

ELLEN F. ROSENBLUM  
Attorney General  
CHRISTINA L. BEATTY-WALTERS #981634  
BRIAN SIMMONDS MARSHALL #196129  
Senior Assistant Attorneys General  
Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Telephone: (971) 673-1880  
Fax: (971) 673-5000  
Email: Tina.BeattyWalters@doj.state.or.us  
Brian.S.Marshall@doj.state.or.us

Attorneys for Defendant Secretary Beverly Clarno

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

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

Plaintiffs,

v.

BEVERLY CLARNO, OREGON  
SECRETARY OF STATE,

Defendant.

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

DEFENDANT'S ANSWER TO COMPLAINT

Defendant Secretary of State Beverly Clarno, by and through her attorneys Christina Beatty-Walters and Brian Marshall, answers plaintiffs' Complaint and sets forth defenses as follows:

## GENERAL RESPONSE

Defendant denies each and every material allegation of Plaintiffs' Complaint not expressly admitted herein.

1.

In response to paragraph 1, Defendant admits that Plaintiff People not Politicians ("PNP") has proposed to amend the Oregon Constitution to change the procedure for redrawing legislative and congressional districts, that C. Norman Turrill and Sharon K. Waterman filed Initiative Petition 57 ("IP 57") on November 12, 2019, and that the COVID-19 pandemic spread to the United States following November 12, 2019. Defendant denies any allegations not expressly admitted.

2.

Defendant denies the allegations in Paragraph 2.

3.

In response to paragraph 3, Defendant admits that PNP gathered some signatures by mail and downloadable petition, that PNP did not gather the constitutionally required number of signatures to qualify IP 57 for the ballot by the deadline required by the Oregon Constitution, and that PNP sent a letter to the Secretary immediately before filing this lawsuit, to which Defendant refers the Court for a full and complete explanation of its contents. Defendant denies any remaining allegations and declines to respond to the legal conclusions as no response is required.

4.

Paragraph 4 contains no factual allegations and therefore a response is not required. Defendant denies any allegations requiring a response.

5.

In response to paragraphs 5 through 10, Defendant admits PNP is a petition committee formed to qualify IP 57 for the November ballot and advocate for its approval, that Common

Cause is a civic organization, that League of Women Voters of Oregon is a political organization, that NAACP Eugene/Springfield is a nonprofit organization located in Eugene, that Independent Party of Oregon is a political party, and that C. Norman Turrill is a Chief Petitioner for IP 57. Defendant denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraphs 5 through 10 and therefore denies them. The legal conclusions in paragraphs 5 through 10 require no response.

6.

In response to paragraph 11, Defendant admits that she is the Oregon Secretary of State. The remaining allegations are legal conclusions to which no response is required.

7.

In response to paragraphs 12 through 16, Defendant admits this Court has personal jurisdiction over the parties and that venue is proper. Otherwise, Plaintiffs' legal conclusions do not require a response.

8.

In response to paragraph 17, Defendant admits that C. Norman Turrill and Sharon K. Waterman filed a SEL 310, a Prospective Petition related to State Initiative and Referendum for IP 57 with the Secretary of State's Elections Division on November 12, 2019. The remainder of paragraph 17 purports to describe IP 57, in response to which Defendant refers the Court to the text of IP 57 itself for a full and complete explanation of its contents.

9.

In response to paragraph 18, Defendant admits that sponsorship signatures for IP 57 were submitted on December 5, 2019, that the Elections Division verified 1,656 sponsorship signatures on December 20, 2019, and that following the verification of sponsorship signatures, the ballot title drafting process began. Defendant denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 18 and therefore denies same. The legal conclusions in paragraph 18 require no response.

10.

In response to paragraph 19, Defendant admits that a final judgment of the Oregon Supreme Court was entered on March 27, 2020, to which Defendant refers the Court for a full and complete explanation of its contents.

11.

In response to paragraph 20, Defendant admits that the IP 57 was approved for circulation on April 9, 2020, and denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 20 and therefore denies same.

12.

In response to paragraph 21, Defendant admits that Becca Uherbelau and Emily McClain filed a complaint in Marion County Circuit Court on March 27, 2020, and admits the case is pending. The remaining allegations in paragraph 21 purport to describe the complaint, in response to which Defendant refers the Court to the text of the complaint itself for a full and complete explanation of its contents.

13.

In response to paragraphs 22 and 23, Defendant admits that the Oregon Constitution required constitutional initiative proponents to submit at least 149,360 valid signatures by July 2, 2020 in order to qualify for the November 2020 ballot. The remainder of the allegations in paragraphs 22 and 23 are legal conclusions which require no response.

14.

In response to paragraph 24, Defendant admits Governor Brown has issued multiple Executive Orders in response to the COVID-19 pandemic and Defendant refers the Court to those orders for a full and complete explanation of their contents. Defendant otherwise denies the allegations in paragraph 24.

15.

In response to paragraph 25, Defendant admits the Director General of the World Health Organization declared the outbreak of COVID-19 to be a public health emergency of international concern on January 30, 2020, and that Congress passed laws in March 2020 to which Defendant refers the Court for a full and complete explanation of their contents. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 25 and on that basis denies same.

16.

In response to paragraph 26, Defendant admits that the Governor issued a series of Executive Orders in response to the COVID-19 pandemic and refers the Court to those orders for a full and complete explanation of their contents.

17.

In response to paragraph 27, Defendant admits the Governor issued Executive Order 20-03. The remainder of paragraph 27 purports to describe the content of Executive Order 20-03, in response to which Defendant refers the Court to the document for a full and complete explanation of its contents.

18.

In response to paragraph 28, Defendant admits the Governor issued Executive Order 20-05. The remainder of paragraph 28 purports to describe the content of Executive Order 20-05, in response to which Defendant refers the Court to the document for a full and complete explanation of its contents.

19.

In response to paragraph 29, Defendant admits the Governor issued Executive Order 20-07. The remainder of paragraph 29 purports to describe the content of Executive Order 20-07, in response to which Defendant refers the Court to the document for a full and complete explanation of its contents.

20.

In response to paragraph 30, Defendant admits the Governor issued Executive Order 20-12. The remainder of paragraph 30 purports to describe the content of Executive Order 20-12, in response to which Defendant refers the Court to the document for a full and complete explanation of its contents.

21.

In response to paragraph 31, Defendant admits the Governor issued Executive Order 20-24. The remainder of paragraph 31 purports to describe the content of Executive Order 20-24, in response to which Defendant refers the Court to the document for a full and complete explanation of its contents.

22.

In response to paragraph 32, Defendant admits the Governor issued Executive Order 20-25. The remainder of paragraph 32 purports to describe the content of Executive Order 20-25, in response to which Defendant refers the Court to the document for a full and complete explanation of its contents.

23.

In response to paragraph 33, Defendant admits that Baker County Circuit Court and the Oregon Supreme Court both issued rulings on May 18, 2020, and refers the Court to those rulings for a full and complete explanation of their contents.

24.

In response to paragraph 34, Defendant admits the Oregon Supreme Court issued a decision on June 12, 2020, in the matter filed by Elkhorn Baptist Church, and refers the Court to that decision for a full and complete explanation of its contents.

25.

In response to paragraph 35, Defendant admits that Multnomah County entered Phase I status under the Governor's Executive Orders on June 19, 2020, and was the last Oregon county

to do so. Defendant admits that Multnomah, Washington, Clackamas, and Lincoln Counties are currently in Phase I status and admits that all other counties had entered Phase II status by the time the Complaint was filed. However, Defendant denies that Morrow, Umatilla, and Malheur Counties are currently in Phase II status. The remainder of paragraph 35 purports to describe the content of the Governor's Executive Orders in response to which Defendant refers the Court to the orders for a full and complete explanation of their contents.

26.

In response to paragraph 36, Defendant denies that state and local restrictions have barred or prohibited in-person signature gathering. Defendant denies that in-person signature gathering requires signature gatherers to be in close physical proximity with voters and denies that it requires signature gatherers to physically pass items to and receive them back from potential voters. Defendant admits that some signature gatherers have often attempted to collect signatures in highly-trafficked areas, including near markets. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 36 and on that basis denies them.

27.

Defendant admits that some buildings and businesses in Oregon have closed to the public and otherwise denies the allegations in paragraph 37.

28.

Paragraph 38 contains legal conclusions to which no response is required, and Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 38 and on that basis denies them.

29.

In response to paragraph 39, Defendant denies that PNP's failure to collect sufficient signatures by the July 2 deadline can be attributed to the pandemic or to the state's response to the pandemic and otherwise denies any remaining allegations in paragraph 39.

30.

Paragraphs 40 and 41 purport to characterize the contents or effect of the Governor's Executive Orders, in response to which Defendant refers the Court to the Executive Orders themselves for a full and complete explanation of their contents.

31.

In response to paragraph 42, Defendant denies the implication that one or more officials of one or more states have unilaterally changed state constitutional requirements for constitutional initiatives. Paragraph 42 otherwise attempts to characterize the content of a New York Times article, in response to which Defendant refers the Court to that article for a full and complete description of its content.

32.

Paragraphs 43 through 49 purport to characterize specific legal rulings, which are legal conclusions that require no response.

33.

In response to paragraph 50, Defendant denies that the proponents of IP 57 failed to meet state constitutional requirements "through no fault of their own." Paragraph 50 otherwise purports to describe the content of a letter sent to the Secretary and Elections Division officials, in response to which Defendant refers the Court to the letter itself for a full and complete description of its contents.

34.

In response to paragraph 51, Defendant admits that she did not respond to the letter referenced in paragraph 50 of the Complaint.

35.

In response to paragraph 52, Defendant incorporates her response to all prior paragraphs of the Complaint.

36.

Paragraphs 53 through 59 state legal conclusions to which no response is required. To the extent a response is required to allegations in paragraphs 53 through 59, the allegations are denied.

37.

Defendant denies that Plaintiffs are entitled to any relief whatsoever.

#### **First Affirmative Defense**

38.

Plaintiffs fail to state a claim upon which relief can be granted because the First Amendment does not prohibit the application of the challenged provisions of the Oregon Constitution.

#### **Second Affirmative Defense**

39.

Plaintiffs' claim and the relief they request are barred by sovereign immunity and the Eleventh Amendment, because (a) requiring Oregon to amend its Constitution without its consent "implicat[es] special sovereignty interests," *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 282 (1997), and (b) Plaintiffs seek a federal injunction to enforce a state right to initiate a constitutional amendment, which is barred by *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984).

#### **Third Affirmative Defense**

40.

Plaintiffs' claim and the relief they request are barred by Article I, section 4, of the U.S. Constitution because, in the absence of Congressional action, the "time, place, and manner" of federal elections may only be changed "in accordance with the State's prescriptions for lawmaking," *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015).

**Fourth Affirmative Defense**

41.

Plaintiffs' claim and the relief they request are barred by laches, because Plaintiffs unreasonably delayed filing suit and thereby prejudiced the Secretary of State, the State, and third parties.

**WHEREFORE** Defendant prays as follows: That Plaintiffs be denied recovery or the relief requested upon the claim set forth in the Complaint and that the Complaint be dismissed with prejudice in its entirety.

DATED August 31, 2020.

Respectfully submitted,

ELLEN F. ROSENBLUM

Attorney General

*s/ Christina L. Beatty-Walters*

CHRISTINA L. BEATTY-WALTERS #981634

BRIAN SIMMONDS MARSHALL #196129

Senior Assistant Attorneys General

Trial Attorneys

Tel (971) 673-1880

Fax (971) 673-5000

Tina.BeattyWalters@doj.state.or.us

Brian.S.Marshall@doj.state.or.us

Attorneys for Defendant Secretary Beverly

Clarno