

**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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**DECLARATION OF STEPHEN ELZINGA IN SUPPORT OF  
OPPOSITION TO APPLICATION FOR STAY**

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*Counsel for Respondents*

I, Stephen Elzinga, declare as follows:

1. I am an attorney licensed to practice in the State of Oregon and one of Respondents' counsel. I have personal knowledge of the facts stated in this declaration.

2. On July 14, 2020, the Oregon Secretary of State issued a press release stating that she was "not requesting an appeal" of the District Court's preliminary injunction in this matter at that time. Attached as Exhibit A is a true and correct copy of the press release, which is available at <https://bit.ly/3fCoxXF>.

3. On July 15, 2020, the Oregon Attorney General announced that she would appeal the District Court's preliminary injunction. Attached as Exhibit B is a true and correct copy of an article from The Oregonian/Oregon Live about the Attorney General's decision, which is available at <https://bit.ly/2WoNpdW>. Attached as Exhibit C is a true and correct copy of an article from Oregon Public Broadcasting about the Attorney General's decision, which is available at <https://bit.ly/2XlSiEL>.

4. On July 29, 2020, I emailed Benjamin Gutman, counsel of record for the Attorney General in appellate proceedings, to ask that Mr. Gutman provide evidence that the Secretary had authorized the Attorney General's appeal in accordance with Oregon law. Mr. Gutman responded that he was "not in a position to comment on our office's discussions with the Secretary of State or her staff." Attached as Exhibit D is a true and correct copy of this email correspondence.

5. On July 30, 2020, I spoke with Mr. Gutman by telephone and again asked that the Attorney General provide some evidence of the Secretary's authorization of the appeal. Mr. Gutman responded that the Attorney General would not provide such evidence.

6. That evening, I emailed Mr. Gutman to memorialize our phone call and to offer him another opportunity to provide evidence that the Attorney General's appeal was properly authorized. I advised Mr. Gutman that, absent such evidence, Respondents would raise in this appeal the issue of whether the appeal was properly authorized. In his response, Mr. Gutman again declined to provide such evidence. Attached as Exhibit E is a true and correct copy of this email correspondence.

7. On the same day, the Secretary of State's staff lead on initiatives and signature verification, Summer Davis, emailed People Not Politicians' authorized agent, Rebecca Tweed, to confirm that signature verification for Initiative Petition 57 was complete, and that the petition had met the signature threshold set by the District Court's preliminary injunction with a validity rate of over 97%. Attached as Exhibit F is a true and correct copy of Ms. Davis' email to Ms. Tweed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 4, 2020 at Salem, Oregon.



STEPHEN ELZINGA

# Exhibit A



# Secretary of State Bev Clarno Announces Extension of Signature Gathering for Initiative Petition 57

July 14, 2020

Salem, OR—In light of the recent opinion and order from U.S. District Judge Michael McShane, Secretary of State Bev Clarno has announced she will continue to accept signatures from Chief Petitioners for Initiative Petition 57.

IP 57 is seeking to place an initiative on the November 2020 ballot that would amend the Oregon Constitution to create an independent redistricting commission.

Per the court order, IP 57 will have a reduced signature threshold and an extension until August 17. The Secretary of State Elections Division will review and certify signatures for IP 57 through its normal process.

Secretary Clarno is not requesting an appeal to the ruling at this time. This ruling applies only to IP 57 and does not extend to other signature petition efforts without a separate court order.

“As Oregon’s chief elections officer, I am deeply committed to expanding voter access and ensuring the integrity of Oregon’s elections,” said Secretary Clarno. “I and our Elections Division team will remain focused on the smooth administration of our election processes.”

## Attachments

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**Categories:**


Elections & Voting

## Exhibit B

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# Oregon secretary of state, attorney general clash on lowering bar to ballot measure

Updated Jul 15, 2020; Posted Jul 15, 2020



Oregon Attorney General Ellen Rosenblum, shown here at a March event warning residents against imposter and telemarketing scam calls, has appealed to the Ninth Circuit Court of Appeals to prevent a redistricting initiative from qualifying for the November ballot. Dave Killen / staff Dave Killen

**By [Hillary Borrud | The Oregonian/OregonLive](#)**

Oregon Attorney General Ellen Rosenblum is asking the Ninth Circuit Court of Appeals to step in to prevent an initiative to put an independent commission in charge of [redrawing Oregon's electoral map](#) from qualifying for the November ballot.

Rosenblum's administration filed the appeal Wednesday morning, despite Secretary of State Bev Clarno's statement Tuesday night that she would not appeal a federal judge's ruling last week that the state must make it easier for the initiative to qualify due to the pandemic.

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Although Clarno's name is listed on the appeal, she did not request it, spokeswoman Laura Fosmire wrote in an email Wednesday. Rather, Rosenblum decided to appeal "for the state on her authority as chief legal officer."

In response to an inquiry by The Oregonian/OregonLive Wednesday, Rosenblum issued a statement saying that "any final decision made in this case could have long reaching impacts for the state and on future ballot initiatives."



“We are seeking clarity from the federal appellate court (the Ninth Circuit) on a critical, time-sensitive issue pertaining to state sovereignty,” Rosenblum said. “While Secretary Clarno did not ask us to appeal Judge McShane’s ruling, the Secretary deferred to our view that the overall interests of the state require us to file this appeal.”

Initiative Petition 57 would transfer the once-a-decade job of redrawing Oregon’s legislative and congressional district lines from the state Legislature to a new 12-member commission. Backers include good government groups, business associations and branches of the NAACP.

Clarno had announced Tuesday night that the initiative campaign was getting additional time to gather signatures to qualify the initiative for ballot, in response to the federal judge’s order.

The campaign will also face a lower threshold to qualify — less than half as many valid signatures as normal — due to the difficulty of collecting signatures during the coronavirus public health emergency and Oregon’s stay-home orders.

Clarno previously held out against the redistricting campaign’s coronavirus accommodation request. But U.S. District Court Judge Michael J. McShane last week ordered her to either accept the signatures the People Not Politicians campaign gathered through its largely mail-in collection effort, or set a lower threshold of 58,789 valid signatures by Aug. 17. The normal requirement was 149,360 valid signatures by July 2. Clarno chose the latter option.

There are currently two initiatives Oregon voters are certain to see on their November ballots. Initiative Petition 34 would legalize the therapeutic use of psychedelic mushrooms and Initiative Petition 44, which would decriminalize possession of small amounts of all drugs and divert most of the state’s pot tax revenue to fund drug treatment centers. Voters will also decide on two legislative referrals, one to amend the state constitution to explicitly allow campaign contribution limits and one to raise tobacco taxes to pay for Medicaid. The second measure is such a high priority for

lawmakers that they ditched a bill to ban flavored vapes in February after a tobacco lobbyist told them it would decrease tax revenues from the proposed tax hike.

Since the July 2 signature deadline has already passed, Rosenblum's appeal if successful would effectively prevent supporters from getting their redistricting proposal before voters in November.

The initiative also faces a state court challenge from the political nonprofit Our Oregon, which receives much of its financial support from the state's public employee unions, and Planned Parenthood Advocates of Oregon. They argue the initiative violates a procedural requirement in the Oregon Constitution that initiatives only amend one provision of the constitution at a time, and they say the initiative would run afoul of the constitution's free speech protections, for example by barring lobbyists and political party leaders from serving on the redistricting commission.

Nationally, Democrats including former President Barack Obama and former Attorney General Eric Holder are pushing for states to switch to independent redistricting commissions. That effort is focused on Republican controlled states. In Oregon, neither political party has explicitly endorsed the plan but the Republican party has issued supportive statements.

Democrats control Oregon's Legislature and most statewide offices, with the exception of the secretary of state's office. Supporters of the redistricting initiative have argued lawmakers face an inherent conflict of interest in redrawing the boundaries of the districts where they will run for re-election.

If lawmakers cannot complete the job of redistricting, which they have failed to do in all but one case over the last century, Oregon relies on the secretary of state to step in. Clarno, who is serving the remainder of Dennis Richardon's term, is not running for election this year so the next secretary of state will almost certainly be either Democratic state Sen. Shemia Fagan or Republican state Sen. Kim Thatcher.

Fagan narrowly won the May primary with public employee unions ponying up roughly 80% of the funding for her 2 1/2 month campaign. Fagan has raised approximately \$900,000 since 2019, according to state campaign finance records. Thatcher effectively ran unopposed in her primary and reported raising roughly \$180,000 since 2019, with the largest contributions — \$10,000 each — from Frank Timber Resources, her family's company [Highway Specialties](#) and Oregon Firearms Federation.

— Hillary Borrud | [hborrud@oregonian.com](mailto:hborrud@oregonian.com) | [@hborrud](#)

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# Exhibit C

POLITICS

# Oregon attorney general takes fight against redistricting initiative to US Supreme Court

By [Jeff Mapes](#) (OPB)

July 29, 2020 6:28 p.m. Updated: July 30, 2020 10:56 a.m.

**A federal judge earlier ruled in favor of a lower signature threshold to qualify for the ballot, given the ongoing coronavirus pandemic.**



In this July 8, 2020, file photo the Supreme Court is shown in Washington, D.C. Oregon Attorney General Ellen Rosenblum is appealing a decision regarding an anti-gerrymandering initiative petition to the nation's high court

 The Daily Oregonian  
Andrew Harnik / AP

Oregon Attorney General Ellen Rosenblum intensified her legal battle Wednesday against a ballot measure that would put the redrawing of political district lines into the hands of a nonpartisan commission.

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Rosenblum asked U.S. Supreme Court Justice Elena Kagan to issue an emergency stay blocking attempts to put the measure on the November ballot in Oregon.

In her legal filing with the nation's high court, Rosenblum said U.S. District Judge Michael McShane erred when he issued a [July 10 ruling](#) that gave the anti-gerrymandering measure a clear path to the ballot. McShane said the state needed to lower its signature threshold because the pandemic made it too hard for the proposed constitutional amendment to qualify.

McShane's ruling "encroaches on the state's sovereign authority to determine for itself the process by which its own constitution can be amended," Rosenblum wrote. "Changing the rules for initiatives by judicial fiat, this late in the election cycle only for one privileged measure, is legally unsupportable and fundamentally unfair."

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While the matter of drawing district lines may seem arcane, it could have a big impact on political power in Oregon. Currently, the Oregon Legislature redraws congressional and legislative district lines to account for population changes.

Following the 2020 Census, Democrats in the Legislature and governor's office are poised to have sole control over those changes for the first time in modern Oregon history. Control over redistricting could help Democrats maintain their three-fifths supermajority in the Legislature, which allows them to raise taxes without needing Republican votes. It also helps give Democrats a better shot at winning a new congressional seat that Oregon is expected to get after redistricting.



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The redistricting measure is sponsored by a coalition of government watchdog groups and business organizations that are politically close to Republicans. The two chief sponsors represent the Oregon League of Women Voters and the Oregon Farm Bureau.

McShane cut the needed number of voter signatures from nearly 150,000 to just under 59,000 and extended the normal deadline for gathering them from July 3 to Aug. 17.

Secretary of State Bev Clarno, a Republican, accepted McShane's decision and said she would place the measure on the ballot if it meets the new signature threshold. Clarno's office said that she "did not request the appeal; Attorney General Rosenblum has made the decision on her own authority as chief legal officer."

Rosenblum, a Democrat, moved forward with an appeal listing Clarno as the "nominal defendant" while saying that the attorney general can "intervene in defense of the constitutionality of the state law."

A three-judge panel for the U.S. 9th Circuit Court of Appeals refused Rosenblum's request for an emergency stay of McShane's decision and has scheduled oral arguments for Aug. 13 on whether to overturn his decision.

In her filing with the Supreme Court, Rosenblum said it is unclear whether the 9th Circuit would act before the state needs to finalize the ballot for the November election. Rosenblum's filing said that after Aug. 28, it "will be extraordinarily difficult" to make changes.

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## Exhibit D

## Steve Elzinga

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**From:** Gutman Benjamin <Benjamin.Gutman@doj.state.or.us>  
**Sent:** Wednesday, July 29, 2020 9:40 AM  
**To:** Steve Elzinga  
**Cc:** Adam Lauridsen  
**Subject:** RE: People Not Politicians v. Clarno

**Categories:** Filed to FileSystem

Thank you for your courtesy on the electronic service. I'm not in a position to comment on our office's discussions with the Secretary of State or her staff, but I will relay your request.

Regards,  
Ben

Benjamin Gutman  
503.378.4402

---

**From:** Steve Elzinga <steve@shermlaw.com>  
**Sent:** Wednesday, July 29, 2020 9:38 AM  
**To:** Gutman Benjamin <Benjamin.Gutman@doj.state.or.us>  
**Cc:** Adam Lauridsen <alauridsen@keker.com>  
**Subject:** RE: People Not Politicians v. Clarno

Ben,

We are happy to agree to electronic service. Please send copies to both Adam and myself at the email addresses on this email.

Did the Secretary of State authorize the filing of this appeal? *See* Or. Rev. Stat. § 180.060(9). If so, please provide admissible evidence of that authorization by July 31, including for both the Ninth Circuit appeal and the Supreme Court stay application.

Thank you,  
Steve

Steve Elzinga  
Attorney



SHERMAN SHERMAN JOHNNIE & HOYT, LLP - Attorneys at Law | [www.shermlaw.com](http://www.shermlaw.com)

Ph. 503-364-2281 | Fax 503-370-4308 | 693 Chemeketa St. NE Salem, OR 97301

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**From:** Gutman Benjamin <[Benjamin.Gutman@doj.state.or.us](mailto:Benjamin.Gutman@doj.state.or.us)>  
**Sent:** Tuesday, July 28, 2020 6:46 PM  
**To:** Steve Elzinga <[steve@shermlaw.com](mailto:steve@shermlaw.com)>; Adam Lauridsen <[alauridsen@keker.com](mailto:alauridsen@keker.com)>  
**Subject:** People Not Politicians v. Clarno

Steve and Adam,

We’re planning to file an application for a stay of the preliminary injunction with the U.S. Supreme Court tomorrow. I wanted to give you a heads up that it would be coming.

I also wanted to see if you would agree to electronic service of the application rather than having us mail you a copy. The Court has issued a COVID-19 order strongly encouraging parties to use electronic service if feasible:

[https://www.supremecourt.gov/orders/courtorders/041520zr\\_g204.pdf](https://www.supremecourt.gov/orders/courtorders/041520zr_g204.pdf)

If you agree to electronic service, please let me know which email address or addresses you’d like us to use. I would of course agree to electronic service of any response or other filings in the Supreme Court in return; it would be helpful if you would email both me and [AppellateService@doj.state.or.us](mailto:AppellateService@doj.state.or.us) to ensure that it’s filed properly here.

If you would like to discuss any of this, please let me know – I can be reached at 971-209-0465.

Regards,  
Ben

**Benjamin Gutman**  
Solicitor General | Appellate Division  
Oregon Department of Justice  
503.378.4402

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\*\*\*\*\*

# Exhibit E

## Steve Elzinga

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**From:** Gutman Benjamin <Benjamin.Gutman@doj.state.or.us>  
**Sent:** Thursday, July 30, 2020 6:46 PM  
**To:** Steve Elzinga  
**Cc:** Adam Lauridsen  
**Subject:** RE: Appeal Authorization Evidence

**Categories:** Filed to FileSystem

I appreciate your call, Steve, and I understand your request, but I disagree with your reading of ORS 180.060(9). We do not have a “burden to demonstrate that the appeal is properly before the Court,” and I am not aware that we have ever produced the sort of evidence you are requesting in an appeal. I understand that you have a different view, and we’ll have to see what the courts think.

Regards,  
Ben

Benjamin Gutman  
503.378.4402

---

**From:** Steve Elzinga <steve@shermlaw.com>  
**Sent:** Thursday, July 30, 2020 6:42 PM  
**To:** Gutman Benjamin <Benjamin.Gutman@doj.state.or.us>  
**Cc:** Adam Lauridsen <alauridsen@keker.com>  
**Subject:** Appeal Authorization Evidence

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Ben,

Thank you for taking the time to talk this afternoon. As discussed, despite our repeated requests, the Attorney General has not provided any evidence that Secretary of State Clarno authorized Oregon’s appeal to the Ninth Circuit or Application for Stay to the Supreme Court. You reiterated on the phone today that your office has no intention of providing any such evidence.

Under applicable Oregon law, it is the Attorney General’s burden to demonstrate that the appeal is properly before the Court. See Or. Rev. Stat. § 180.060(9). We once again request that you provide evidence by July 31 that the Secretary authorized this appeal. Without such evidence, we will raise this issue in our filings.

Thank you,  
Steve

Steve Elzinga  
Attorney



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\*\*\*\*\*

# Exhibit F

**From:** DAVIS Summer S \* SOS <[Summer.S.DAVIS@oregon.gov](mailto:Summer.S.DAVIS@oregon.gov)>  
**Sent:** Thursday, July 30, 2020 12:23 PM  
**To:** Rebecca Tweed <[Rebecca@groworegon.com](mailto:Rebecca@groworegon.com)>  
**Subject:** Results

Rebecca,

We've completed verification of IP 2020-057. The petition has met the threshold set by Judge McShane. I'm currently waiting on information from Multnomah County on 1 voter. Once I have that information I will get you final numbers.

Validity rate of the signatures we verified yesterday and today was over 97%. There was one duplicate.

Summer