Gregory A Chaimov

Sharon K Waterman  
Carson L Whitehead  
Shannon T Reel  
Bev Clarno

asb

**APPELLATE JUDGMENT**

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REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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.

**APPELLATE JUDGMENT**

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REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563  
Page 2 of 2



IN THE SUPREME COURT OF THE STATE OF OREGON

BECCA UHERBELAU,  
Petitioner,

v.

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

S067451

**ORDER CERTIFYING BALLOT TITLE**

Upon consideration by the court.

Petitioner's argument that the Attorney General's certified ballot title for Initiative Petition No. 57 (2020) does not comply substantially with ORS 250.035(2) is not well taken.

The court certifies to the Secretary of State the Attorney General's certified ballot title for the proposed ballot measure. A copy of the Attorney General's certified ballot title is appended to this order.

MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
3/26/2020 10:27 AM

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

[ X ] No costs allowed

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- c: C Norman Turrill
- Sharon K Waterman
- Steven C Berman
- Carson L Whitehead
- Benjamin Gutman
- Shannon T Reel
- Gregory A Chaimov
- Bev Clarno

asb

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**ORDER CERTIFYING BALLOT TITLE**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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.



## ORDER CERTIFYING BALLOT TITLE

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REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 2 of 2



**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

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PEOPLE NOT POLITICIANS OREGON, COMMON CAUSE, LEAGUE OF WOMEN  
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PARTY OF OREGON, and C. NORMAN TURRILL,

*Respondents.*

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**APPENDIX D TO OPPOSITION TO APPLICATION FOR STAY**

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Historical Data Concerning Oregon Citizen Initiative Petitions

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*Counsel for Respondents*

The following chart identifies the Oregon citizen initiative petitions that qualified for the ballot in the 2010, 2012, 2014, 2016, and 2018 election cycles and the dates on which the initiatives were approved for signature collection. Asterisks indicate approval dates close to or after April 9, the date in the current election on which Initiative Petition 57 was approved for signature collection.

The underlying data is drawn from the Oregon Secretary of State Elections Division’s Initiative, Referendum, and Referral search tool, available at <https://bit.ly/2ELzsAJ>.

<b>Election Cycle (November)</b>	<b>Ballot Measure Number</b>	<b>Date Approved for Circulation</b>
2010	73	September 18, 2008
2010	74	August 27, 2008
2010	75	February 19, 2010
2010	76	*April 8, 2010
2012	79	August 2, 2010
2012	80	March 24, 2011
2012	81	*April 11, 2012
2012	82	February 27, 2012
2012	83	February 27, 2012
2012	84	January 27, 2012
2012	85	*April 17, 2012
2014	89	December 20, 2013
2014	90	*May 15, 2014
2014	91	*March 28, 2014
2014	92	*May 15, 2014
2016	97	September 1, 2015
2016	98	*March 22, 2016
2016	99	January 22, 2016
2016	100	January 13, 2016
2018	103	*March 7, 2018
2018	104	January 29, 2018
2018	105	October 11, 2017
2018	106	February 24, 2017



**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX E TO OPPOSITION TO APPLICATION FOR STAY**

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Declaration of Ted Blaszak in Support of  
Plaintiffs' Motion for a Temporary Restraining Order  
*People Not Politicians Oregon et al. v. Clarno*, No. 6:20-cv-01053-MC (D. Or.)

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TURRILL

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

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

Plaintiffs,

v.

BEVERLY CLARNO, OREGON  
SECRETARY OF STATE,

Defendants.

Case No. 20-01053-MC

**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

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TED BLASZAK

**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX F TO OPPOSITION TO APPLICATION FOR STAY**

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Complaint

*People Not Politicians Oregon et al. v. Clarno*, No. 6:20-cv-01053-MC (D. Or.)

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TURRILL

UNITED STATES DISTRICT COURT

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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 requirement and deadline to account 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 sign 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 signatures. Or. Const. art. IV, § 1, cl. 4(a); Or. Rev. Stat. § 246.110.

### **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, Senate, and U.S. 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

By: s/ Steve Elzinga  
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Attorneys for Plaintiffs  
PEOPLE NOT POLITICIANS OREGON,  
COMMON CAUSE, LEAGUE OF  
WOMEN VOTERS OF OREGON, NAACP  
OF EUGENE/SPRINGFIELD,  
INDEPENDENT PARTY OF OREGON,  
and C. NORMAN TURRILL



**In the Supreme Court of the United States**

---

BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX G TO OPPOSITION TO APPLICATION FOR STAY**

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Docket

*People Not Politicians Oregon et al. v. Clarno*, No. 6:20-cv-01053-MC (D. Or.)

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*Counsel for Respondents*

**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****People Not Politicians Oregon**

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**Plaintiff****Common Cause**

represented by **Stephen Elzinga**  
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**Plaintiff****League of Women Voters of Oregon**

represented by **Stephen Elzinga**  
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**Plaintiff****NAACP of Eugene/Springfield**

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**Plaintiff****Independent Party of Oregon**

represented by **Stephen Elzinga**  
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*LEAD ATTORNEY*  
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**Plaintiff****C. Norman Turrill**

represented by **Stephen Elzinga**  
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V.

**Defendant**

**Beverly Clarno**  
*Oregon Secretary of State*

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Amicus**Our Oregon**represented by **Steven C. Berman**

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LEAD ATTORNEY

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**Lydia Anderson-Dana**

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/30/2020	<a href="#">1</a>	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	<a href="#">2</a>	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	<a href="#">3</a>	Declaration of Ted Blaszak <i>in Support of Plaintiff's Motion for a Temporary Restraining Order</i> . Filed by All Plaintiffs. (Related document(s): Motion for Temporary Restraining Order <a href="#">2</a> .) (Elzinga, Stephen) (Entered: 06/30/2020)
06/30/2020	<a href="#">4</a>	Declaration of Candalynn Johnson <i>in Support of Plaintiff's Motion for a Temporary Restraining Order</i> . Filed by All Plaintiffs. (Related document(s): Motion for Temporary Restraining Order <a href="#">2</a> .) (Elzinga, Stephen) (Entered: 06/30/2020)
06/30/2020	<a href="#">5</a>	Declaration of C. Norman Turrill <i>in Support of Plaintiff's Motion for a Temporary Restraining Order</i> . Filed by All Plaintiffs. (Related document(s): Motion for Temporary Restraining Order <a href="#">2</a> .) (Elzinga, Stephen) (Entered: 06/30/2020)
07/01/2020	<a href="#">6</a>	Civil Cover Sheet regarding Complaint, <a href="#">1</a> . Filed by All Plaintiffs. (Elzinga, Stephen) (Entered: 07/01/2020)
07/01/2020	<a href="#">7</a>	Notice of Case Assignment to Judge Michael J. McShane and Discovery and Pretrial Scheduling Order. <b>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.</b> 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	<a href="#">8</a>	Waiver of Service of Summons Returned Executed by All Defendants. Filed by All Plaintiffs. (Elzinga, Stephen) (Entered: 07/01/2020)
07/01/2020	<a href="#">9</a>	Waiver of Service of Summons Returned Executed by All Defendants. Filed by All Plaintiffs. (Elzinga, Stephen) (Entered: 07/01/2020)
07/01/2020	<a href="#">10</a>	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	<a href="#">11</a>	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 <a href="#">2</a> . Based upon the communications from the parties, the Court will treat the pending motion <a href="#">2</a> 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 <a href="#">2</a> 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 <a href="#">2</a> 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	<a href="#">15</a>	Response to Motion for Preliminary Injunction <a href="#">2</a> . Filed by Beverly Clarno. (Beatty-Walters, Christina) (Entered: 07/09/2020)
07/09/2020	<a href="#">16</a>	Declaration of Summer S. Davis <i>in Opposition to Motion for Preliminary Injunction</i> . Filed by Beverly Clarno. (Related document(s): Motion for Preliminary Injunction <a href="#">2</a> .) (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H) (Beatty-Walters, Christina) (Entered: 07/09/2020)
07/09/2020	<a href="#">17</a>	Motion to Intervene <i>or in the Alternative Appear as Amici Curiae</i> . Oral Argument requested. Filed by Becca Uherbelau, Our Oregon. (Attachments: # <a href="#">1</a> Exhibit A - Becca Uherbelau and Our Oregon's Opposition to Plaintiffs Motion for a Temporary Restraining Order or Preliminary Injunction, # <a href="#">2</a> Exhibit B - Declaration of Becca Uherbelau, # <a href="#">3</a> Exhibit C - Declaration of Ben Unger, # <a href="#">4</a> Exhibit D - Declaration of Elizabeth Kaufman) (Anderson-Dana, Lydia) (Entered: 07/09/2020)
07/09/2020	<a href="#">18</a>	Corrected Response ( <i>with Table of Authorities Added</i> ) to Motion for Preliminary Injunction <a href="#">2</a> . Filed by Beverly Clarno. (Beatty-Walters, Christina) (Entered: 07/09/2020)
07/09/2020	<a href="#">19</a>	Motion for Leave <i>to File Reply in Support of Plaintiff's Motion for Preliminary Injunction</i> . Filed by All Plaintiffs. (Attachments: # <a href="#">1</a> Plaintiff's Reply in Support of Its Motion for Preliminary Injunction) (Elzinga, Stephen) (Entered: 07/09/2020)
07/09/2020	<a href="#">20</a>	Supplemental Declaration of Ted Blaszak <i>in Support of Plaintiff's Motion for Preliminary Injunction</i> . Filed by All Plaintiffs. (Related document(s): Motion for Leave <a href="#">19</a> .) (Elzinga, Stephen) (Entered: 07/09/2020)
07/10/2020	<a href="#">21</a>	Corrected Motion for Leave <i>File Reply in Support of Plaintiff's Motion for Preliminary Injunction</i> . Filed by All Plaintiffs. (Attachments: # <a href="#">1</a> Plaintiff's Reply in Support of Its Motion for Preliminary Injunction) (Elzinga, Stephen) (Entered: 07/10/2020)
07/10/2020	22	<b>MINUTES of Proceedings:</b> 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 <a href="#">2</a> 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 <a href="#">17</a> 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	<a href="#">23</a>	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 <a href="#">2</a> . Signed on 7/13/2020 by Judge Michael J. McShane. (cp) (Entered: 07/13/2020)
07/13/2020	<a href="#">24</a>	Notice re Opinion and Order,,,, <a href="#">23</a> in Response to Court Order Filed by Beverly Clarno. (Related document(s): Opinion and Order,,,, <a href="#">23</a> .) (Beatty-Walters, Christina) (Entered: 07/13/2020)
07/14/2020	25	Order: Based on the Defendant's Notice <a href="#">24</a> regarding the Court's Opinion and Order <a href="#">23</a> , 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 <a href="#">2</a> . Ordered by Judge Michael J. McShane. (cp) (Entered: 07/14/2020)
07/15/2020	<a href="#">26</a>	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	<a href="#">27</a>	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 <a href="#">26</a> 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 <a href="#">26</a> . <b>Case Appealed to 9th Circuit Case Number 20-35630</b> assigned. (bd) (Entered: 07/15/2020)
07/22/2020	<a href="#">28</a>	Order from USCA for the 9th Circuit, USCA # 20-35630 re Notice of Appeal - Preliminary Injunction <a href="#">26</a> . We expedite this appeal. No streamlined extensions of time will be approved. No written motions for extensions of time will be granted absent extraordinary and compelling circumstances. The Clerk shall place this case on the calendar for August 2020. (bd) (Entered: 07/23/2020)
07/23/2020	<a href="#">29</a>	Order from USCA for the 9th Circuit, USCA # 20-35630 re Notice of Appeal - Preliminary Injunction <a href="#">26</a> . Appellant's motion to stay the district court's July 13, 2020 order pending appeal is denied. (bd) (Entered: 07/23/2020)
07/30/2020	<a href="#">30</a>	Joint Status Report . Filed by Beverly Clarno. (Beatty-Walters, Christina) (Entered: 07/30/2020)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
08/03/2020 09:35:19			
<b>PACER Login:</b>	jrapaport2355	<b>Client Code:</b>	MISC
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	6:20-cv-01053-MC Start date: 1/1/1971 End date: 8/3/2020
<b>Billable Pages:</b>	5	<b>Cost:</b>	0.50

**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX H TO OPPOSITION TO APPLICATION FOR STAY**

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Joint Status Report

*People Not Politicians Oregon et al. v. Clarno*, No. 6:20-cv-01053-MC (D. Or.)

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PARTY OF OREGON, and C. NORMAN  
TURRILL

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  
JOINT STATUS REPORT

The parties have conferred and are engaged in implementing the Court's preliminary injunction order. The parties file this joint status report to inform the Court that:

- (1) The actions under Oregon law relating to the potential qualification of IP 57 for the ballot that were required before or shortly after the Court entered its preliminary injunction order have now been taken; and
- (2) The Office of the Secretary of State has today completed the signature verification process for Initiative Petition 57 and has verified more than the court-imposed threshold of 58,789 signatures.

DATED July 30, 2020.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

*s/ Christina L. Beatty-Walters*

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COMMON CAUSE, LEAGUE OF WOMEN  
VOTERS OF OREGON, NAACP OF  
EUGENE/SPRINGFIELD, INDEPENDENT  
PARTY OF OREGON, and C. NORMAN

**In the Supreme Court of the United States**

---

BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX I TO OPPOSITION TO APPLICATION FOR STAY**

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Emergency Motion Under Circuit Rule 27-3 for a Stay Pending Appeal  
*People Not Politicians Oregon et al. v. Clarno*, No. 20-35630 (9th Cir.)

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*Counsel for Respondents*

No. 20-35630

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PEOPLE NOT POLITICIANS OREGON, et al,

Plaintiffs-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of State,

Defendant-Appellant.

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**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR A STAY  
PENDING APPEAL—RULING REQUESTED BY JULY 22, 2020**

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

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Attorneys for Appellant

---

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## **CIRCUIT RULE 27-3 CERTIFICATE**

- (i) The names, telephone numbers, e-mail addresses, and office addresses of the attorneys for all parties are as follows:

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Counsel for Plaintiffs-Appellees

- (ii) The facts showing the existence of the emergency are as follows: The district court ordered Oregon to place on the November 2020 ballot a proposed constitutional amendment that does not meet the state constitution's signature and deadline requirements as long as the plaintiffs produce 39% of the required signatures by August 17, 2020, six weeks after the deadline. That order requires the state to violate the provisions of the Oregon Constitution regarding constitutional amendments. And it will require the state and others to take immediate steps to comply, including by verifying signatures and

preparing the material that will appear in the voter's pamphlet. Once the ballot design is finalized and ballots are printed and mailed, it will be too late to remove the measure from the ballot even if the preliminary injunction is overturned. The Secretary of State must finalize what is on the ballot by September 3rd at the latest to allow ballots to be mailed no later than September 19th. If this court denies a stay but expedites the appeal so that it can be decided by the end of August, a scheduling order needs to be issued promptly. To prevent the irreparable harm that will occur immediately and to ensure that there is time to expedite the appeal if needed, the state requests a ruling by **July 22, 2020**.

- (iii) The motion could not have been filed earlier because the district court issued its written order entering its preliminary injunction on July 13, 2020. The state could not appeal and seek a stay before that date, and this motion is submitted just two days later.
- (iv) Undersigned counsel spoke to counsel for plaintiffs, Steve Elzinga, on July 13, 2020, to inform him about this motion, and exchanged emails about the motion on July 14th and July 15th. Mr. Elzinga informed me that plaintiffs oppose the motion. Mr. Elzinga will be served through ECF and I am also emailing him a copy of the motion.

(v) The relief sought here was first sought in the district court. Trial counsel for the state informs me that the district court stated orally on Friday, July 10, 2020, that it would deny a stay and that counsel did not need to file a motion because it was deemed denied.

/s/ Benjamin Gutman  
Benjamin Gutman

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**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR A STAY  
PENDING APPEAL—RULING REQUESTED BY JULY 22, 2020**

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**INTRODUCTION**

Oregon’s constitution allows its citizens to propose constitutional amendments by initiative for popular vote. To appear on the ballot, the constitution requires the proponents of a measure to obtain signatures from registered voters equal to “eight percent of the total number of votes cast for all candidates for Governor” in the last gubernatorial election—here, 149,360 signatures. Or. Const. art. IV, § 1(2)(c). Those signatures must be submitted “not less than four months before the election,” which for the November 2020 election was July 2, 2020. *Id.* § 1(2)(e).

On July 13, 2020, the district court (McShane, J.) issued a preliminary injunction that will require the state<sup>1</sup> to place a constitutional amendment on the November 2020 ballot even though its proponents did submitted only a fraction of the required number of signatures by July 2nd. Although Oregon Constitution’s signature and deadline requirements are clear and without exception, the court held that the First Amendment required Oregon to replace

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<sup>1</sup> This motion refers to “the state” because the state is the real party in interest, even though the Secretary of State (in her official capacity) was the nominal defendant in the district court.

its unambiguous signature requirement with a lesser requirement of the court's creation and to extend the deadline to a date chosen by the court.

This Court should immediately stay the preliminary injunction. The state is likely to prevail on appeal because the signature and deadline requirements do not implicate, much less violate, the First Amendment, even during the pandemic. Restrictions on the *manner* in which signatures may be gathered are subject to First Amendment scrutiny, because signature gathering is core political speech. But the constitutional provisions challenged here do not regulate the manner in which signatures are gathered. They regulate the legislative process, not speech. As several other circuits have explicitly recognized, such procedural rules do not implicate the First Amendment. In ruling to the contrary, the district court encroached on the state's sovereign authority to determine for itself the procedures by which its own constitution is to be amended. The balance of harms and public interest also favor keeping the constitutionally mandated rules for initiatives in place rather than changing them for one privileged initiative shortly before the election.

Although this Court recently denied a stay in *Reclaim Idaho v. Little*, No. 20-35584, the case for a stay is considerably stronger here. The preliminary injunction in *Reclaim Idaho* was primarily about the manner in which signatures are gathered to put an initiative on the ballot—specifically, whether

the state had to accept electronic signatures. Although the district court in that case gave the state the option to place the measure on the ballot with fewer signatures than usual, it pointedly refused to order the state to do so—expressly “recognizing the State’s interest in upholding its conditions, specifically the numerical and geographic requirements.” *Reclaim Idaho v. Little*, 2020 WL 3490216, at \*11 (D. Idaho June 26, 2020). Although the state ultimately should prevail in *Reclaim Idaho* as well, regulations governing the manner of collecting signatures touch much more closely on the First-Amendment-protected communications between signature gatherers and voters than the bare numerical requirement at issue here, which does not implicate the First Amendment at all. Moreover, the state defendants in *Reclaim Idaho* apparently have the power under Idaho law to waive or amend the statutory requirements for initiative petitions, *id.* at \*8 and \*10, unlike in this case. Only the people of Oregon—not the Secretary of State—can amend the state’s constitution. And unlike in *Reclaim Idaho*, an immediate stay is needed here to prevent a constitutional amendment that does not meet the constitutionally required signature threshold from appearing on the ballot.<sup>2</sup>

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<sup>2</sup> The United States Supreme Court is considering a motion for a stay pending appeal in a case out of the Sixth Circuit, *Whitmer v. SawariMedia, LLC*, No. 20A1, which also involves a district court order invalidating the state’s signature and deadline requirements for initiatives. Michigan Governor  
*Footnote continued...*

## BACKGROUND

**A. To place a proposed constitutional amendment on the November 2020 ballot, the Oregon Constitution requires proponents to collect 149,360 signatures by July 2, 2020.**

The Oregon Constitution allows individuals to propose constitutional amendments to be submitted to a popular vote. Or. Const. art. IV, § 1(2)(c).

The constitution imposes two requirements to qualify a constitutional amendment for the ballot that are relevant here.

First, the signature requirement: The proponents must file a petition with the Secretary of State “signed by a number of qualified voters equal to eight percent of the number of votes cast” in the last gubernatorial election. *Id.*

Second, the deadline requirement: The petition must be filed “not less than four months before the election at which the proposed law or amendment to the Constitution is to be voted upon.” Or. Const. art. IV, § 1(2)(e).

For the 2020 general election, those requirements mean that a proposed constitutional amendment required filing a petition with 149,360 valid signatures by July 2, 2020. *See State Initiative and Referendum Manual at 5.*<sup>3</sup>

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*(...continued)*

Gretchen Whitmer has asked the Supreme Court to rule by July 17, 2020. If a stay is granted in *Whitmer*, that will provide further support for a stay here.

<sup>3</sup> The provisions of the Manual, which is available at <https://sos.oregon.gov/elections/Documents/stateIR.pdf>, constitute administrative rules. *See Or. Admin. R. 165-014-0005.*

**B. Plaintiffs collected less than half of the required signatures for Initiative Petition 57 before the July 2nd deadline.**

Initiative Petition (IP) 57 is a proposed constitutional amendment that would create a redistricting commission in Oregon. *See* Davis Decl., Ex. B (attached to this motion). IP 57 was approved for circulation on April 9, 2020. *Id.* ¶ 12. By the July 2nd deadline, petitioners claimed to have collected a little over 64,000 signatures, less than half of the constitutional requirement. *Id.* ¶ 15.

**C. The district court issued a preliminary injunction requiring the Secretary of State to place IP 57 on the ballot as long as plaintiffs present 58,789 signatures by August 17th.**

One of IP 57's chief petitioners and five organizations that support IP 57 filed this lawsuit on June 30, 2020, two days before the deadline to submit petition signatures. Plaintiffs requested a temporary restraining order extending the deadline for submitting signatures for ballot initiatives and reducing the number of signatures required. Mot. for TRO at 40. Plaintiffs argued that although the state constitution's signature and deadline requirements ordinarily would pass muster under the First Amendment, they were unconstitutional as applied to IP 57 because of the circumstances of the COVID-19 pandemic. Reply in support of Mot. for PI at 5.

The district court treated the motion as a request for a preliminary injunction, which it granted after a hearing. The court held that the signature

and deadline requirements violated the First Amendment as applied to IP 57, because plaintiffs had been “reasonably diligent” in their attempt to meet the signature and deadline requirements but those requirements “significantly inhibit[ed]” their ability to place IP 57 on the ballot. Op. at 8-11. The district court ordered the state either to place IP 57 on the ballot immediately or to do so if plaintiffs produced just 58,789 valid signatures (about 39% of the constitutional requirement of 149,360 signatures) by August 17th, six weeks after the constitutional deadline. *Id.* at 13. The state objected to both proposed remedies but explained that it understood the court’s decision to effectively require the latter. Def. Notice in Response to Court Order (July 13, 2020).

### **ARGUMENT**

In considering whether to grant a stay pending appeal, the Court must consider four factors: (1) the applicant’s likelihood of success on the merits; (2) whether the applicant will suffer irreparable injury; (3) the balance of hardships to other parties interested in the proceeding; and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). All four factors weigh in favor of a stay.

**A. The Secretary is likely to prevail on appeal, because the Oregon Constitution’s signature and deadline requirements for initiative petitions do not violate the First Amendment as applied to plaintiffs.**

A preliminary injunction is an “extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). That



principle carries particular force in the elections context. *See Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012) (“[G]iven the imminent nature of the election, we find it important not to disturb long-established expectations that might have unintended consequences.”). Moreover, “[w]hen a mandatory preliminary injunction is requested, the district court should deny such relief unless the facts and law clearly favor the moving party.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quotation marks and citation omitted).

In granting a preliminary injunction, the district court concluded that the signature and deadline requirements in the Oregon Constitution violate the First Amendment as applied to IP 57. That conclusion is wrong as matter of law.

- 1. Signature and deadlines requirements for initiatives do not implicate the First Amendment, because they are legislative rules rather than regulations of speech.**

Plaintiffs’ entire legal theory is based on the First Amendment, but the First Amendment simply is not implicated by signature and deadline requirements for placing an initiative on the ballot. Accordingly, the federal courts have no authority to enjoin those requirements at all—much less to rewrite state law on the eve on an election.

The First Amendment does not limit the number of signatures a state can choose to require for an initiative or the deadline for submitting those signatures, because those requirements are fundamentally legislative rules

rather than regulation of speech. In Oregon, the people—when acting through the initiative process—are a coequal legislative branch. *See State v. Vallin*, 434 P.3d 413, 419 (Or. 2019). The signature and deadline requirements are rules governing how that branch operates, akin to a rule requiring a certain number of legislators to agree to bring proposed legislation to the floor.

Every state is free to establish the procedural mechanisms by which laws may be enacted and its state constitution may be amended. The right of voters to legislate through initiative is one such mechanism that many states, including Oregon, provide. But the state is free to define the procedural requirements that must be met to effectuate that state-created right. Non-discriminatory, content-neutral ballot initiative requirements like the signature gathering requirements here at issue do not implicate the First Amendment.

To be sure, gathering support for a ballot initiative is core political speech, and thus laws that regulate the *manner* in which signature gathering is done can implicate the First Amendment by regulating speech between a signature gatherer and voter. But the constitutional provisions challenged in this case are neutral and non-discriminatory requirements that establish the minimum number of signatures needed to be gathered and the deadline for submitting them. They regulate no speech.

The overwhelming weight of authority from other circuits that have considered the issue concludes that such neutral procedural laws do not implicate the First Amendment. *See Molinari v. Bloomberg*, 564 F.3d 587, 602 (2d Cir. 2009) (“As our Sister Circuits (and the Nebraska Supreme Court) have recognized, plaintiffs’ First Amendment rights are not implicated by referendum schemes *per se*[,] but by the regulation of advocacy within the referenda process, *i.e.*, petition circulating, discourse and all other protected forms of advocacy.”); *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1099 (10th Cir. 2006) (“Although the First Amendment protects political speech incident to an initiative campaign, it does not protect the right to make law, by initiative or otherwise.”); *Marijuana Policy Project v. United States*, 304 F.3d 82, 85 (D.C. Cir. 2002) (noting that the plaintiff “cites no case, nor are we aware of one, establishing that limits on legislative authority—as opposed to limits on legislative advocacy—violate the First Amendment. This is not surprising, for although the First Amendment protects public debate about legislation, it confers no right to legislate on a particular subject.”); *Dobrovolny v. Moore*, 126 F.3d 1111, 1112–13 (8th Cir. 1997) (rejecting First Amendment challenge to Nebraska constitutional provision requiring submission of signatures to place measure on ballot equal to 10% of registered voters because “the constitutional provision at issue here does not in any way impact the

communication of appellants’ political message or otherwise restrict the circulation of their initiative petitions or their ability to communicate with voters about their proposals”). Just last week, the Seventh Circuit reached a similar conclusion, explaining that initiatives and referenda are “wholly a matter of state law,” and that there would be no First Amendment issue if the state decided to “skip all referenda for the 2020 election cycle”:

The federal Constitution does not require any state or local government to put referenda or initiatives on the ballot. That is wholly a matter of state law. If we understand the Governor’s orders, coupled with the signature requirements, as equivalent to a decision to skip all referenda for the 2020 election cycle, there is no federal problem. Illinois may decide for itself whether a pandemic is a good time to be soliciting signatures on the streets in order to add referenda to a ballot.

*Morgan v. White*, \_\_\_ F.3d \_\_\_; 2020 WL 3818059, \*2 (No. 20-1801) (7th Cir. July 8, 2020) (per curiam) (citation omitted).

Those decisions reflect that the First Amendment’s Free Speech Clause is about speech, not about legislative procedures. Rules about how many signatures the proponents of a measure must collect to place it on the ballot do not regulate speech.

None of that is to suggest that merely because the initiative power is a state-created right that states are therefore free to regulate expressive conduct associated with that right in any way it wants. See *Meyer v. Grant*, 486 U.S. 414, 424-25 (1988) (“[T]he power to ban initiatives entirely” does not include

“the power to limit discussion of political issues raised in initiative petitions.”). But there is a difference between regulations that govern the manner in which the initiative right, once created, can be effectuated, and laws that create or define initiative right in the first place. It is up to the state to define the initiative power by establishing the procedures by which an initiative becomes law. Once that power is established, a right to speech is created, and regulations that restrict that may right trigger the First Amendment. But laws establishing the nature of the initiative power in the first instance are not themselves speech regulations. The constitutional provisions here at issue are ones that *define* what the initiative power is in the first place by setting forth the procedures by which initiatives can become Oregon law. They do not implicate the First Amendment. By treating them otherwise, the district court claimed for the federal judiciary power that properly belongs to the sovereign state.

**2. *Angle v. Miller* does not support the district court’s ruling.**

The district court’s ruling relied on this court’s decision in *Angle v. Miller*, 373 F.3d 1122 (9th Cir. 2012). Op. at 7. But *Angle* did not answer the question posed here, and the district court’s discussion and application of that case are incorrect.

In *Angle*, the plaintiffs raised a facial challenge under the First Amendment to a Nevada rule that required initiative proponents to meet a ten-

percent signature threshold in each of Nevada's three congressional districts in order to place an initiative on the ballot. *Id.* at 1126-27. In analyzing that rule, the court considered whether the rule imposed a "severe burden" on the plaintiffs' speech, which would trigger heightened scrutiny, or whether the burden was a lesser one, which would entail less exacting review. *Id.* at 1132.

In concluding that the rule did not impose a severe burden, the court discussed two factors: whether the regulations limit one-on-one communication between petition circulators and voters and whether the regulations "make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot." *Id.* at 1132-33 (citing *Meyer*, 486 U.S. at 422). The Nevada rule in question did not limit one-on-one communication at all and so did not impose a severe burden under that factor. *Id.* at 1132. As to the second factor, the court noted that *Meyer* recognized that ballot access restrictions may indirectly impact core political speech by preventing an issue from become "the focus of statewide discussion." *Id.* at 1133 (quoting *Meyer*, 486 U.S. at 423). The court then stated that "as applied to the initiative process, *we assume* that ballot access restrictions place a severe burden on core political speech, and trigger strict scrutiny, when they significantly inhibit the ability of initiative proponents to place initiatives on the ballot." *Angle*, 673 F.3d at 1133

(emphasis added). But under that factor, the plaintiffs failed to demonstrate that the rule at issue severely burdened core political speech. *Id.*

Although *Angle* applied a First Amendment standard in upholding the Nevada law, it merely “assume[d]” that the standard applied and concluded that the law satisfied it. *Id.* *Angle* did not consider, much less address, the threshold question whether the First Amendment was implicated at all—and it did not have to, because the Nevada statute satisfied the First Amendment even if it was implicated. The Nevada statute was arguably manner-of-collection regulation, as it defined *where* signature collectors needed to go in the state, not how many signatures needed to be collected in total. *Angle* thus did not answer the question presented here, which is a question that other federal courts of appeals around the country have resolved in favor of states.

The district court nonetheless relied on *Angle* to conclude that Oregon’s constitutional requirements for signature gathering imposed a severe burden on core political speech under both factors discussed in that case. First, the court concluded that plaintiffs’ ability to gather signatures one-on-one was limited by the pandemic and the Governor’s Executive Orders issued in response to the pandemic, and so the application of Oregon’s constitutional requirements imposed a burden on their speech. *Op.* at 7-8. Second, the court concluded that plaintiffs could not place their initiative on the ballot because the state adhered

to the constitutional requirements and therefore burdened plaintiffs' core political speech. Both conclusions are wrong.

As to the restriction on one-on-one communication, the district court's reliance on the Governor's Executive Orders—which plaintiffs did not challenge—to conclude that enforcement of the constitutional requirements restricted their speech is not supported by *Angle* or by *Meyer*. The question under those cases is whether the challenged regulation—here the constitutional requirements—limited one-on-one communication. Oregon's signature and deadline requirements do not restrict one-on-one communication in any way, either facially or as applied to plaintiffs. *See Reclaim Idaho*, 2020 WL 3490216 at \*8 (concluding that the first *Angle* factor did not apply because it was Idaho's management of COVID-19 and not the initiative requirements that limited one-on-one communication). Simply put, the district court's reasoning was fundamentally flawed because it targeted the wrong regulation. Although the state disputes the district court's conclusion that the Executive Orders restricted one-on-one communication, even if that were true any restriction on speech would follow from *those* orders and the pandemic—not from application of the constitutional requirements for putting a measure on the ballot.

The district court also made a fundamental error in describing and applying the second factor. First, neither *Angle* nor *Meyer* support the district



court’s assertion that core political speech is burdened when “the regulations make it less likely that proponents can obtain the necessary signatures to place the initiative on the ballot.” *Op.* at 7. Again, the court in *Angle* assumed—but did not decide—that core political speech could be burdened by regulations “when they significantly inhibit the ability of initiative proponents to place initiatives on the ballot.” 673 F.3d at 1133. But the concern underlying that line of inquiry is that signature gathering restrictions can indirectly limit speech by making it less likely for an issue to become a matter of statewide discussion. 486 U.S. at 423. Under *Meyer*, a regulation on signature gathering not only directly regulates speech but *also* may have an indirect effect on speech by making it less likely that an issue will make it on to the statewide ballot. But nothing in *Meyer* suggests that *any* procedural requirement that does not regulate speech at all but happens to make it less likely for an issue to make it on the ballot triggers First Amendment scrutiny. If that were the case, virtually any procedural requirement for adopting legislation would be unlawful.

Neither *Angle* nor *Meyer* addressed whether a numerical signature threshold or a deadline could be a restriction on core political speech. And even if the standard from those cases controlled here, the district court badly misapplied the standard. As with its conclusion concerning one-on-one communication, the court reasoned that the state’s “insistence on strictly

applying the initiative requirements made it less likely that Plaintiffs could obtain the necessary signatures.” Op. at 8. That circular reasoning is fundamentally unsound. Any signature requirement beyond zero “make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot,” as does any deadline before election day. But the cause of plaintiffs’ inability to timely “garner the necessary signatures” is not the fact that plaintiffs must collect the necessary number of signatures by a deadline.

The district court was also wrong to blame to the Secretary of State for failing to make accommodations for plaintiffs. Op. at 11. The Oregon Constitution does not give the Secretary any authority to waive the number of signatures required or the deadline for submission. The constitutional requirements for citizen initiatives were put in place by the citizens themselves and can be amended only by the same process, a process that the First Amendment does not control.

There are other problems with the district court’s reasoning that the Secretary intends to address in the merits briefs on appeal. But the points above suffice to show that the preliminary injunction was legally flawed. Because the district court erred in applying the First Amendment and erred in its consideration of *Angle* and *Meyer*, the state has a strong likelihood of prevailing on appeal and this Court should grant the stay.

**B. The remaining factors also favor a stay.**

The Secretary and the public will suffer irreparable injury if the preliminary injunction is not stayed. The government sustains irreparable harm whenever it “is enjoined by a court from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, Circuit Justice). The preliminary injunction requires the Secretary to place IP 57 on the ballot even though IP 57 does not satisfy the state constitutional requirements for an amendment to the constitution. If a stay is not granted before ballots are printed and mailed, Oregonians will be asked to vote on a proposed constitutional amendment that should not be on the ballot. The district court’s preliminary ruling thus threatens to enshrine permanently in the Oregon Constitution an amendment that did not comply with the state constitutional process for amendments. At the very least, there is likely to be protracted litigation about the validity of the amendment. Indeed, if the ruling is not promptly stayed, in December the federal courts may find themselves in the position of telling Oregon—based on the First Amendment—what is or is not in the state’s constitution.

The injunction will also impose burdens on entities that are not part of this case. Preparations for the November 2020 election are already well

underway. A committee of five public officials started meeting July 8th<sup>4</sup> to produce a financial estimate of the “amount” and “description” of the “financial effects” of the ballot measures by July 27th. *See* Or. Rev. Stat. § 250.127(5). The committee then must hold a hearing with public comment and produce a final statement by August 5th. Or. Rev. Stat. § 250.127. The resulting financial estimate will be printed on the ballot. Or. Rev. Stat. § 250.125(5). Separate committees will soon be appointed to produce official explanatory statements for each ballot measure, which will be printed in the Voters’ Pamphlet. Or. Rev. Stat. § 251.205. The explanatory statement process has similar deadlines and public comment requirements as the financial estimate. *See* Or. Rev. Stat. §§ 251.205, 251.215. The deadline for “any person” to petition the Oregon Supreme Court to challenge either statement is August 10th. Or. Rev. Stat. § 250.131(2) (Financial Estimate); *id.* § 250.235(1) (Explanatory Statement). And arguments for or against a ballot measure must be filed with the Secretary by August 25th for inclusion in the official Voters’ Pamphlet mailed to every Oregon household. *See* State Voters’ Pamphlet Manual at 4–5.

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<sup>4</sup> *See* Secretary of State Elections Division, Financial Estimate Committee (FEC) Meeting Schedule, <https://content.govdelivery.com/accounts/ORSOS/bulletins/2944fcc>.

By September 3rd, the Secretary of State must issue a directive listing the federal and state contests and the language that will appear on the ballot for each measure. *See* Or. Rev. Stat. § 254.085; Davis Decl. ¶ 37. Over the next 16 calendar days, each of Oregon’s 36 county election administrators then must design between 6 and 250 unique ballots (listing only the local races in which a voter is eligible to vote), print those ballots, and prepare military and overseas ballots for mailing. Military and overseas ballots must be mailed by September 19th and will be sent earlier if possible to ensure those voters have time to vote. *See* 52 U.S.C. § 20302(a)(8)(A); Or. Rev. Stat. § 253.065(1)(a); Davis Decl. ¶¶ 36–37.

If not stayed, the preliminary injunction will interfere with all of those preparations. County election administrators will have to design ballots around the measure. Persons who are for or against the measure will likely spend time and money on efforts to support or oppose it. All of that effort will be wasted if this Court reverses the preliminary injunction or if a court ultimately determines that the measure, despite having been placed on the ballot, was invalid.

The need to avoid those harms significantly outweighs any harm to plaintiffs in not having their initiative appear on the November 2020 ballot. Any harm suffered by plaintiffs is largely the result of their own choices and the pandemic, not the result of the Oregon Constitution or the Governor’s orders.

The petition to begin the process for IP 57 was not filed until November 2019, and a court challenge to the ballot title (which was required before plaintiffs could begin collecting signatures) was not resolved until March 27, 2020. See Davis Decl. ¶ 12. IP 57 was approved for circulation on April 9, only 84 days before the July 2nd deadline. *Id.* That is later in the election cycle than most successful initiative campaigns even in years not affected by a pandemic: Of the 30 initiative petitions proposing constitutional amendments that have qualified for the ballot since 2000, all but two were approved for circulate no later than March of the election year. *Id.* ¶ 9.

The public interest also favors a stay. The preliminary injunction fundamentally changes the requirements to amend the Oregon Constitution late in an election cycle, after the two-year signature gathering period has ended. The state has a strong interest in ensuring the efficient and orderly administration of its elections and in applying consistent state constitutional standards to each matter proposed for inclusion on the ballot. Changing the rules at this late date—and especially just for one initiative—undercuts the fairness of the election process, favors one measure over others that may be similarly situated, and undermines state and county officials’ administration of the election. And it very well could result in the federal courts having to tell

Oregon what Oregon's constitution says and does not say, which is not their proper role.

Such last-minute injunctions to election laws are strongly disfavored. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). When an election is “imminent,” it is “important not to disturb long-established expectations that might have unintended consequences.” *Lair*, 697 F.3d at 1214 (issuing stay pending appeal); *see also Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (“the Supreme Court has warned us many times to tread carefully where preliminary relief would disrupt a state voting system on the eve of an election”).

Because of the practical limitations caused by COVID-19, this will probably be the most challenging election season in memory for state and local elections officials. The district court's preliminary injunction adds to their burdens and, by shortening the timeframe to take various steps, increases the likelihood of serious mistakes that affect the integrity of the election. The balance of hardships and public interest weigh heavily in favor of a stay to ensure an orderly November election.

**C. If the Court does not grant a stay, it should expedite the appeal so that it can be decided before the end of August.**

In the alternative, if the Court denies the motion for a stay pending appeal, it should expedite consideration of this appeal so that a merits panel can

rule before the end of August. This Court recently did that in *Reclaim Idaho v. Little*, No. 20-35584, which is scheduled for oral argument on August 10th. Although a ruling by the end of August reversing the preliminary injunction will not alleviate all of the harms discussed above, it *might* still allow the state to pull IP 57 from the ballots before they are printed and mailed.

The state proposes the following briefing schedule:

- Opening brief on July 24, 2020.
- Answering brief on August 7, 2020.
- Reply brief, if any, on whatever schedule would allow the court to hold oral argument by videoconference on August 14 or 19, 2020, if the court holds argument.



**CONCLUSION**

This Court should stay the preliminary injunction pending appeal. If it does not do so, it should at least expedite the appeal to allow a ruling on the merits before the end of August.

Respectfully submitted,

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/s/ Benjamin Gutman

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Attorneys for Defendant-Appellant

**In the Supreme Court of the United States**

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BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

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**APPENDIX J TO OPPOSITION TO APPLICATION FOR STAY**

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Order

*People Not Politicians Oregon et al. v. Clarno*, No. 20-35630 (9th Cir.)

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUL 22 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

PEOPLE NOT POLITICIANS OREGON; et  
al.,

Plaintiffs-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of  
State,

Defendant-Appellant.

No. 20-35630

D.C. No. 6:20-cv-01053-MC  
District of Oregon,  
Eugene

ORDER

Before: THOMAS, Chief Judge, SCHROEDER and CALLAHAN, Circuit Judges.

We expedite this appeal. The opening brief is due July 24, 2020. The answering brief is due August 7, 2020. The optional reply brief is due by 9:00 am Pacific Time on August 10, 2020.

No streamlined extensions of time will be approved. *See* 9th Cir. R. 31-2.2(a)(1). No written motions for extensions of time under Ninth Circuit Rule 31-2.2(b) will be granted absent extraordinary and compelling circumstances.

The Clerk shall place this case on the calendar for August 2020. *See* 9th Cir. Gen. Order 3.3(g).

**In the Supreme Court of the United States**

---

BEVERLY CLARNO, Oregon Secretary of State,

*Applicant,*

v.

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

*Respondents.*

---

**APPENDIX K TO OPPOSITION TO APPLICATION FOR STAY**

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Notice of Oral Argument

*People Not Politicians Oregon et al. v. Clarno*, No. 20-35630 (9th Cir.)

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**United States Court of Appeals for the Ninth Circuit**

**Notice of Docket Activity**

The following transaction was entered on 07/28/2020 at 3:38:29 PM PDT and filed on 07/28/2020

**Case Name:** People Not Politicians Oregon, et al v. Beverly Clarno

**Case Number:** [20-35630](#)

**Docket Text:**

Notice of Oral Argument on Thursday, August 13, 2020 - 09:30 A.M. - AK Ross Historic Courtroom - Scheduled Location: Anchorage OldFedBldg AK.

The hearing time is the local time zone at the scheduled hearing location, even if the argument is fully remote.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. See Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, any argument may be held **remotely** with all of the judges and attorneys appearing by video or telephone. Travel to a courthouse will not be required. If the panel determines that it will hold oral argument, the Clerk's Office will be in contact with you directly at least two weeks before the set argument date to make any necessary arrangements for remote appearance.

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the [ACKNOWLEDGMENT OF HEARING NOTICE](#) filing type in CM/ECF no later than 21 days before Thursday, August 13, 2020. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11769751]. [20-35630] (AW)

**Notice will be electronically mailed to:**

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