July 10, 2020

Bev Clarno
Oregon Secretary of State
900 Court Street NE
Capitol Room 136
Salem, OR 97310

Stephen Trout
Director, Elections Division
Oregon Secretary of State
Public Service Building Suite 501
255 Capitol St. NE
Salem, OR 97310

Re: Complaint Regarding Violations of Election Law – Our Oregon – Case No. 20-021

Dear Ms. Clarno and Mr. Trout,

On May 13, 2020, I filed a complaint with your office alleging violations of Oregon campaign finance law by the organization Our Oregon.

New evidence further substantiates those allegations, as documented below.

On July 9, 2020, Our Oregon filed a motion to intervene in *People Not Politicians v. Clarno*, a case currently before the U.S. District Court for the District of Oregon challenging the Secretary of State's threshold and deadline for gathering initiative petition (IP) signatures in the midst of the COVID-19 pandemic.

Along with its motion to intervene, Our Oregon filed arguments opposing the Plaintiffs' motion for a temporary restraining order, which were accompanied by a sworn declaration from Our Oregon's executive director, Becca Uherbelau.

See **Exhibit A**, a copy of Our Oregon's motion and supporting documents.

Allegation: Violations of ORS 260.035

Our Oregon admits it will be involved in organizing, leading and funding a campaign to defeat a ballot measure in 2020 pending the outcome of *People Not Politicians v. Clarno*.

Supporting Documentation

On page 2 of its motion, Our Oregon states:

> "Our Oregon is opposed to IP 57 and would be involved in organizing a campaign against IP 57 if it were to qualify for the November 3, 2020 ballot." (emphasis added)

See **Exhibit A**.

The above statement is neither a mistake nor an isolated occurrence.

On page 2 of her sworn declaration, Becca Uherbelau, the executive director of Our Oregon, states the following:

> "Our Oregon is opposed to IP 57 and would lead, or be part of, any campaign to defeat IP 57 if it were to qualify for the November 3, 2020 General Election ballot." (emphasis added)

On page 6 of her sworn declaration, Ms. Uherbelau further states:

> "Allowing the Chief Petitioners to submit after the constitutional deadline (and at a lower threshold) would make it exponentially more difficult for Our Oregon, or anyone else, to organize an opposition campaign to IP 57. It takes months to build and fund a coalition in opposition to a ballot measure." (emphasis added)

See **Exhibit A**.

Our Oregon admits that it would be involved in a campaign against IP 57 *after* it qualified for the general election – i.e., once it became a *measure* – and Ms. Uherbelau, in her sworn declaration made under penalty of perjury, further states that Our Oregon would likely "lead" any such campaign.

Furthermore, after admitting that Our Oregon would be involved in organizing the campaign against the ballot measure, Ms. Uherbelau argues that an unfavorable court ruling would make it more difficult for Our Oregon "to organize an opposition campaign" and, in the same line of reasoning, explains that "[i]t takes months to build *and fund* a coalition in opposition to a ballot measure." (emphasis added).

Conclusion

Our Oregon's statements further reveal that its true purpose is to influence ballot measure elections and that it receives contributions and makes expenditures for that purpose.

In light of the substantial evidence already presented to your office in Case No. 20-021, the evidence documented here further substantiates the allegation that Our Oregon has operated, and

continues to operate, as a political committee without filing a statement of organization with the Secretary of State as required by ORS 260.035.

Please do not hesitate to contact me if I can be of assistance.

Thank you,

Ben Straka
Labor Policy Analyst
Freedom Foundation
P.O. Box 18146, Salem, OR 97305
503.951.6208
bstraka@freedomfoundation.com

Exhibit A

Steven C. Berman, OSB No. 951769
Email: sberman@stollberne.com
Lydia Anderson-Dana, OSB No. 166167
Email: landersondana@stollberne.com
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Attorneys for Our Oregon and Becca Uherbelau

IN THE UNITED STATES DISTRICT COURT

FOR THE 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, Defendant.	Case No. 6:20-cv-01053-MC BECCA UHERBELAU AND OUR OREGON'S MOTION FOR LEAVE TO INTERVENE OR IN THE ALTERNATIVE APPEAR AS *AMICI CURIAE* **ORAL ARGUMENT REQUESTED**

LOCAL RULE 7-1 CERTIFICATION

Pursuant to Local Rule 7-1, counsel for proposed intervenors Becca Uherbelau and Our Oregon certifies that they have conferred in good faith with counsel for Plaintiffs and Defendant in an attempt to resolve the issues presented by this Motion to Intervene. Plaintiffs and Defendant take no position on Ms. Uherbelau and Our Oregon's requested relief.

MOTION

Pursuant to Fed. R. Civ. P. 24, Becca Uherbelau and Our Oregon respectfully move for leave to intervene in the above-titled action as of right under Fed. R. Civ. P. 24(a)(2) or with permission of the Court under Fed. R. Civ. P. 24(b)(1)(B). Alternatively, Ms. Uherbelau and Our Oregon move to appear as *amici curiae*. For the reasons stated more fully in the supporting Memorandum of Law that follows, Ms. Uherbelau and Our Oregon's Motion should be granted.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiffs filed this action against Secretary of State Beverly Clarno on June 30, 2020. Plaintiffs allege that the Oregon Constitution's initiative petition signature qualification threshold and signature filing deadline violate their federal constitutional rights.

Proposed intervenor Becca Uherbelau is the Executive Director of Our Oregon and an Oregon elector opposed to IP 57. As mentioned in the Complaint, Ms. Uherbelau is also a plaintiff in a separate state court action, *Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar. 27, 2020), in which she alleges that IP 57 does not comply with the constitutional requirements of the Oregon Constitution. Proposed intervenor Our Oregon is a 501(c)(4) organization dedicated to advancing economic and social justice for all Oregonians, with a focus on ballot measures. Our Oregon is opposed to IP 57 and would be involved in organizing a campaign against IP 57 if it were to qualify for the November 3, 2020 ballot. In addition to their interests related to and affected by this action, both Ms. Uherbelau and Our Oregon have extensive experience and expertise related to ballot initiatives, signature gathering, and running opposition campaigns to initiative petitions.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

This case was filed just over a week ago, and granting Ms. Uherbelau and Our Oregon leave to intervene would not prejudice any of the parties. However, denying this Motion would prejudice Ms. Uherbelau and Our Oregon, by denying them the opportunity to fully defend their interests in preventing IP 57 from appearing on the November 3, 2020 ballot. Accordingly, Ms. Uherbelau and Our Oregon request leave to intervene as of right in this action under Fed. R. Civ. P. 24(a)(2) or seek the Court's permission to intervene pursuant to Fed. R. Civ. P. 24(b)(1)(B). Alternatively, Ms. Uherbelau and Our Oregon seek leave to appear as *amici curiae*. A copy of Ms. Uherbelau and Our Oregon's proposed Opposition to Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction is attached as Exhibit A. Also attached are Declarations from Ms. Uherbelau ("Uherbelau Decl.") (Exhibit B), Ben Unger, former Executive Director of Our Oregon and current general consultant for the successful campaign to qualify Initiative Petition 34 for the 2020 General Election cycle ("Unger Decl.") (Exhibit C), and Elizabeth Kaufman, the campaign director for the successful campaign to qualify Initiative Petition 44 for the 2020 General Election cycle ("Kaufman Decl.") (Exhibit D).

II. FACTUAL BACKGROUND

A. Proposed Intervenors

Ms. Uherbelau is an Oregon elector and executive director of Our Oregon. Uherbelau Decl., ¶ 1. As mentioned in the Complaint, Ms. Uherbelau is a plaintiff in a separate action in Marion County Circuit Court against Secretary of State Clarno, in which she alleges that IP 57 does not comply with the constitutional requirements of the Oregon Constitution. Complaint, ¶ 21; *see Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020).

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

Our Oregon is a public benefit nonprofit corporation organized under Internal Revenue Code section 501(c)(4) and registered with the Oregon Secretary of State. Uherbelau Decl., ¶ 2. Our Oregon is dedicated to fighting for economic and social justice for all Oregonians, and its primary mission is to educate the public about public services, to advocate for stable, adequate and fair funding for public services, and to fight for justice for all Oregonians. Uherbelau Decl., ¶ 2. The rights of Oregonians, and funding for public services, are perennial topics of statewide ballot measures. Uherbelau Decl., ¶ 2. As a result, Our Oregon has a strong interest in the initiative and ballot measure processes. Uherbelau Decl., ¶ 2. Our Oregon, through its executive director and staff, provides input as to whether an initiative petition complies with the procedural requirements of the Oregon Constitution, frequently commenting on draft ballot titles for statewide initiative petitions and subsequently challenging certified ballot titles for initiative petitions before the Oregon Supreme Court. Uherbelau Decl., ¶ 2.

B. Timeline of Relevant Events

On November 12, 2019, the chief petitioners filed a prospective petition for IP 57 with the Secretary of State. Complaint, ¶ 17. On December 20, 2019, the Secretary of State confirmed that IP 57 had sufficient sponsorship signatures to proceed through the ballot title certification process. Complaint, ¶ 18. On December 30, 2019, the Secretary of State received a draft ballot title for IP 57 from the Attorney General and provided public notice of that draft ballot title. *See* IP 57 Draft Ballot Title, http://oregonvotes.org/irr/2020/057dbt.pdf. Pursuant to the public notice, Ms. Uherbelau filed timely comments regarding the draft ballot title and setting forth why IP 57 does not comply with the procedural requirements of the Oregon Constitution. Uherbelau Decl., ¶ 4. On or about January 30, 2020, the Secretary of State determined that IP 57 complies with the procedural requirements of the Oregon Constitution, provided public notice of

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

her determination, and issued a certified ballot title for IP 57. *See* IP 57 Constitutional Requirement Ruling, http://oregonvotes.org/irr/2020/057cbt.pdf. Ms. Uherbelau filed a timely challenge to the ballot title. Uherbelau Decl., ¶ 4. On March 26, 2020, the Oregon Supreme Court approved the Attorney General's certified ballot title for IP 57. Complaint, ¶ 19.

On March 27, 2020, Ms. Uherbelau filed a separate action in Marion County Circuit Court against Secretary of State Clarno, in which she alleges that IP 57 does not comply with the constitutional requirements of the Oregon Constitution. Complaint, ¶ 21; Uherbelau Decl., ¶ 4; *see Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020). In that separate action, Ms. Uherbelau requests, in part, that the court prevent IP 57 from being circulated for signature, prevent the Secretary of State from counting and verifying signatures, and prohibit the Secretary of State from allowing IP 57 to appear on the November 3, 2020 ballot. *See Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020).

III. ARGUMENT

A. Ms. Uherbelau and Our Oregon Are Entitled to Intervene as a Matter of Right Pursuant to Fed. R. Civ. P. 24(A)(2).

Under Fed. R. Civ. P. 24(a)(2), courts must permit intervention under the following circumstances:

> (1) the intervention application is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest.

Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006) (citing Fed. R. Civ. P. 24(a)(2)). In the Ninth Circuit, these "requirements are broadly interpreted in favor of intervention." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). "In addition to

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

mandating broad construction, [the court's] review is guided primarily by practical considerations, not technical distinctions." *Id.* (quoting *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001)).

For the following reasons, Ms. Uherbelau and Our Oregon meet each of these four requirements, and the Court should grant their motion to intervene as of right.

1. The Motion to Intervene is Timely.

"The timeliness of intervention is measured by (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for the length of the delay." *Sanford v. MemberWorks, Inc.*, 483 F.3d 956, 965 (9th Cir. 2007) (internal quotation marks and citation omitted).

Here, Ms. Uherbelau and Our Oregon's motion to intervene is timely. Plaintiffs filed this action on June 30, 2020, only nine days ago. *People Not Politicians Oregon, et al. v. Clarno*, Case No. 6:20-cv-01053-MC (D. Or. June 30, 2020), ECF No. 1; *see Citizens*, 647 F.3d at 897 (finding motion to intervene timely when filed three months after complaint was filed); *United States v. Brooks*, 164 F.R.D. 501, 503 (D. Or.), *adhered to*, 163 F.R.D. 601 (D. Or. 1995) (finding motion to intervene timely when filed seven months after action commenced, where no depositions had been taken and no trial date set). Additionally, Ms. Uherbelau and Our Oregon do not seek to extend or delay any deadlines in this case related to Plaintiffs' Motion for a Temporary Restraining Order, including the upcoming hearing currently scheduled for Friday, July 10, and have sought to intervene prior to a court-ordered deadline for Defendant to respond to Plaintiffs' Motion for a Temporary Restraining Order. *See People Not Politicians Oregon*, Case No. 6:20-cv-01053-MC (D. Or. July 7, 2020), ECF No. 13.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

Due to the early stages of the proceeding, Plaintiffs and Defendant have not and could not be prejudiced by Ms. Uherbelau and Our Oregon's intervention, and there has been no delay in Ms. Uherbelau and Our Oregon's motion to intervene. For these reasons, the Court should find Ms. Uherbelau and Our Oregon's motion to intervene timely.

2. Ms. Uherbelau and Our Oregon Have Significantly Protectable Interests at Issue in this Lawsuit.

"An applicant has a 'significant protectable interest' in an action if (1) it asserts an interest that is protected under some law, and (2) there is a 'relationship' between its legally protected interest and the plaintiff's claims." *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). "The 'interest' test is not a clear-cut or bright-line rule . . . . Instead, the 'interest' test directs courts to make a 'practical, threshold inquiry.'" *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (quoting *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993)). For example, "advocacy relating to a particular issue may give rise to an interest." *Or. Nat. Desert Ass'n v. Bureau of Land Mgmt.*, No. 3:09-CV-00369-PK, 2009 WL 10703721, at *3 (D. Or. Sept. 16, 2009) (citing *City of Los Angeles*, 288 F.3d at 402 & n.5). "The relationship requirement is met 'if the resolution of the plaintiff's claim actually will affect the applicant.'" *City of Los Angeles*, 288 F.3d at 398 (quoting *Donnelly*, 159 F.3d at 410).

Here, each proposed intervenor has several significant protectable interests at issue in this lawsuit. As an Oregon elector, Ms. Uherbelau has a strong interest in the integrity of the initiative process, including the processes to obtain signatures on initiative petitions. *See* Uherbelau Decl., ¶ 1. She has an interest in ensuring that all initiative petitions are on a level and equal playing field, and the relief Plaintiffs seek would alter the rules set forth in the Oregon

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
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Constitution for signature gathering, allowing IP 57 to qualify for the November 3, 2020 ballot using different rules than initiative petitions filed earlier this election cycle. *See* Uherbelau Decl., ¶¶ 12, 14; Unger Decl., ¶ 16; Kaufman Decl., ¶ 18. Ms. Uherbelau also has an interest as an active participant in the ballot title process, as she filed comments in opposition to IP 57's draft ballot title and subsequently challenged that ballot title before the Oregon Supreme Court. *See* Uherbelau Decl., ¶ 4; *see also Or. Nat. Desert Ass'n*, 2009 WL 10703721, at *3 ("[A]dvocacy relating to a particular issue may give rise to an interest."). Finally, Ms. Uherbelau has a significant interest as a plaintiff in *Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020). In filing the separate state court action, Ms. Uherbelau relied on the Oregon Constitution's requirements and deadlines for signature gathering; altering the application of those requirements as they apply to Plaintiffs will adversely affect her rights in that case. And a decision from this Court in favor of allowing Plaintiffs more time to collect fewer signatures would adversely affect Ms. Uherbelau's requested relief in the state court action, as she asked the court to prevent IP 57 from being circulated for signature, to prevent the Secretary of State from counting and verifying signatures, and to prohibit the Secretary of State from allowing IP 57 to appear on the November 3, 2020 ballot. *See Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020).

Our Oregon also has significant protectable interests in this action. Our Oregon is an organization devoted to fighting for economic and social justice for all Oregonians; its interests in ensuring the integrity of the initiative system and promoting equitable access to the ballot would be harmed by a decision in favor of Plaintiffs. Uherbelau Decl., ¶ 2. Our Oregon is also a frequent participant in the initiative petition process, including via commenting through its executive director on draft ballot titles, as occurred here, and through challenging initiative

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

petitions in court through its executive director, as also occurred here. Uherbelau Decl., ¶ 4; *see City of Los Angeles*, 288 F.3d 402 n.5 (concluding that "organizational community members" may have a protectable interest in a proposed police consent decree, even where organizations had only "worked for reform of the LAPD generally rather than for this specific consent decree"). That role would be affected by a court decision in favor of Plaintiffs here, because such a decision would result in the uneven application of the Oregon Constitution's provisions on signature gathering and greatly increase uncertainty moving forward as to how and when such provisions will be applicable. Uherbelau Decl., ¶ 14; Unger Decl., ¶ 16; Kaufman Decl., ¶ 18. Such uncertainty, in turn, affects the rights of organizations that participate in opposition campaigns to initiatives. Uherbelau Decl., ¶ 13.

For these reasons, the Court should find that Ms. Uherbelau and Our Oregon have significant protectable interests at stake in this case.

3. Ms. Uherbelau and Our Oregon's Ability to Protect Their Interests Will Be Impaired if They Cannot Intervene.

"If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Citizens*, 647 F.3d at 898 (quoting Fed. R. Civ. P. 24 advisory committee's note). "[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *Lockyer*, 450 F.3d at 441.

As discussed above, Ms. Uherbelau's interests as an Oregon elector, a participant in the initiative process, and a plaintiff in a related state court case would be substantially and practically affected by any court decision in this case in favor of Plaintiffs, as such a decision would affect the fair and equal application of the Oregon Constitution's signature-gathering

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

requirements to all Oregon citizens, affect the requirements and timeline of the initiative process moving forward, and would affect the relief requested by Ms. Uherbelau as a plaintiff in *Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar. 27, 2020). Uherbelau Decl., ¶¶ 2, 4, 13–14. Our Oregon's similar interests in ensuring the integrity of the initiative system and promoting equitable access to the ballot would be substantially and practically affected by a determination in this case. Uherbelau Decl., ¶ 2. As discussed above, a decision in favor of Plaintiffs would result in the uneven application of the Oregon Constitution's provisions on signature gathering on different initiative campaigns and greatly increase uncertainty moving forward as to how and when opponents of such initiatives can and should organize campaigns in opposition. Uherbelau Decl., ¶¶ 13–14; Unger Decl., ¶ 16; Kaufman Decl., ¶ 18.

For these reasons, the Court should find that Ms. Uherbelau and Our Oregon's interests would be substantially and practically impaired if they cannot intervene.

4. Defendant Cannot Adequately Represent Ms. Uherbelau and Our Oregon's Interests.

To determine adequacy of representation, courts look to "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003). Included in this analysis is whether a proposed intervenor has "expertise apart from that of the" parties, and whether "the intervenor offers a perspective which differs materially from that of the present parties to [the] litigation." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983). "[T]he requirement of inadequacy of representation is satisfied if the

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

applicant shows that representation of its interests 'may be' inadequate." *Id.* "[T]he burden of making this showing is minimal." *Id.*

Here, although Ms. Uherbelau and Our Oregon are aligned with the Secretary of State in terms of urging the Court to uphold the signature threshold requirements and deadlines in the Oregon Constitution, Art. IV, §§ 1(2)(c), 1(2)(e), and 1(4)(a), Ms. Uherbelau and Our Oregon will make certain arguments the Secretary of State cannot and will not make. Ms. Uherbelau and Our Oregon will present evidence, based on their experience and expertise with Oregon's initiative process, that Plaintiffs did not and cannot present a compelling argument for altering the Oregon Constitution's signature-gathering requirements and deadlines, because the IP 57 initiative qualification campaign was not run in an efficient and timely manner. *See* Uherbelau Decl., ¶¶ 6–12; Unger Decl., ¶¶ 8–15; Kaufman Decl., ¶¶ 5–17. Ms. Uherbelau and Our Oregon will also argue that Plaintiffs' requested relief would dramatically alter the initiative process landscape moving forward and open a can of worms to other initiative proponents seeking to lower the bar to entry onto the ballot, thus greatly affecting the ability of opponents of initiative petitions to effectively run campaigns. *See* Uherbelau Decl., ¶¶ 13–14. Ms. Uherbelau and Our Oregon are uniquely positioned to offer such arguments based on their expertise and roles in Oregon's initiative process, both of which differ from the Secretary of State's expertise and role. *See Sagebrush Rebellion*, 713 F.2d at 528 (concluding that a proposed intervenor with "expertise apart from that of the" parties, and "a perspective which differs materially from that of the present parties to this litigation" may not be adequately represented without intervention).

For these reasons, Ms. Uherbelau and Our Oregon urge the Court to grant their Motion for intervention as of right under Fed. R. Civ. P. 24(a)(2).

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

B. The Court Should Grant Ms. Uherbelau and Our Oregon's Request for Permissive Intervention Under Fed. R. Civ. P. 24(B)(1).

"[A] court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996*), as amended on denial of reh'g* (May 30, 1996). Here, each of these requirements is met.

The first requirement is met because this case arises under federal question jurisdiction and Ms. Uherbelau and Our Oregon do not seek to assert any new claims. *See Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) ("Where the proposed intervenor in a federal-question case brings no new claims, the jurisdictional concern drops away."). Second, as discussed above, Ms. Uherbelau and Our Oregon's motion is timely because it was filed only nine days after this action commenced, and before any substantive proceedings have occurred. Finally, there are common questions of law and fact because Ms. Uherbelau and Our Oregon seek to defend the signature-gathering threshold and filing deadline in the Oregon Constitution. Because each of these requirements is met, the Court should, alternatively, grant Ms. Uherbelau and Our Oregon permission to intervene under Fed. R. Civ. P. 24(b)(1).

C. In the Alternative, the Court Should Grant Ms. Uherbelau and Our Oregon Leave to Appear as *Amici Curiae.*

This Court "has broad discretion to appoint amici curiae." *Greater Hells Canyon Council v. Stein*, No. 2:17-CV-00843-SU, 2018 WL 438924, at *1 (D. Or. Jan. 16, 2018) (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995)). "The classic role of amicus curiae is assisting in a case of general

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (internal quotation marks and citation omitted). "[T]here is no rule that amici must be totally disinterested." *Funbus Sys., Inc. v. Cal. Pub. Utils. Comm'n.*, 801 F.2d 1120, 1125 (9th Cir. 1986). "The amicus curiae may, with permission of the court, file briefs, argue the case, and introduce evidence." 4 Am. Jur. 2d Amicus Curiae § 8; *see* 3B C.J.S. Amicus Curiae § 18 ("Amicus curiae also may be permitted to argue the case, introduce evidence, and conduct discovery."); *United States v. State of La.*, 751 F. Supp. 608, 620 (E.D. La. 1990) ("Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case, and, with further permission of the court, to argue the case and introduce evidence."); *see also Int'l Franchise Ass'n, Inc. v. City of Seattle*, 97 F. Supp. 3d 1256, 1276 (W.D. Wash.), *aff'd but criticized*, 803 F.3d 389 (9th Cir. 2015) (noting that *amici* submitted briefing and evidence); *Chinatown Neighborhood Ass'n v. Brown*, No. C 12-3759 PJH, 2013 WL 60919, at *7 (N.D. Cal. Jan. 2, 2013), *aff'd*, 539 F. App'x 761 (9th Cir. 2013) (same).

As discussed above, Ms. Uherbelau and Our Oregon will offer the Court their experience and expertise working with Oregon's initiative process in supporting and opposing initiatives, as well as their familiarity with the initiative petition qualification process, including the signature-gathering process and related deadlines. Uherbelau Decl., ¶¶ 1–5. The Court has previously allowed an organization aligned with Our Oregon (and represented by the same counsel that represents Ms. Uherbelau and Our Oregon here) to appear as *amicus*, file a brief, and introduce evidence in similar circumstances. *See Geiger v. Kitzhaber*, Case No. 6:13-cv-01834-MC (D.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

Or. Apr. 4, 2014), ECF No. 76 (granting Oregon United for Marriage and Oregon Says I Do's Motion for Leave to appear as *amici curiae*).

If the Court concludes that Ms. Uherbelau and Our Oregon should not be permitted to intervene as of right or with permission of the Court, Ms. Uherbelau and Our Oregon ask the Court to grant them leave to appear as *amici curiae.*

IV. CONCLUSION

For the reasons above, the Court should grant Ms. Uherbelau and Our Oregon's Motion to Intervene as of right or with permission of the Court. Alternatively, Ms. Uherbelau and Our Oregon urge the Court to grant them leave to appear as *amici curiae*.

DATED this 9th day of July, 2020.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: s/ Lydia Anderson-Dana

Steven C. Berman, OSB No. 951769
Email: sberman@stollberne.com
Lydia Anderson-Dana, OSB No. 166167
Email: landersondana@stollberne.com

209 S.W. Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Attorneys for Our Oregon and Becca Uherbelau

Steven C. Berman, OSB No. 951769
Email: sberman@stollberne.com
Lydia Anderson-Dana, OSB No. 166167
Email: landersondana@stollberne.com
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Attorneys for Our Oregon and Becca Uherbelau

IN THE UNITED STATES DISTRICT COURT

FOR THE 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, Defendant.	Case No. 6:20-cv-01053-MC BECCA UHERBELAU AND OUR OREGON'S OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION **ORAL ARGUMENT REQUESTED**

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STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

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STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

INTRODUCTION

The Oregon Constitution sets certain basic requirements for citizen initiative petitions to qualify for the ballot. Article IV, section 1(2)(c) of the Oregon Constitution sets a minimum signature threshold for a proposed constitutional amendment. It provides that "[a]n initiative amendment to the Constitution may be proposed only by a petition signed by a number of qualified voters equal to eight percent of the total number of votes cast for all candidates for Governor at the last election at which a Governor was elected for the term of four years next preceding the filing of the petition." The Oregon Constitution also sets a deadline for filing an initiative petition. Under Article IV, section 1(2)(e), "[a]n initiative petition shall 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." For the November 3, 2020 General Election, the signature threshold for a proposed amendment to the constitution is 149,360. The filing deadline was July 2, 2020.

Plaintiffs are the supporters of Oregon statewide Initiative Petition 57 for the November 3, 2020 General Election ("IP 57"). Plaintiffs' efforts to qualify IP 57 fell far short. Plaintiffs were able to obtain less than a third of the raw, unverified signatures necessary to qualify their initiative and did not submit the required number of signatures before the July 2, 2020 deadline. Days before the deadline, Plaintiffs filed an action in this Court, seeking an exception to both the signature threshold and filing deadline in the Oregon Constitution. Plaintiffs argue that they are entitled to a special exception to the constitutional requirements, because the current COVID-19 pandemic has impeded their signature collection efforts.

Plaintiffs' arguments are flawed. As the evidence shows, Plaintiffs got an extremely late start pursuing their initiative. Plaintiffs had inadequate funding and an insufficient signature

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

collection effort in place. Plaintiffs' efforts would have failed regardless of the pandemic. In contrast, better organized and better run Oregon statewide initiative petition campaigns were able to obtain sufficient signatures in advance of the constitutional deadline. Courts consistently have rejected similar efforts by other campaigns that have failed to establish that they would have qualified but for the pandemic. Plaintiffs' request for extraordinary relief is wholly unsupported by the facts or the law.

I. BACKGROUND

A. The Initiative Power Under Oregon Law and the Process for Qualifying an Initiative Petition.

The initiative power is a core tenet of democracy in Oregon. In order to protect the integrity of the initiative system, the Oregon Constitution sets certain criteria for an initiative to qualify. And, the statutory process for qualifying has a number of steps that any successful initiative petition qualification campaign must take into consideration. As the Oregon Supreme Court recently explained:

> The Oregon Constitution places a number of requirements and conditions on the exercise of the initiative power. First, a measure may not be submitted to a vote until supported by a petition signed by a specified number of qualified voters equal to a percentage of the total number of votes cast for all candidates for governor at the last election at which the governor was elected to a four-year term; the percentage depends on whether the measure is statutory or constitutional. Or. Const., Art. IV, § 1(2)(b), (c). Second, the petition must be filed with the Secretary of State "not less than four months before the election at which the proposed law or amendment to the Constitution is to be voted upon. *Id.* at § 1(2)(e) . . . . .
>
> The constitution expressly authorizes the legislature to prescribe "[t]he manner of exercising" the initiative power by "general laws," that is, by statutes. Or. Const., Art. IV, § 1(5) . . . Pursuant to that constitutional authority, the legislature enacted ORS chapter 250, which provides a comprehensive statutory process for placing proposed initiative petitions on the ballot and ensuring compliance with constitutional requirements and conditions. . .

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

> In brief, the law requires that individuals who propose a statewide initiative measure, known a "chief petitioners," file with the Secretary of State a "prospective petition," which consists of the text of the proposed measure along with the signatures of at least 1,000 electors. ORS 250.045(1). Once the secretary has received a prospective petition and verified the sponsorship signatures, the secretary forwards it to the Attorney General. ORS 250.065(2). The Attorney General then has five days in which to prepare a draft ballot title — that is, a three-part summary of the proposed measure and its major effects stated in the form of (1) a caption of no more than 15 words; (2) a "yes" and "no" vote result statement of no more than 25 words explaining the consequences of a "yes" and "no" vote; and (3) a summary of no more than 125 words. ORS 250.035(2). The secretary then provides notice of the public's right to submit written comments on the draft ballot title. ORS 250.067(1). After receiving any comments, the secretary forwards them to the Attorney General. *Id*. The Attorney General then considers those comments and certifies either the original draft ballot title or a revised ballot title. ORS 250.067(2).
>
> Electors who previously commented on the draft ballot title and who are dissatisfied with the certified ballot title may seek review in the Supreme Court. ORS 250.085(2). Any such electors are required to file a petition for judicial review within 10 business days of the Attorney General's certification of the ballot title. ORS 250.085(3)(a). And the elector must notify the Secretary of State in writing the following business day that the petition has been filed. ORS 250.085(4).
>
> The Supreme Court reviews the Attorney General's certified ballot title to determine whether it substantially complies with the statutory requirements as to its form and content. ORS 250.085(5). . . If the court determines that the challenged ballot title substantially complies with the statutory requirements, the court certifies the ballot title to the secretary. ORS 250.085(8). If the court determines that the challenged ballot title does not substantially comply, then the court refers the ballot title to the Attorney General for modification. *Id.* The final, certified ballot title then is placed on the cover of the initiative petition, which is required before chief petitioners may solicit signatures in support of the measure. ORS 250.045(6).

Unger v. Rosenblum, 362 Or 210, 214-215, 407 P3d 817 (2017).

There are no restrictions on when an initiative petition may be filed. "A petition may be filed for any election." Oregon Secretary of State, "Initiatives, Referendums and Referrals."[1] A

[1]Available at https://sos.oregon.gov/elections/Pages/2022-irr.aspx (last accessed July 7, 2020).

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

petition for a future election may be filed before the signature submission deadline for a prior election has concluded. As the Secretary of State explains, during an election cycle, "Petitions for future elections may go through the sponsorship phase, obtain a ballot title and go through ballot title appeal process." *Id.* In other words, the chief petitioners for IP 57 could have filed their petition and completed the ballot title process for the November 2020 General Election during the 2018 election cycle and started collecting signatures on what became IP 57 as early as July 2018.

B. Initiative Petition 57

Initiative Petition 57 is one of four statewide redistricting initiatives proposed during this election cycle. Initiative Petition 5 was filed early in the election cycle, in June 2018. As with IP 57, IP 5 would have transferred redistricting authority away from the Oregon Legislature to a commission. The proponents of IP 5 received their final ballot title on September 4, 2019. They withdrew their initiative the following month, on October 31, 2019.[2] Less than two weeks later, Mr. Turrill and two other chief petitioners filed IP 57, along with Initiative Petition 58 and Initiative Petition 59. Each of those initiative petitions proposed amending the Oregon Constitution to repeal the existing redistricting process and take redistricting authority away from the Oregon Legislature.[3] At the time of filing, Mr. Turrill acknowledged that the chief

[2]The Oregon Secretary of State maintains a publicly accessible Initiative, Referendum and Referral database (the "IRR Database"), accessible at http://egov.sos.state.or.us/elec/web_irr_search.search_form). Specific information regarding IP 5 (2020) is available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200005..LSCYYY5. In this memorandum, publicly available information about a specific initiative obtained from the IRR Database is cited by reference to the "IRR Database" followed by the initiative petition number.

[3]*See generally* IRR Database, IP 57 (2020), available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200057..LSCYYY5

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209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

petitioners were floating three measure to determine which one was most viable, a practice commonly referred to as "ballot title shopping." *See, e.g.*, Jeff Mapes, *Group Seeks to Take Oregon Redistricting Out of State Legislature's Hands*, OR. PUB. BROAD. (November 12, 2019).[4] *See also* Declaration of Ben Unger ("Unger Decl.") at ¶ 8(e) (discussing ballot title shopping by the initiative's proponents).

IP 57 quickly garnered opposition from progressive and voter advocacy groups. Although the intricacies of IP 57 are not material to this dispute, in summary IP 57 would repeal the existing provisions of the Oregon Constitution addressing legislative redistricting. IP 57 would create a 12-person commission to conduct redistricting of state legislative districts and federal congressional districts. It is strongly opposed for many reasons. Two predominant concerns are the initiative would lead to over-representation of Republican-backed interests (giving Republicans disproportionate power on the commission) and commission membership would exclude many highly qualified candidates, including younger voters, immigrants and newer Oregon residents.

IP 57 went through the ballot title process. Petitioner Uherbelau petitioned the Oregon Supreme Court for review of the certified ballot title. She filed her challenge on February 2, 2019. That challenge was resolved very quickly, on March 26, 2020. *Uherbelau v. Rosenblum* (S067451) (March 26, 2020); *see* IRR Database, IP 57 (2020). Ballot title challenges often can

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7; IRR Database, IP 58 (2020), available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200058..LSCYYY58 (IP 58); and IRR Database, IP 59 (2020), available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200059..LSCYYY59 (IP 59).

[4]Available at https://www.opb.org/news/article/gerrymandering-redistricting-oregon-census/ (last accessed July 7, 2020).

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209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

take months to resolve. Unger Decl., ¶ 8(f); Declaration of Elizabeth Kaufman ("Kaufman Decl."), ¶ 7. For example, the ballot title challenge for related IP 5 took over seven months for the Supreme Court to decide. *See* IRR Database, IP 5 (2020) (setting forth timeline); *see also Fletchall v. Rosenblum*, 365 Or 98, 442 P3d 193 (2019), *opinion after remand* 365 Or 527, 448 P3d 634 (2019).

By law, as soon as the ballot title process was completed, the proponents of IP 57 could begin circulating the initiative to collect signatures. Templates for signature collection for IP 57 were issued by the Secretary of State on March 30, 2019, within one business day of when the Secretary of State received notice of the court's final judgment. The chief petitioners obtained templates to circulate ten days later, on April 9, 2020. IRR Database, IP 5 (2020); Declaration of Norman Turrill ("Turrill Decl."), ¶ 19. However, the chief petitioners undertook no efforts to collect signatures for over a month, when they "launched a portal for Oregonians to view, download and print the IP 57 petition and signature page." Turrill Decl., ¶ 22. The initiative's proponents did not undertake any significant outreach to voters to obtain signatures until late, when they sent a mass mailing to over 1.1 million registered Oregon voters. Turrill Decl., ¶ 29. In other words, the supporters of IP 57 waited almost two months *after* they received a certified ballot title before they begin collecting signatures.

C. IP 57 Fails to Collect Sufficient Signatures

As discussed above, under Article IV, section 1(2) of the Oregon Constitution, for the November 2020 General Election, an initiative petition to amend the Oregon Constitution must contain at least 149,360 valid signatures submitted by July 2, 2020. As Plaintiffs conceded, the IP 57 campaign fell far short of that threshold, and had collected approximately 60,000 raw,

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

unverified signatures by the end of June. Turrill Decl., ¶ 30. On June 30, 2020, just two days before the signature submission date, Plaintiffs filed this suit.

II. PLAINTIFFS ARE NOT ENTITLED TO AN EXCEPTION TO THE SIGNATURE THRESHOLD AND FILING DEADLINE IN THE OREGON CONSTITUTION

The law and the facts are fatal to Plaintiffs' request for extraordinary relief.

A. The Two Controlling Ninth Circuit Cases Are Dispositive.

Two Ninth Circuit decisions – *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006) and *Angle v. Miller*, 673 F3d 1122 (9th Cir. 2012) – are applicable here. Plaintiffs disregard *Prete* and misread *Angle*.

In *Prete*, the Ninth Circuit rejected a challenge to Oregon's constitutional pay-per-signature ban. The Ninth Circuit began its analysis by recognizing that while the circulation of initiative petitions involves "core political speech," the First Amendment does not prohibit "all restrictions upon election processes." 438 F.3d at 961. The Court explained:

> "'States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election and campaign-related disorder.' *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L.Ed.2d 589 (1997). Indeed, the U.S. Supreme Court has recognized 'States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally.' *Buckley* [*v. Am. Const. Law Found., Inc.*], 525 U.S. [182,] 191, 119 S. Ct. 636 (1999)."

Prete, 438 F.3d at 961.

Because Oregon's pay-per-signature ban is "content-neutral," the Ninth Circuit rejected the plaintiffs' argument that it was subject to strict scrutiny, *Prete*, 438 F.3d at 968. The Court further concluded that the plaintiffs had failed to establish that the pay-per-signature ban imposed a severe burden on signature collection, because the plaintiffs' evidence amounted to little more than "unsupported speculation," and referendum petitions continued to qualify with

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

the ban in place. *Id.* at 964-967. The Court determined that Oregon's "important regulatory interest in preventing fraud and its appearances in electoral processes" outweighed any perceived infringement on First Amendment rights. *Id*. at 969.

In *Angle*, the Ninth Circuit considered, and rejected, a challenge to an Arizona law that required an initiative petition to have signatures from each congressional district in the state. The Ninth Circuit determined that the rule did not trigger an equal protection strict scrutiny analysis, "because it serves the state's legitimate interest in ensuring a minimum of statewide support for an initiative as a prerequisite to placement on the ballot." 673 F.3d at 1129; *see also id.* at 1130 (rejecting the argument that a ballot access requirement is subject to strict scrutiny because "[a] ballot access requirement determines whether there is a minimum level of grassroots support for an initiative to warrant its inclusion on the ballot").

As for the *Angle* plaintiffs' First Amendment challenge, the Ninth Circuit concluded that Arizona's ballot access rule did not impose a severe burden on signature collection. As the Court recognized, "[t]here is no First Amendment right to place an initiative on the ballot" and "regulations that make it more difficult to qualify an initiative for the ballot therefore do not necessarily place a burden on First Amendment rights." 673 F3d at 1133. A ballot access rule is "severe" only if it would "significantly inhibit" a "reasonably diligent" campaign from placing an initiative on the ballot. *Id.* The Ninth Circuit rejected the plaintiffs' challenge because the plaintiffs failed to present evidence "that, despite reasonably diligent efforts, they *and other initiative proponents* have been unable to qualify initiatives for the ballot as a result of the" objected to law. *Id.* at 1134 (emphasis added). In other words, the test is not merely whether a campaign cannot gain ballot access, but rather whether other campaigns in the same election cycle are also precluded from obtaining ballot access. The court in *Angle* recognized that states

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

have an "important regulatory interest" in ensuring that initiative petitions have sufficient grassroots support to be placed on the ballot and the First Amendment allows states "considerable leeway" in how to protect that interest. "We believe this leeway applies to a state's decision about how to measure the grassroots support sufficient to qualify an initiative for the ballot." *Id.* at 1135.

B. The Facts Defeat Plaintiffs' Theory.

As the foregoing discussion shows, whether a state election law imposes an unconstitutional restriction on a specific signature collection campaign depends on the diligence of the campaign. A determinative measure of diligence is whether other campaigns in the same election cycle were able to qualify. The Plaintiffs have failed to present sufficient evidence on either issue. In fact, the evidence clearly refutes Plaintiffs' claim.

1. Plaintiffs' Evidence Is Insufficient.

The declarations filed by Plaintiffs fail to establish that the campaign was reasonably diligent. In her declaration, Candalynn Johnson testifies that she acted as a deputy campaign manager for IP 57 beginning in early January. She states that she attended a number of forums, beginning in September 2018, to promote IP 57. Johnson Decl., ¶ 5. She states that by late March 2020, she had a list of 77 people who said they would volunteer to circulate IP 57. *Id.* She does *not* testify that the campaign had adequate financial resources or an organized paid signature circulator presence to engage in a signature gathering effort that would have garnered sufficient signatures for IP 57 to qualify.

The declaration from plaintiff and chief petitioner Norman Turrill is similarly unavailing to Plaintiffs. Mr. Turrill acknowledges that the IP 57 campaign did not begin discussing how to acquire signatures until January 2020, and that the campaign concluded it "would rely principally

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

on paid signature circulators, supplemented by volunteer circulators, to gather the required 149,360 signatures." *Id.*, ¶ 4. Over the next few months, Mr. Turrill and the campaign apparently scheduled and held a series of meetings but did nothing meaningful to move their actual signature collection organizational efforts forward. *Id.*, ¶ 7. By March 2020, the campaign apparently still had not finalized the procedures for (or even retained anyone to conduct) its paid signature collection effort when Mr. Turrill "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 had concluded." *Id.*, ¶ 9. The campaign apparently also lacked sufficient funds at that time. *See id.* (Mr. Turrill testifying that he was hopeful "the campaign's finances would improve once we hit the streets"). According to Mr. Turrill, by March 20, the campaign was aware that "general public signature solicitation had not been prohibited." *Id.*, ¶¶ 11, 13. However, for reasons that are unclear, the campaign subsequently erroneously concluded that it could not conduct in-person signature collection. *Id.* at ¶ 15.

According to Mr. Turrill's testimony, it was not until March 31, 2020 that the IP 57 campaign even had an estimate of the raw (unverified) number of signatures it would need to qualify IP 57. At that point, the committee concluded "the campaign would need about 213,000 signatures to meet the required number of valid signatures (149,360)."[5] Turrill Decl., ¶ 17. Still, the campaign did nothing to pursue signatures. Even though it could have obtained signature templates, the campaign waited until April 9 to get those templates. *Id.*, ¶ 19. And, for the most part, the campaign continued to sit on its hands. In mid-May – almost two months after the

[5]Mr. Turrill assumes a validity rate of 70%, which, as discussed below, is substantially higher than the validity rate achieved for other campaigns conducted by Ted Blaszak.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

campaign received its final, certified ballot title and could begin circulating – the campaign set up a website where voters could download, print, sign and mail-in a completed petition. *Id.*, ¶ 22. (Such websites are standard for any initiative qualification campaign). It was not until the end of May that the campaign made any concerted effort to reach electors, when it sent a mass mailing. *Id.*, ¶ 29. The campaign never undertook in-person signature collection.

Mr. Turrill's declaration reveals a disorganized campaign that was behind the curve well before any order issued by the Governor. As with Ms. Johnson's declaration, what is surprisingly absent from Mr. Turrill's declaration is any indication that the campaign had sufficient financial resources or a sufficient paid signature circulator presence to engage in a signature gathering effort. Mr. Turrill's declaration, perhaps unintentionally, emphasizes that the IP 57 did not have the financial resources, or any plan in place, to qualify IP 57.

Plaintiffs' final declaration, from Ted Blaszak, is also inconclusive. Mr. Blaszak testifies that he has helped initiative petitions qualify in the past "in shorter periods of time than the April 9-July 2, 2020 period available to the PNP campaign." Blaszak Decl., ¶ 3. He also testifies that paid circulators would be essential to qualification. *Id.* Mr. Blaszak's testimony then shifts to the campaign's mail signature-solicitation campaign. He states that the campaign's mail solicitation statistics "were excellent – six percent of all households returns signatures." *Id.*, ¶ 8.[6] Finally, Mr. Blaszak testifies that "my clients in Oregon ballot measure campaigns received an average of 15,000-20,000 signatures per week."[7] *Id.*, ¶ 9. He also states that "under normal signature-gathering circumstances" a hypothetical initiative campaign could have "collected and

[6]As is discussed below, this 6% return is well-below the return achieved by other campaigns during this same election cycle.

[7]As is discussed below, the evidence is inconsistent with Mr. Blaszak's sworn statement.

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209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

submitted to the Oregon Secretary of State at least 150,000 valid signatures between April 9 and July 2, 2020." *Id.* As with Ms. Johnson and Mr. Turrill's declarations, clearly missing from Mr. Blaszak's declaration is that the IP 57 campaign actually had funding to conduct a paid signature collection effort (under any circumstances) or that Mr. Blaszak had been retained or was prepared to conduct that effort.

At most, Plaintiffs convey a speculative, aspirational hope that IP 57 could have qualified. What their declarations fail to establish is that the campaign was in any actual position to collect sufficient signatures for IP 57, under even normal circumstances. As in *Angle*, their "assertions are too vague, conclusory and speculative to create a triable issue." 673 F.3d at 1134; *see also Prete*, 485 F.3d at 964-965 (declarations proffered by the plaintiffs were insufficient as "unsupported speculation"). Plaintiffs fail to establish any probability, much less a likelihood, that they were ever in any position to qualify IP 57. Their proffer is insufficient.

2. The IP 57 Qualification Campaign Was Not Diligent.

Declarations from three established campaign veterans establish that the campaign to qualify IP 57 was doomed from the outset, and that the pandemic is *not* the reason the initiative failed. Ben Unger has been working in initiative politics for years, and until 2018, oversaw Our Oregon's initiative qualification and monitoring operations. He currently is the campaign consultant for Initiative Petition 34 (2020), which has qualified for the November 2020 ballot. Unger Decl., ¶¶ 2-6. Elizabeth Kaufman also has been working in initiative politics for years. She led the campaign to qualify and pass Initiative Petition 53 (2014), to legalize recreational marijuana, which became Measure 91 and was resoundingly approved by Oregon voters. Ms. Kaufman currently is the campaign director for Initiative Petition 44 (2020), which also has qualified for the November 2020 ballot. Kaufman Decl., ¶¶ 2-3. Finally, Becca Uherbelau – a

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209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

proposed intervenor in this case and the executive director of Our Oregon – currently oversees Our Oregon's initiative monitoring program. Declaration of Becca Uherbelau ("Uherbelau Decl."), ¶ 5. All three testify that IP 57 never was in position to qualify for the ballot. Unger Decl., ¶¶ 8-11, 15; Kaufman Decl., ¶¶ 5-13; Uherbelau Decl., ¶¶ 6-11.

a. IP 57 Was Filed Too Late

As discussed above, an initiative petition must go through a series of procedural steps before it can be circulated for signatures. As part of that process, the Attorney General issues a ballot title and (if the title is challenged), the Supreme Court will review it. Once Supreme Court review is complete, the chief petitioners may obtain templates and begin circulation. There are no restrictions on when the chief petitioners can begin the process of obtaining a ballot title and templates. Chief petitioners with a final ballot title and templates can begin circulating an initiative petition once the signature submission deadline for the prior cycle has passed. In other words, chief petitioners for a 2022 initiative could begin obtaining signatures now (because the 2020 signature deadline has passed).

The later in an election cycle that an initiative petition is filed, the more difficult and expensive it will be for the initiative to qualify. Unger Decl., ¶ 8(b); Kaufman Decl., ¶ 6; Uherbelau Decl., ¶ 8. IP 57 was not filed with the Secretary of State's office until November 12, 2019. Unger Decl., ¶ 8(c); Kaufman Decl., ¶ 6; Uherbelau Decl., ¶ 8; *see also* IRR Database, IP 57 (2020). This was unreasonably late in the election cycle and would have made it extremely challenging for IP 57 to qualify. Unger Decl., ¶ 8(c); Kaufman Decl., ¶ 6; Uherbelau Decl., ¶ 8. Given the extremely late filing date, the only way that IP 57 could have obtained sufficient signatures to qualify (under any circumstances) would have been if the campaign had sufficient funding, a well-organized ground game, and a paid petition circulation firm ready to hit the

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PORTLAND, OREGON 97204
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streets. Unger Decl., ¶¶ 8(h), (i); Kaufman Decl., ¶ 8, Uherbelau Decl., ¶ 12. However, IP 57 did not.[8]

Plaintiffs' decision to file IP 57 so late in the cycle was not the result of the coronavirus or any other pandemic related event. The proponents of IP 57 had been contemplating filing a redistricting initiative as early as the 2018 election cycle. Unger Decl., ¶ 8(d); *see also* Johnson Decl., ¶¶ 4, 5 (IP 57 deputy campaign director testifying that the campaign to qualify IP 57 began contacting people about a possible ballot measure "from as early as September 2018"). Other redistricting advocates filed their initiative petitions much earlier in this election cycle. Initiative Petition 5, which also would have removed redistricting authority from the legislature and given it a committee, was filed in June 2018. The IP 57 campaign's late start is particularly confounding, in the light of Mr. Turrill's own testimony that the campaign was "aware that this was our last once-in-a-decade opportunity to create a redistricting commission in time for the 2021 redistricting process." Turrill Decl., ¶ 5. It may well be that the proponents of IP 57 were engaging in "ballot title shopping," looking for the best way to promote their initiative. Unger Decl., ¶ 8(e). While that is not impermissible, any attendant delay in the initiative process that resulted was a strategic choice made by the initiative's proponents.

Over the last two election cycles, no initiative petition (either statutory or constitutional) has qualified for the ballot that was filed as late in the election cycle as IP 57. And, over the last two election cycles, no initiative petition approved for circulation as late as IP 57 has qualified for the ballot. The only initiative petition that has come as close to pushing the timeline as IP 57

[8]IP 57 benefitted from a very quick resolution of Supreme Court's review of the ballot title. That review took only six weeks, whereas review can often take months (as it did for the ballot title for IP 5). Unger Decl., ¶ 8(f); Kaufman Decl., ¶ 7, *Uherbelau v. Rosenblum* (S067451) (March 26, 2020).

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was Initiative Petition 37 [Measure 103] (2018). But that initiative was filed a month earlier than IP 57, obtained its certified ballot title weeks earlier than IP 57 and, as discussed below, had exponentially more cash on hand to devote to signature collection than did IP 57. Uherbelau Decl., ¶ 7.

For this election cycle, the successful campaigns to qualify Initiative Petition 34 and Initiative Petition 44 both began significantly earlier than did the campaign to qualify IP 57. IP 34 was filed on July 2, 2019. IP 44 was filed on August 15, 2019. Both were months ahead of IP 57. Unger Decl, ¶¶ 8(c), 13; Kaufman Decl., ¶¶ 6, 14.

b. The IP 57 Campaign Did Not Secure Sufficient Funding.

A second hurdle faced by the IP 57 campaign is that it never secured sufficient funding to conduct its signature collection effort. Given the campaign's late start date, the campaign would have needed funding in place to begin a vigorous paid signature collection effort the minute the ballot title was finalized. Unger Decl., ¶¶ 8 (g), (h), (i); Kaufman Decl., ¶ 8; Uherbelau Decl., ¶ 7. The last-minute, rush signature collection effort that IP 57's late filing would require would cost approximately $1,000,000. Unger Decl., ¶ 8 (g). Yet, the IP 57 campaign's total reported fundraising for all purposes was significantly less than that. Unger Decl., ¶ 8(g); Uherbelau Decl., ¶ 7. By contrast, the IP 34 campaign spent over $900,000 and the IP 44 campaign reported spending over $2 million this election cycle during the qualification period. Uherbelau Decl., ¶ 7. Both campaigns filed (and were able to begin signature collection) months before IP 57. And, both IP 34 and IP 44 are statutory initiatives, with a lower signature threshold than the proposal to amend the Oregon Constitution in IP 57.

The IP 57 qualification campaign's limited resources were fatal, regardless of any pandemic concerns. Measures to amend the constitution that qualified for the 2018 General

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Election were much better financed. For example, Initiative Petition 37 [Measure 103] (2018) – a constitutional amendment to limit taxes – spent $2.2 million during the qualification period. While IP 37 was filed just a month earlier in the election cycle than IP 57, it had to spend nearly four times more during qualification. And, Initiative Petition 31 [Measure 104] – another constitutional amendment to limit taxes – spent over $1 million during the qualification period. While two other initiatives during the 2018 election cycle qualified with lower expenditures – Initiative Petition 1 [Measure 106] (2018) and Initiative Petition 22 [Measure 103] – they were filed, respectively, two years and fourteen months before the signature deadline. Uherbelau Decl., ¶¶ 7-8. It would have been wholly unprecedented for the IP 57 campaign to qualify the measure, given the limited time it allowed itself and the campaign's resources.

c. The IP 57 Campaign Was Not Proactive After It Obtained a Final Ballot Title.

The IP 57 campaign's lack of diligence continued even after it received a certified ballot title and could begin petition circulation. As Mr. Turrill testifies, the Supreme Court's decision certifying the ballot title was issued on March 26, 2020. Turrill Decl., ¶ 16. However, the campaign did not obtain templates from the Secretary of State for almost two weeks, until April 9. *Id.*, ¶ 19. A campaign can obtain signature templates almost immediately after the Court issues its decision. That two-week delay further shortened the timeline for the campaign to gather signatures and is "inexplicable, given the timeline." Unger Decl., ¶ 9(a); *see also* Kaufman Decl., ¶ 11(a).

Even after the IP 57 campaign obtained templates, it made no immediate efforts to reach out to voters. As Mr. Turrill testified, the IP 57 campaign did not set up website where petitions could be downloaded and printed until mid-May. The campaign did not send out its mailer until

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late May, nearly two months after it had obtained its ballot title. "These two months of inactivity were not reasonable, given the approaching submission deadline." Kaufman Decl., ¶ 11(b). *See also* Unger Decl., ¶ 9(b) ("[t]hose two months of inactivity, with the deadline approaching and the pandemic swirling, is a mindboggling delay"). The campaign apparently did not institute any significant follow-up to accompany its mailing effort. Any successful mail effort requires follow-up to electors. Kaufman Decl., ¶ 13. In contrast, the campaign to qualify IP 34 had a detailed plan to contact potential petition signers both before and after they sent out their mailing. Unger Decl., ¶ 11.

Plaintiffs also made no effort to conduct in-person signature collection. Plaintiffs have taken the position – without any viable legal support – that executive orders from the Governor prohibited in-person signature collection. That is inaccurate. The Governor's orders did not prohibit in-person signature collection. After making necessary safety protocol adjustments, both the IP 34 and IP 44 campaigns continued in-person signature collection in "phase 1" counties. Unger Decl., ¶ 11(c), (d); Kaufman Decl., ¶¶ 11(c), (d).

The IP 57 campaign made a strategic decision not to engage in-person signature collectors at any time. That was their choice. The campaign's decision was not compelled by any government restriction and certainly was not mandated by anything in Article IV, section 1 of the Oregon Constitution.

The campaign unreasonably delayed in starting the initiative process by not filing IP 57 until November 2019. Even after the campaign received its ballot title, it took no action to begin signature collection. The campaign waited weeks to set up a standard website where electors could download and print petitions and months to initiate a mail-signature solicitation effort. The campaign never undertook in-person signature collection, even though such activity was not

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prohibited, and other campaigns continued their in-person efforts. The campaigns post-pandemic actions were not reasonably diligent.

d. Plaintiffs Overstate the IP 57 Campaign's Ability to Collect Signatures and Overestimate the Initiative's Grassroots Support.

The campaign overstates its ability to collect signatures. Mr. Blaszak testifies that "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." Blaszak Decl., ¶ 9. Based on that estimate, he claims that an initiative campaign could have collected and submitted at least 150,000 valid signatures "between April 9 and July 2, 2020." *Id.* Mr. Blaszak offers no evidence for his assertions. However, publicly available information on the Secretary of State's website reveals that Mr. Blaszak's statements are not accurate.

Mr. Blaszak's then-company NW Democracy Resources conducted the signature collection campaign for Initiative Petition 76 (2010). IP 76 (2010) was a proposed constitutional amendment to allow casino gambling in Oregon. Although that campaign spent over $750,000 (in 2010 dollars) and had over three months to collect signatures, Mr. Blaszak's company did not obtain sufficient signatures to qualify the initiative. For IP 76, Mr. Blaszak's experience fell far short of his sworn testimony. For IP 76, with over fourteen weeks, Mr. Blaszak's campaign was unable to collect the 110,358 signatures to qualify; his campaign averaged less than 8,000 signatures a week. Uherbelau Decl., ¶ 9.[9] The validity rate was dismal – less than 62.5%. Mr. Blaszak's campaign for Initiative Petition 53 (2014) achieved similar results. That campaign had

[9]*See also* IRR Database, IP 76 (2010) (providing data) (available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20100076..LSCYYY76).

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about the same amount of time to collect signatures as did IP 57. With well over half a million dollars, Mr. Blaszak's signature collection firm was able to collect only 88,584 valid signatures for IP 53 (2014), barely enough to qualify. Kaufman Decl., ¶ 10. The validity rate was again quite low – 64.41%. Again, he averaged less than 8,000 signatures a week. *Id.*

The facts are inconsistent with Mr. Blaszak's assertion "my clients in Oregon ballot measure campaigns received an average of 15,000-20,000 signatures a week." Blaszak Decl., ¶ 9. His average has been closer to 7,500-8,000 valid signatures a week. In 2010, with substantially more money and more time, he failed to gather the required 110,358 signatures and was unable to qualify IP 76. In 2014, with more money and the same amount of time, he barely qualified IP 53. However, the signature threshold for IP 53, a statutory initiative, was only 88,584. The threshold for IP 59 – a proposed constitutional amendment – is much higher, 149,360. For IP 57 to qualify, Mr. Blaszak's signature collection efforts would have had to have been twice as effective (and his validity rate substantially higher) than his past performance.

Plaintiffs provide no basis to believe that Mr. Blazak's signature collection efforts would be exponentially more effective in this election cycle than in the past. Rather, Mr. Turrill's declaration reveals that the IP 57 campaign was ineffective at obtaining signatures. As Mr. Turrill testifies, using paid signature collectors, the IP 57 campaign submitted its 1,000 sponsorship signatures 22 days after the prospective petition was filed, with 10 days spent collecting the signatures. Turrill Decl., ¶¶ 2, 3. A well-run campaign can complete that signature collection in a day. Unger Decl., ¶ 8(j).

Plaintiffs' declarations also reveal that IP 57 lacks significant grassroots support. The response the campaign received to its mail signature-solicitation effort was lackluster. Mr. Blaszak testifies that their 6% return rate was "excellent." Blaszak Decl., ¶ 7. But, that return

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rate is almost half of the 11.4% return rate that the IP 34 and IP 44 campaigns obtained on their mail signature-solicitation efforts. Unger Decl., ¶ 10; Kaufman Decl., ¶ 12. That low return rate indicates that IP 57 "never had sufficient support." Kaufman Decl., ¶ 12. Moreover, Mr. Blaszak's reported return rate is for raw, *unverified* signatures. When Our Oregon ran a test signature-collection direct mail program for IP 25 (2018), it had a return rate of 8.47% *after* validating the signatures, a return rate 25% higher than IP 57's unverified return rate. Uherbelau Decl., ¶ 10. The evidence suggests that electors are just not that interested in IP 57, a clear indication that the initiative could not qualify under normal circumstances.

e. Other Initiatives Were Able to Qualify During This Election Cycle.

As discussed above, both Initiative Petition 34 and Initiative Petition 44 were able to qualify during this election cycle. Unger Decl, ¶¶ 13, 14; Kaufman Decl, ¶ 15, 16. The Secretary of State has formally announced that both initiatives will be on the November 3, 2020 General Election ballot.[10]

The recent campaign to qualify a Multnomah County initiative petition further undermines Plaintiffs' argument that successful in-person petition drives were not possible over the past few months. The Universal Preschool Now petition, designated as MultCoInit-08, was approved for circulation on June 3, 2020. UPN's signature collectors have been a common sight at the various mass rallies and marches in Multnomah County that have occurred over the past

[10]*See* IRR Database, IP 34 (2020) (so stating) (available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200034..LSCYYY34) (last accessed July 8, 2020); IRR Database, IP 44 (2020) (so stating) (available at http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20200044..LSCYYY44) (last accessed July 8, 2020).

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six weeks. Signature collectors for Measure 57 also could have collected signatures at those mass gatherings but chose not to. On July 6, 2020, the chief petitioners for MultCoInit-08 submitted 32,356 raw signatures, almost 10,000 signatures more than required for that initiative to qualify.[11] In other words, the chief petitioners for that local initiative were able to collect over 30,000 raw signatures in Multnomah County in a month.

C. Courts Consistently Have Rejected Plaintiffs' Arguments.

The recent decision in *Arizonans for Fair Elections v. Hobbs*, ___ F.Supp.3d ___, 2020 WL 1905747 (D. Ariz. April 10, 2020) is most analogous to this case. In *Arizonans for Fair Elections*, the plaintiffs – a pair of ballot measure committees seeking to place initiatives on the ballot – alleged that state and local pandemic responses made it impossible for them to obtain sufficient signatures. They argued, in particular, that the state's requirement for "in-person" rather than "electronic" signatures infringed on the plaintiffs' First and Fourteenth Amendment rights.

The court's legal analysis began with a discussion of *Prete* and *Angle*. Applying that settled Ninth Circuit caselaw, the court rejected the challenge. The court concluded that the plaintiffs had failed to show that they had been "reasonably diligent" in pursing their initiatives and, accordingly, could not establish a "severe burden." The court wrote:

> Under Ninth Circuit law, such a challenger must show that the law creates a "severe burden" on the ability to successfully place an initiative on the ballot, and burdensomeness is gauged in part by assessing whether a "reasonably diligent" initiative committee could have succeeded despite the law. Here, although it is undeniable that the COVID-19 pandemic is currently wreaking havoc on initiative committees' ability to gather signatures, it is undisputed that some Arizona

[11]The June 3, 2020 letter from Multnomah County Elections Division Director Tim Scott approving the initiative for circulation is available on the County's website, at https://multco.us/file/89605/download. The campaign's July 6, 2020 submission is also available on the County's website, at https://multco.us/file/90148/download.

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> initiative committees (including one of the committees in this case) had gathered enough signatures to qualify before the pandemic took hold. It is also undisputed that the two committees in this case didn't start organizing and gathering signatures until the second half of 2019, whereas some of their counterparts began organizing as early as November 2018. Finally, although it is impossible to predict how the pandemic will play out in the coming weeks and months, it is possible that conditions will abate to the point that in-person signature gathering again becomes viable before the July 2020 submission deadline for signatures. On this record, Plaintiffs have not demonstrated that Arizona law creates a severe burden that would prevent a reasonably diligent initiative committee from placing its proposed initiative on the ballot. And because Plaintiffs failed to make this showing, the challenged laws are subject to a relaxed form of scrutiny that is easily satisfied by Arizona's interests in preventing fraud and promoting political speech and civic engagement.

Arizonans for Fair Elections, 2020 WL 1905747 at *2.

In *Arizonans for Fair Elections*, the Court properly rejected the plaintiffs' argument that Arizona's ballot qualification requirements inhibited face-to-face communication with voters. As it explained:

> To the extent Plaintiffs aren't currently able to engage in face-to-face interactions with qualified electors, that's the fault of the COVID-19 pandemic, not the [state's] requirements. It's only when a state law bars certain individuals from serving as petition circulators that the first category of First Amendment harm might arise."

2020 WL 1905747 at *9. That analysis applies here as well. The signature threshold and filing deadline in the Oregon Constitution do not bar any individuals from serving as petition circulators. The Governor's content-neutral executive orders similarly did not bar any person or individual from acting as a petition circulator.

Similarly, the plaintiffs' argument that Arizona's ballot qualification requirements imposed a severe burden were not supported by the record.

> The State's final argument—diligence—has more force. The State notes that Plaintiffs could have begun organizing and gathering signatures in November 2018 (as at least one other initiative committee did) yet didn't file the necessary registration paperwork with the Secretary until August 20, 2019 (HRAZ) and

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> October 30, 2019 (AFE), thereby wasting between 45% and 55% of the 20-month election cycle. In contrast, the State notes that the government-issued social distancing guidelines arising from the COVID-19 pandemic, which came into effect on March 11, 2020, will cover only 7.5% to 12.5% of the election cycle, depending on whether they remain in effect through April 30, 2020 or May 31, 2020. . .
>
> The Court agrees with the State that, on this record, Plaintiffs have not established that the Title 19 requirements create a "severe burden" on the ability to place an initiative on the ballot. As noted, "the burden on plaintiffs' rights should be measured by whether, in light of the entire statutory scheme regulating ballot access, 'reasonably diligent' initiative proponents can gain a place for their proposed initiative on the ballot." *Angle*, 673 F.3d at 1133 (quotation omitted). The party challenging the regulation bears the burden of establishing severity. "Speculation, without supporting evidence," is insufficient to demonstrate that the statutory scheme results in a severe burden. *Angle*, 673 F.3d at 1134; *Prete*, 438 F.3d at 964 (rejecting "unsupported speculation" as insufficient to demonstrate severe burden).
>
> Here, a "reasonably diligent" committee could have placed its initiative on the November 2020 ballot despite the Title 19 requirements and the COVID-19 outbreak. It is notable that Plaintiffs' declarations fail to provide any explanation (let alone justification) for why they waited so long to begin organizing and gathering signatures. The State has presented evidence that at least one Arizona initiative committee began that process in November 2018, yet the two committees in this case waited until the second half of 2019, thereby missing out on essentially a year's worth of time to work toward the 237,645 signature cutoff. . . . All of this strongly suggests that, had Plaintiffs simply started gathering signatures earlier, they could have gathered more than enough to qualify for the ballot before the COVID-19 pandemic started interfering with their efforts.

Arizonans for Fair Elections, 2020 WL 1905747 at *10-11.

As with the plaintiffs in *Arizonans for Fair Elections*, the Plaintiffs here have failed to establish reasonable diligence. It is undisputed that IP 57 got an extremely late start in this election cycle. Whereas an earlier redistricting initiative, IP 5, was filed in June 2018, the chief petitioners for IP 57 did not file their initiative until November 12, 2019. Both IP 34 and IP 44, which got earlier starts in the election cycle and had better organized campaigns, were able to qualify. And, in-person signature collection was possible throughout the time that IP 57 was

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authorized to circulate. In-person signature collection for IP 34 and IP 44 continued during that same time. In addition, Multnomah County initiative petition MultCoInit-08 was able to obtain all the signatures it needed to qualify during the month of June using in-person signature collection. "[C]ourts (including the Ninth Circuit) require parties raising constitutional challenges to state ballot access laws to show not only that *they* have been thwarted by the law, but that a reasonably diligent party would have been thwarted, too." *Arizonans for Fair Elections*, 2020 WL 1905747 at *2. It is undisputed that other campaigns were able to qualify their initiatives during this same election cycle.

The evidence submitted by Plaintiffs is even weaker than the evidence presented in *Arizonans for Fair Elections*. Plaintiffs have failed to show any reasonable likelihood that they could have qualified IP 57 absent the pandemic. Given the short time frame that the IP 57 campaign imposed on itself, it had an insufficient ground game, insufficient funding and no viable plan to collect the signatures it needed to qualify the initiative. *See, e.g., id.* at *11 n 13 ("a reasonably diligent campaign wouldn't have needed to put all its eggs in the March/April basked"). At most, the declarations submitted by Plaintiffs show that Plaintiffs hoped to try to qualify IP 57. But, what is missing is *any* evidence that they would have qualified IP 57. The pandemic did not prevent the IP 57 campaign from qualifying; rather, the campaign's own efforts fell far short.

Oregon has a well-established interest in maintaining the integrity of its initiative system. Oregon voters first enshrined the initiative power in the Oregon Constitution in 1902. When voters adopted the current version of Article IV, section 1 in 1968, they included both the 8% signature threshold requirement for constitutional amendments in Article IV, section 1(2)(c) and the signature filing deadline in Article IV, section 1(2)(e). The people set those constitutional

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baselines, to ensure that any proposed amendment to the Oregon Constitution had sufficient grassroots support to justify an expensive election on a statewide ballot measure. As the Court in *Arizonans for Fair Elections* recognized, "it is . . . a profound thing for a federal court to rewrite state election laws that have been in place since the 1910s." 2020 WL 1821991 at *3. Here, "the signature requirements Plaintiffs seek to displace have been a part of [Oregon]'s constitutional and electoral landscape for over a century." *See id.* at *16. Plaintiffs have failed to meet their burden to overturn this "bedrock component" of the Oregon Constitution. *See id*. at *11.

The decision in *Arizonans for Fair Elections* is consistent with decisions from other jurisdictions facing similar issues regarding ballot access. For example, in *Fight for Nevada v. Cegavske*, ___ F.Supp.3d ___, 2020 WL 2614624 (D. Nev. May 15, 2020), the court rejected a challenge brought by a recall committee to statutory signature deadlines "because of emergency directives that Governor Sisolak has issued in response to the coronavirus pandemic." *Id.* at *1. Applying *Angle* and *Prete*, the court concluded that the plaintiff failed to establish it had made a diligent effort to obtain signatures on their recall petition *before* the governor issued his directives. "That Plaintiff was already so far from its goal by March 30, 2020 gives less credence to the argument that the emergency directives, as opposed to other reasons, such as a lack of diligence, prevented Plaintiff from acquiring the requisite signatures." *Id.* at *6.

Similarly, in *Sinner v. Jager*, 2020 WL 324413 (D.N.D. June 15, 2020), the plaintiffs sought to place a redistricting initiative on the North Dakota ballot. The plaintiffs challenged North Dakota's constitutional and statutory signature requirements, arguing that a state of emergency declared by the North Dakota governor in response to coronavirus pandemic infringed on their First and Fourteenth Amendment rights. The Court rejected that argument.

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> Further, even assuming the pandemic's impact on in-person signature gathering created a severe burden for NDVF beginning in March, strict scrutiny still is not warranted here. That is so because the *Anderson-Burdick* framework mandates analysis of a ballot-access scheme as a whole. Critically, North Dakota law allows for circulation of a petition for up to one year following approval. Despite knowing that the 2020 general election presented the final opportunity to implement legislative redistricting reform for the next decade, NDVF waited until four months before the July 6, 2020 signature deadline to submit a proposed petition. After the Secretary returned the petition with corrections, NDVF waited another month and a half before submitting its revised petition, leaving a mere 67 days to gather signatures. So NDVF's predicament is largely attributable to its own delay.

Id. at *6 (citations omitted); *see also Morgan v. White*, 2020 WL 2526484 at *6 (N.D. Ill. May 18, 2020) (rejecting challenge to Illinois constitutional and statutory signature requirements because "Plaintiffs have not established that it is state law, rather than their own 16-month delay, that imposes a severe burden on their First Amendment rights, even in the context of the COVID-19 pandemic").

D. Plaintiffs Seek an Unfair and Improper Advantage.

Plaintiffs ask the Court to allow them to play by their own, special, rules. Plaintiffs downplay that it is the signature threshold in Article IV, section 1(2)(c) and the filing deadline in Article IV, section 1(2)(e) of the Oregon Constitution that they seek to evade. Instead, they focus on the Governor's executive orders. But, as was discussed above, those content-neutral executive orders did not prohibit in-person signature collection or other methods of obtaining signatures, and at least three campaigns continued their (successful) in-person signature collection efforts after the executive orders were in place. Even in the cases on which Plaintiffs so heavily rely, courts have refused to find *constitutional* signature requirements improper. *See, e.g.*, *Fair Maps Nevada v. Cegavske*, 2020 WL 2798018, at *16 (D. Nev. May 29, 2020) (court, when modifying statutory filing deadline that was six weeks earlier than constitutional filing

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PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

deadline, concluding statute is not narrowly tailored, because "the deadline it imposes is not required by Nevada's constitution"); *id.* at *15 (writing that the statute "in not narrowly tailored because extending the Deadline by six weeks . . . would not even push back the deadline to the deadline required by Nevada's constitution"); *id*. at *16 n. 20 ("the Court assumes without deciding the result of this finding is the deadline will revert to the constitutional deadline").

Plaintiffs seek an advantage that would be unfair. The campaigns to qualify IP 34 and IP 44 were able to comply with the applicable constitutional requirements. Those campaigns planned ahead, did not wait until late in the cycle to file their initiatives, and organized well-financed and well-run efforts. The sponsors of those initiatives incurred substantial expense in so doing. The IP 57 campaign seeks preferential treatment. It wants to be the beneficiary of different legal standards, merely because it was not diligent from the outset. They ask the court – at this very late date – to create a two-tiered system from which *only* Plaintiffs will benefit. Under Plaintiffs' proposal, campaigns that plan ahead, comply with the rules, and budget appropriately would be held to a higher standard than campaigns that are disorganized and delay. Unger Decl., ¶ 16; Kaufman Decl., ¶ 18; Uherbelau Decl, ¶ 12. The law does not countenance such an unjust result.

The relief Plaintiffs seek also would give them an advantage in the upcoming election. As discussed above, Oregon voters included signature thresholds and filing deadlines to ensure that initiative petitions have significant grassroots support. It is not supposed to be easy to amend the Oregon Constitution. IP 57's opponents should be able to reasonably rely on the signature thresholds and deadlines in the Oregon Constitution as a necessary filter to prevent initiative petitions that lack widespread public support – such as IP 57 – from qualifying for the ballot. Statewide ballot measure campaigns can run into the tens of millions of dollars and

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209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

require extensive resources. Uherbelau Decl., ¶ 14. The opposition to IP 57 should not be forced to incur such expense in the absence of clear, timely support for IP 57. The constitution sets signature thresholds to determine what qualifies as adequate support, and Plaintiffs have fallen far short of the applicable threshold.

The November 2020 election is less than four months away. Pulling together an opposition coalition is a complex, time-consuming process. In less than two months, Voters' Pamphlet statements are due and explanatory statements must be finalized. The filing deadline in the Oregon Constitution provides advocates with the necessary time to determine whether they need to prepare for an election contest. Delay prejudices the opponents' rights. Uherbelau Decl., ¶ 13.

Finally, if the Plaintiffs were able to obtain the relief that they seek here, that would dramatically alter the initiative process landscape moving forward. Proponents seeking to qualify initiatives in the future would demand their own exceptions to the requirements set in the Oregon Constitution, which would significantly impact how campaigns to qualify initiative petitions would be run and would seriously undermine the integrity of Oregon's voter-approved initiative system.

CONCLUSION

For the reasons set forth above, Ms. Uherbelau and Our Oregon respectfully request that the Court deny Plaintiffs' motion and dismiss this case with prejudice.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

DATED this 9th day of July, 2020.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: s/ Lydia Anderson-Dana

Steven C. Berman, OSB No. 951769
Email: sberman@stollberne.com
Lydia Anderson-Dana, OSB No. 166167
Email: landersondana@stollberne.com

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Attorneys for Our Oregon and Becca Uherbelau

Steven C. Berman, OSB No. 951769
Email: sberman@stollberne.com
Lydia Anderson-Dana, OSB No. 166167
Email: landersondana@stollberne.com
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Attorneys for Our Oregon and Becca Uherbelau

IN THE UNITED STATES DISTRICT COURT

FOR THE 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, Defendant.	Case No. 6:20-cv-01053-MC DECLARATION OF BECCA UHERBELAU

I, Becca Uherbelau, declare as follows:

1. I am the Executive Director of Our Oregon and an Oregon elector.

2. Our Oregon is a public benefit nonprofit corporation organized under section 501(c)(4) of the Internal Revenue Code and registered with the Oregon Secretary of State. Our Oregon is dedicated to fighting for economic and social justice for all Oregonians. Our Oregon's

primary mission is to educate the public about public services, to advocate for stable, adequate and fair funding for public services, and to fight for justice for all Oregonians. Our Oregon also works to protect the integrity of the initiative system and promote equitable access to the ballot. The rights of Oregonians, and funding for public services, are perennial topics of statewide ballot measures. Accordingly, in fulfilling its mission, Our Oregon has a strong interest in the initiative and ballot measure processes. Our Oregon, through its executive director and staff, frequently comments on draft ballot titles for statewide initiative petitions and subsequently challenges ballot tiles for initiative petitions before the Oregon Supreme Court. As part of the comment process, Our Oregon, through its executive director or staff, provides input as to whether an initiative petition complies with the procedural requirements of the Oregon Constitution.

3. Our Oregon serves as a watchdog regarding initiative petitions it opposes (and did so under Mr. Unger's tenure as Executive Director as well). In its watchdog capacity, Our Oregon monitors initiative petition circulation and signature gathering. Our Oregon staff, coalition members and other volunteers observe signature verification conducted by the Secretary of State, to ensure that submitted initiative petitions have sufficient valid signatures to qualify for the ballot and to watch out for any potential fraud and abuse or misuse of the initiative system.

4. Our Oregon is opposed to IP 57 and would lead, or be part of, any campaign to defeat IP 57 if it were to qualify for the November 3, 2020 General Election ballot. I filed timely comments on the draft ballot title for IP 57 and subsequently challenged that ballot title before the Oregon Supreme Court. I also am a plaintiff in a separate action in Marion County circuit court, *Uherbelau v. Clarno*, No. 20CV13939 (Or. Cir. Ct. Mar 27, 2020), in which I allege that IP 57 does not comply with the procedural requirements of the Oregon Constitution and may not

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appear on the ballot. Cross-motions for summary judgment in that case have been filed, but have not yet been fully briefed or decided.

5. Since mid-2018, I have overseen Our Oregon's statewide ballot initiative work. I also have been involved with and overseen Our Oregon's watchdog efforts in monitoring signature collection, turn-in and verification for statewide initiative petitions and referenda, including IP 57 (2020). As a result, I am quite familiar with how a viable initiative petition signature campaign – capable of qualifying an initiative petition – would be organized and run.

6. I have reviewed the declarations filed by Plaintiffs in this case as well as information publicly available on the Oregon Secretary of State's website. Based on that review, I conclude that the signature collection campaign for IP 57 was insufficient to qualify IP 57 for the 2020 General Election ballot, and that social distancing and other limitations resulting from the pandemic are *not* the reason the campaign was unable to collect sufficient signatures. That conclusion is based on the factors discussed below.

7. An effective initiative petition campaign would show a sustained increase, or at least a steady stream, of funding to support an effective signature gathering campaign. However, financial reports in ORESTAR reveal that the IP 57 campaign had no such funding. Rather, the data on ORESTAR reveals that the IP 57 campaign spent funds on only one campaign tactic - to have petitions printed and mailed. There is no evidence of expenditures for an effective campaign operation including, for example, a robust field program or a digital organizing or other paid communication and engagement strategy. According to ORESTAR, IP 57 reports having raised only around $600,000. In contrast, two other initiative petitions that have qualified or turned in more than enough signatures to qualify for the 2020 ballot, IP 34 and IP 44, raised and spent over $900,000 and $2.1 million, respectively, during the qualification period. Initiative

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petitions that qualified in the 2018 election cycle similarly raised and spent more that IP 57. For example, IP 31 [Measure 104] spent over $1 million and IP 37 [Measure 103], a proposed constitutional amendment, spent over $2.2 million during the qualification period. (Two other initiative petitions that did manage to qualify for the 2018 ballot while raising less money than IP 57 were both filed way earlier than IP 57, as discussed in paragraph 8, below.) (This information discussed in this paragraph and in the subsequent paragraphs of my declaration is all available from the publicly accessible database ORESTAR on the Secretary of State's website at https://sos.oregon.gov/elections/Pages/campaignfinance.aspx and from the Secretary of State's Initiative, Referendum and Referral database, also on the Secretary of State's website, available at http://egov.sos.state.or.us/elec/web_irr_search.search_form). Given that IP 57 had to obtain almost 150,00 valid signatures, its funding was wholly inadequate.

8. IP 57 filed its initiative petition unreasonably late in the election cycle. As is discussed in Mr. Unger's declaration, an initiative campaign will face substantial challenges if the initiative is filed later in the election cycle. IP 57 was filed very late, in November 2019. Both IP 34 and IP 44 were filed months earlier. Additionally, each of the measures that qualified for the ballot in 2018 (when signature requirements were lower), was filed earlier in that election cycle than IP 57 was filed during this election cycle. IP 1 (2018) [Measure 106] was filed in June 2016, just over two years before the signature deadline. IP 22 (2018) [Measure 105] was filed in April 2017, over fourteen months before the signature deadline. IP 31 (2018) [Measure 104] was filed in September 2017; and IP 16 (2018) [Measure 103] was filed in October 2017. While IP 37 (2018) was filed just a month earlier in the 2018 cycle than IP 57, the IP 37 campaign had significantly more resources – roughly $1.7 million more than IP 57 – to spend during the qualification period.

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9. Mr. Blaszak's assertion that he could have organized a signature collection effort to obtain sufficient signatures to qualify IP 57 for the ballot "under normal signature-gathering circumstances" is suspect and not supported by Mr. Blaszak's own failed signature collection efforts. For example, during the 2010 election cycle, Mr. Blaszak's then-company NW Democracy Resources, conducted the paid-signature collection effort for IP 76, a constitutional amendment to allow casino gambling in Oregon. Although that initiative campaign spent over $750,000 (in 2010 dollars) and had over three months to collect signatures, Mr. Blaszak failed to obtain sufficient signatures for the initiative to qualify. This fact is inconsistent with Mr. Blaszak's sworn statement, in paragraph 9 of his declaration, that "[b]ased 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." For IP 76, Mr. Blaszak's experience fell far short of his sworn assertion. For IP 76, with over fourteen weeks, Mr. Blaszak's campaign was unable to collect the 110,358 signatures to qualify that measure; his campaign's efforts fell well below 8,000 valid signatures per week.

10. Based on the reported rate of return on IP 57's mail-in signature collection effort, it further appears that IP 57 lacked the necessary public support to qualify for the ballot. Mr. Blaszak reports that 6% of all households that were mailed an IP 57 signature sheet returned the sheet. He considers this "excellent." He does not state how many of those sheets were properly completed or contained valid signatures, which could impact – potentially significantly – the validity rate. However, based on our experience, that return rate is mediocre. During the 2018 election cycle, Our Oregon ran a test signature-collection direct mail program for IP 25: we had a rate of return of 8.47% after validating the signatures, a rate over 25% higher than IP 57's. The low rate of return for IP 57 indicates the public does not significantly support IP 57.

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11. There is another significant factual inaccuracy recurring throughout the Plaintiffs' declarations and court papers. First, the Plaintiffs repeatedly state that during the governor's stay-at-home order, they were prohibited from collecting signatures. That is not true. Nothing in the Governor's stay-at-home orders prohibited signature collection. Moreover, by May 15, 2020, 36 of Oregon's 39 counties had moved to "phase-two," where restrictions on social interaction were further reduced. The campaign had over six weeks to collect signatures in-person, using paid circulators during phase two, but opted not to do so.

12. The Plaintiffs ask the Court to reduce the constitutionally mandated signature qualification threshold for IP 57 and to extend the constitutionally mandated signature filing deadline. These are the requirements that every initiative petition in Oregon has been required to meet – including initiative petitions filed in this election cycle. An organized, funded and well-run campaign could have met those deadlines. The pandemic does not excuse the failure of IP 57 to qualify for the ballot. The chief petitioners for IP 57 started too late, did not have enough money, did not have a groundswell of voter support and did not have a well thought-through strategy. It would be unfair to all other participants in the initiative process if a special standard were created for IP 57, especially given that the campaigns for IP 34 and IP 44 were both able to qualify their initiatives. And it would be a disservice to Oregon voters who adopted and enshrined Oregon's initiative system into our constitution.

13. Allowing the Chief Petitioners to submit after the constitutional deadline (and at a lower threshold) would make it exponentially more difficult for Our Oregon, or anyone else, to organize an opposition campaign to IP 57. It takes months to build and fund a coalition in opposition to a ballot measure. While IP 57 has garnered significant opposition from a broad coalition of organizations (including voting and immigrants' rights groups), getting advocates to

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coalesce and fight an initiative petition is a complex process. We are now less than four months away from the November 2020 General Election. In less than two months, voters' pamphlet statements are due and explanatory statements must be drafted. The Financial Estimate Committee (which prepares a statement of the estimated costs for initiative petitions that appear on the ballot) has already begun meeting, and IP 57 was not placed on the agenda because signatures were not submitted by the constitutional deadline. The filing deadline in the Oregon Constitution provides advocates with the necessary time to know if they need to prepare for an election contest. Delay unfairly prejudices their rights.

14. Finally, if the Plaintiffs were able to obtain the relief that they seek here, that would dramatically alter the initiative process landscape moving forward. Proponents seeking to qualify initiatives in the future would seek their own exceptions to the requirements set in the Oregon Constitution, which would significantly impact how campaigns to qualify initiative petitions would be run and would seriously undermine the integrity of our voter-approved initiative system. Initiative petition campaigns are expensive, and increasingly so in the current era. A highly contentious statewide initiative campaign can run well over $10 million. Lowering or reducing the qualification standards – as the Plaintiffs demand – would unfairly impose costs and financial burdens on IP 57's opponents. Those opponents should be able to reasonably rely on the signature thresholds and deadlines in the Oregon Constitution as a necessary filter to prevent initiative petitions that lack widespread public support – such as IP 57 – from qualifying for the ballot.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 8th day of July, 2020.

s/ Becca Uherbelau
Becca Uherbelau

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

Steven C. Berman, OSB No. 951769
Email: sberman@stollberne.com
Lydia Anderson-Dana, OSB No. 166167
Email: landersondana@stollberne.com
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. Oak Street, Suite 500
Portland, Oregon 97204
Telephone: (503) 227-1600
Facsimile: (503) 227-6840

Attorneys for Our Oregon and Becca Uherbelau

IN THE UNITED STATES DISTRICT COURT

FOR THE 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, Defendant.	Case No. 6:20-cv-01053-MC DECLARATION OF BEN UNGER

I, Ben Unger, declare as follows:

1. I am a campaign consultant with extensive experience with the process for qualifying initiatives for the Oregon ballot.

2. In the course of my professional career, I have served as a Special Assistant to the Oregon Attorney General, as the Executive Director of the Oregon Senate Democratic

Leadership Fund, and as a representative in the Oregon State Legislature. In 2011, I also was the director of Portlanders for Schools, a campaign committee to pass a Portland ballot measure to provide funding for Portland area schools.

3. From June 2014 through June 2018, I was the Executive Director of Our Oregon.

4. During my time at Our Oregon, I managed and oversaw Our Oregon's watchdog efforts in monitoring signature collection, turn-in and verification for myriad statewide initiative and referendum petitions filed over three election cycles. Those included Referendum 301 [Measure 88] (2014); Initiative Petition 55 [Measure 90] (2014); Referendum 301 [Measure 101] (2018); IP 1 [Measure 106] (2018); IP 22 [Measure 105] (2018); IP 31 [Measure 90] (2014); and IP 37 [Measure 103] (2018).

5. As Executive Director of Our Oregon, I also participated in many statewide initiative campaigns. As discussed below, I was the chief petitioner for IP 28 [Measure 97] (2018) and I oversaw the process of qualifying IP 28 (2016) for the November 2016 General Election ballot.

6. For this election cycle, I am the general consultant for the successful campaign to qualify Initiative Petition 34 for the 2020 General Election cycle.

7. Based on my experience, I am quite familiar with the steps and efforts that are necessary to qualify a statewide initiative petition for the general election ballot.

8. From my review of the Complaint, Motion for Preliminary Injunction and Declarations submitted by the Plaintiffs in this case, and my review of all the publicly submitted information provided by the IP 57 initiative qualification campaign available on the Secretary of State's website, it is my unequivocal conclusion that IP 57 would not have been able to collect a sufficient number of valid signatures to qualify for the November 3, 2020 General Election ballot

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even if there were no coronavirus pandemic. Based on the information provided by the Plaintiffs, IP 57 never had a viable plan to qualify for the ballot. The pandemic is not the reason IP 57 did not qualify for the ballot. Even in the world we all want, where no pandemic exists, IP 57 simply did not have the necessary infrastructure or funding in place to qualify. My conclusion is based on the following factors:

a. The initiative campaign for IP 57 did not start early enough. Under Oregon law, an elector can file an initiative petition at more than two years before the General Election on which the initiative would appear on the ballot. In fact, the first initiative petition for the November 3, 2020 general election, ("IP 1") was filed on February 2, 2018.

b. The later in an election cycle an initiative is filed, the more difficult and more expensive it will be for it to qualify. There are multiple steps in the process before an initiative petition can be circulated. Importantly, a prospective initiative petition must go through the ballot title process before signatures may be collected. The ballot title process can often take months. After the chief petitioners have submitted 1,000 valid "sponsorship" signatures, the Attorney General drafts a ballot title, there is a public comment period, the Attorney General then certifies a ballot title, and then that title goes through Supreme Court review. Ballot titles can take several months to be resolved. An initiative petition campaign must plan for all those steps in the process.

c. The Chief Petitioners for IP 57 did not file their proposed initiative petition until November 12, 2019. This was very late in the process and means that they would be facing an uphill battle in obtaining sufficient signatures to qualify the initiative in the best of circumstances. In contrast, the Chief Petitioners for IP 34 filed their

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initiative on July 2, 2019. In other words, the Chief Petitioners for IP 34 got a four-month head start on the Chief Petitioners for IP 57. When I ran the initiative qualification effort for IP 28 (2016), we filed the initiative petition in February 2015 – almost nineteen months before signatures were due. (All this information is available on the Oregon Secretary of State's publicly accessible Initiative, Referendum and Referral database on the Secretary of State's website, at http://egov.sos.state.or.us/elec/web_irr_search.search_form).

d. The delay in beginning the initiative process for IP 57 is particularly difficult to explain, given that these proponents of redistricting have been contemplating a redistricting initiative for years. In fact, a national proponent associated with the IP 57 campaign approached me about possibly running a similar initiative petition during the 2018 election cycle.

e. The Chief Petitioners for IP 57 offer no explanation for why they chose to start so late in the process, but I suspect it was in part because of "ballot title" shopping. IP 57 was not the first redistricting initiative filed this election cycle, and when the chief petitioners for IP 57 filed that initiative, they also filed IP 58 and IP 59, two similar redistricting initiatives. Likewise, IP 5 (2020) was a similar redistricting initiative. That initiative was filed on June 19, 2018. It received a final ballot title on September 4, 2019. The Chief Petitioners for IP 5 withdrew their initiative on October 31, 2019. The Chief Petitioners for IP 57 filed their initiative less than two weeks later. (This information is available on the Oregon Secretary of State's Initiative, Referendum and Referral database).

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f. The Chief Petitioners for IP 57 cannot legitimately complain of delay in the ballot title process. The Oregon Supreme Court resolved the ballot title challenge for IP 57 in less than six weeks. This is an incredibly fast turn-around for a ballot title challenge. (In contrast, it took the Oregon Supreme Court almost eight months to resolve the ballot title challenge for IP 5).

g. The Chief Petitioners for IP 57 did not obtain sufficient funding to qualify their measure. Successful campaigns develop a plan to gather the required signatures before the titling process begins and must be prepared to make adjustments for contingencies such as a prolonged legal challenge on the title. This should include a fundraising plan with enough cash on hand to qualify the measure once the title is certified. Mr. Blazak, in his declaration, concedes that one factor an initiative needs to qualify for the ballot is "adequate funding" and that to qualify IP 57, on the very short timeline they set for themselves, a paid signature collection effort would have been necessary. Any such paid signature effort would cost in excess of $1,000,000, especially to qualify an initiative to amend the Oregon Constitution (which requires 149,360 valid signatures) on such short timeline. According to the Secretary of State's publicly accessible ORESTAR campaign finance reporting system, the IP 57 campaign raised only slightly over $500,000 for *all* purposes, not just signature circulation. Their funding fell far short.

h. Moreover, given the late filing date for IP 57, the only way the initiative ever could have qualified under normal circumstances (meaning with no pandemic) would have been if the chief petitioners had lined up sufficient funding, and had contracted with a qualified, experienced petition circulating firm, with circulators ready

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to obtain secretary of state approval and ready to hit the streets, well in advance of when the initiative was authorized to be circulated.

i. Even if all those factors had been in place, obtaining the necessary signatures would have been a herculean effort. However, based on the declarations provided by the plaintiffs, it appears that the supporters of IP 57 had no such plan in place. Rather, Mr. Turrill's declaration makes clear that by early March (before the pandemic hit Oregon), the IP 57 campaign still had not hired or decided upon who would run a paid signature collection effort. In my opinion, this was a significant shortcoming on the part of whoever was advising Mr. Turrill or the campaign.

j. There are other factors that indicate that IP 57's signature collection efforts would never be sufficient to meet the qualification requirements. For example, after the Chief Petitioners filed IP 57 on November 12, 2019, it took the campaign until December 5, 2019 – over four weeks – to obtain and submit the required 1,000 sponsorship signatures. (In contrast, it took the chief petitioners for IP 34 just two weeks to obtain the necessary sponsorship signatures and this number of signatures can be gathered in one day by a well-run, strongly supported, or well-funded campaign). IP 57's painfully slow collection of sponsorship signatures indicates that campaign consultants did not have a skilled or robust signature collection effort in place or an effective plan to qualify for the ballot.

9. The signatures efforts by IP 57 after the pandemic were similarly lackluster. For example:

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a. IP 57 received a final ballot title on March 27, 2020. However, the campaign waited almost two weeks to get approval to circulate the initiatives. That delay is inexplicable given the timeline.

b. The campaign apparently did not make any effort to conduct signature circulation until almost two months after they obtained a final ballot title, when the IP 57 campaign sent out a bulk mailing in late May. These two months of inactivity, with the deadline approaching and the pandemic swirling, is a mindboggling delay.

c. In contrast, for IP 34, the campaign temporarily halted in-person signature collection in mid-March, to adopt new safety protocols that would account for social distancing. However, I immediately was in touch with the Secretary of State's office for guidance about how to best proceed with signature collection by mail and via the internet. After the campaign adjusted its approach, and with clarification from the Secretary of State's office about how to proceed with mail-in signature collection, we were able to restart our efforts. By April, we sent out a targeted mailing, and resumed our in-person signature collection campaign.

d. Contrary to arguments made in the Plaintiffs' legal papers, face-to-face signature collection was never prohibited by any of the Governor's stay-at-home orders. After a delay for safety preparation, the IP 34 campaign conducted in-person signature collection in counties in Phase 1 re-opening through the end of June. Even Mr. Turrill acknowledges in his declaration, at paragraph 13, that it was his understanding that "general public signature solicitation had not been prohibited."

10. The response to IP 57's by mail signature effort indicates that IP 57 never had sufficient support to qualify the measure. Mr. Blazak claims, at paragraph 7 of his declaration,

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that that the rate of return for the IP 57 mail-in sheets was 6%, which he characterizes as "excellent." That is a mischaracterization. The rate of return for IP 34's targeted mailing was almost twice that much, 11.4%.

11. There were also a number of other shortcomings with IP 57's mail-in signature effort that are not the result of the pandemic. For example, IP 57 did not appear to have any significant follow-up to accompany its mailing effort. Any successful mail effort (in non-pandemic times) requires follow-up to electors. For IP 34, we had and exercised a detailed plan to contact potential petition signers both before and after we sent out our mailing, to encourage them to sign and return the petition.

12. In contrast to IP 57, for IP 34 we took a number of steps to ensure that the measure would qualify. In particular: IP 34 filed its proposed initiative four months earlier; had a signature collection strategy (and funding) in place early on; and did not wait until the eleventh hour to begin signature collection**.**

13. IP 34 is not the only initiative petition to qualify this election cycle. Initiative Petition 44 also has qualified. As with IP 34, the chief petitioners for IP 44 filed the initiative in August 2019, months before IP 57 filed its petition. As with IP 34, the chief petitioners for IP 44 had secured funding and had a signature collection plan (with a paid signature collection firm) in place well in advance of the deadline. And, as with IP 34, in-person signature collection efforts continued through June. In fact, the campaign for IP 44 was so well run that it submitted signatures and qualified before the signature filing deadline.

14. The success of the IP 34 and IP 44 signature collection efforts belies the Plaintiffs' assertion that signature collection was impossible or otherwise unmanageable during this election cycle.

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15. As discussed above, it is apparent that IP 57 lacked the campaign structure, organizational foresight and necessary funding to complete a successful initiative petition signature collection drive under any circumstances. Poor planning, insufficient organization, inadequate funding and lack of public support are the reasons the IP 57 campaign could not obtain sufficient signatures before the constitutional deadline. No Secretary of State rule prevented the IP 57 campaign from collecting signatures. A reasonably run campaign could have qualified for the ballot.

16. Finally, it would be unfair for the IP 57 campaign to get to play by a different set of rules than the IP 34 campaign or any other campaign during the election cycle. The sponsors of IP 34 incurred significant expense to qualify their initiative under the established constitutional provisions, laws and regulations that are in place. The IP 57 campaign should not receive preferential treatment, or be the beneficiaries of different legal standards, merely because it was not diligent from the outset. The effect of that would be a two-tiered system, where campaigns that play by the rules, plan ahead, and budget accordingly are effectively held to a higher standard than campaigns that are disorganized and delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 8th day of July, 2020.

s/ Ben Unger
Ben Unger

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209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840