

**IN THE SUPREME COURT FOR THE STATE OF OREGON**

JAMES OFSINK,  
REBECCA GLADSTONE,  
and JASON KAFOURY,  
the Chief Petitioners on  
Initiative Petitions 2022-43,  
2022-44, and 2022-45,

Plaintiffs-Relators,

v.

SHEMIA FAGAN, Secretary of State  
of Oregon,

Defendant.

Secretary of State  
[no case number]

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**MANDAMUS  
PROCEEDING:**

**PETITION FOR  
PEREMPTORY OR  
ALTERNATIVE WRIT OF  
MANDAMUS**

DANIEL W. MEEK  
OSB No. 79124  
10266 S.W. Lancaster Road  
Portland, OR 97219  
503-293-9021 voice  
855-280-0488 fax  
dan@mEEK.net

LINDA K. WILLIAMS  
OSB No. 78425  
10266 S.W. Lancaster Road  
Portland, OR 97219  
503-293-0399 voice  
855-280-0488 fax  
linda@lindawilliams.net

Attorneys for  
Plaintiffs-Relators

Ellen F. Rosenblum, OSB 753239  
Attorney General  
Benjamin Gutman, OSB 160599  
Office of Solicitor General  
1162 Court Street NE  
Salem, Oregon 97301-4096  
503-378-6002  
ellen.f.rosenblum@doj.state.or.us  
benjamin.gutman@doj.state.or.us

Attorneys for Defendant

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## PETITION

Plaintiffs-Relators are Chief Petitioners on Initiative Petitions 2022-43, 2022-44, and 2022-45 (Rebecca Gladstone, Jason Kafoury, and James Ofsink), which were approved for sponsorship signature collection by Defendant Secretary of State on December 7, 2021, for inclusion upon the November 2022 General Election ballot. They petition the Court to issue a peremptory or alternative writ of mandamus directing the Defendant to withdraw her Order, "Constitutional Requirement Ruling" (February 10, 2022) as *ultra vires* and incorrect. ER-1, ER-3, ER-5. This Ruling disqualifies Initiative Petition Nos. 2022-043 ("IP 43"), 2022-044 ("IP 44"), and 2022-045 ("IP 45") from appearing on the November 2022 General Election ballot in violation of Defendant's constitutional duty to correctly and fairly administer the statewide initiative process. ORS 34.110; ORS 34.250.

[T]hree requirements underlie the issuance of a writ of mandamus. First, the relator must identify an inferior court, entity, or person as described who is obligated to perform a particular act. Second, the relator must request performance of an act specifically required by law, by virtue of a duty as described, which does not involve the exercise of judicial discretion. Third, a writ may not be issued if the relator has a plain, speedy, and adequate remedy in the ordinary course of law.

*State ex rel. Portland Habilitation Ctr., Inc. v. Portland State Univ.*, 353 Or 42, 48, 292 P3d 537, 541 (2012).

## I. INTRODUCTION.

Secretary of State Shemia Fagan (hereinafter "the Secretary") after the close of business on February 9, 2022, issued a one sheet "Constitutional Requirement Ruling" that disqualified Initiative Petition No. 2022-043 ("IP 43") from appearing on any ballot, even if the Chief Petitioners were to submit the required 112,020 valid Oregon registered voter signatures by the due date of July 8, 2022. At the same time she issued similar rulings for IP 44 and IP 45. Each ruling consisted of a single sentence: "It does not comply with the procedural constitutional requirements." She issued those rulings after the Attorney General had issued certified ballot titles for the 3 petitions.<sup>1</sup>

These rulings effectively deny the Chief Petitioners on these initiative petitions (the Plaintiff-Relators) their right under Oregon Constitution, Article IV, § 1, to exercise the initiative power. The disqualified petitions cannot be presented to voters despite (1) Chief Petitioners' full compliance with all procedural steps necessary to secure ballot titles and commence circulation and (2) the sustained public interest and demonstrated voter support to debate and vote upon the changes in law proposed by the petitions.

The public importance of both the initiative process and loss of opportunity to debate and adopt the campaign finance reforms the petitions propose is perhaps most easily illustrated by the lead editorial in THE SUNDAY

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1. The Secretary's rules require that she make her ruling "before the certified ballot title deadline." STATE INITIATIVE AND REFERENDUM MANUAL (2020), p. 10.

OREGONIAN of February 13, 2022 (Exhibit 6), which expressly called upon this Court to resolve this matter. Public interest in meaningful campaign finance reform in Oregon is further illustrated by its frequent coverage by news organizations in Oregon (Exhibit 7).

When accorded the opportunity to vote for political campaign contribution limits and disclosure requirements, similar to those in IP 43, IP 44 and IP 45:

- > Multnomah County voters adopted them with an 89% "yes" vote in 2016.
- > City of Portland voters adopted them with an 87% "yes" vote in 2018.

Oregon voters in 2020 approved an amendment to the Oregon Constitution (Measure 107) to establish without question that legislatures and the people using their initiative power can adopt campaign contribution limits and disclosure requirements. They gave a 78% "yes" vote to so amend Article II, § 8, of the Oregon Constitution--more votes than any other initiative or referral has ever received. But that amendment by itself did not adopt any contribution limits or disclosure requirements. It is left to the Oregon Legislature or the people using their initiative power to adopt those. Without this Court's action, Oregonians will be denied the opportunity to adopt a campaign finance reform measure until November 2024. And future chief petitioners, circulators, and voters will be subject to a new and highly restrictive definition of "full text" that will likely preclude other measures as well.

## II. STATEMENT OF FACTS.

Defendant's Elections Division on December 7, 2021, date- and time-stamped each prospective initiative petition and reviewed each "for completeness and correctness." STATE INITIATIVE AND REFERENDUM MANUAL (2020), p. 7 (SIRM).<sup>2</sup> In this case the petitions, each containing between 34 and 49 pages of text (including the full text of the proposed change to ORS 162.005(1) as shown below), were each deemed "complete and correct" on December 7, 2021. Accordingly, the Secretary assigned to each an identification number and an official cover and signature sheet template.

On February 9, 2022, at 5:44 p.m., Defendant disqualified all three petitions by means of checking a box on a one-page form. ER-1, ER-3, ER-5. She conveyed these conclusory rulings to the Chief Petitioners on these initiatives by mail. Although these were rulings of law, they were not made by the Attorney General, who had already certified the ballot titles for the three initiative petitions earlier on February 9, 2022, before the close of business.<sup>3</sup> The Secretary has not posted those certified ballot titles on the website where they belong.<sup>4</sup>

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2. The 2022 version of this manual was not effective until February 2022. <https://sos.oregon.gov/elections/documents/stateir.pdf>.

3. Defendant's office logged in the certified ballot titles at 4:52 pm and 4:53 p.m.

4. [http://egov.sos.state.or.us/elec/web\\_irr\\_search.record\\_detail?p\\_reference=20220043..LSCYYY](http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20220043..LSCYYY).

(continued...)



The purported basis for these non-specific disqualifications is that the initiative petitions do not satisfy the "full text" requirement of Article IV, § 1(2)(d) of the Oregon Constitution. They will counter that assertion by showing that each of the initiatives does satisfy that requirement. The exhibits to this Petition include the text of each of the initiative petitions and their certified ballot titles.

Based on her rulings, the Secretary is refusing to allow the Chief Petitioners to obtain or submit signatures on these initiative petitions, thus precluding their appearance on any ballot. Under applicable Oregon statutes and Secretary of State rules, chief petitioners may not obtain signatures on any combined signature/cover sheet that is not prepared and approved by the Secretary of State.

### **III. MANDAMUS IS THE APPROPRIATE PROCEDURE FOR THIS MATTER.**

Under Article VII, § 2, of the Oregon Constitution and ORS 34.120, this Court has original jurisdiction to decide time-sensitive issues of major public importance. See, e.g., *McAlmond v. Myers*, 262 Or 521, 526-27, 500 P2d 457 (1972); *State ex rel Kelly v. Plummer*, 97 Or 518, 525, 189 P 405 (1920). Mandamus relief is appropriate when there is no "plain, speedy, and

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4.(...continued)

[http://egov.sos.state.or.us/elec/web\\_irr\\_search.record\\_detail?p\\_reference=20220044..LSCYYY](http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20220044..LSCYYY).

[http://egov.sos.state.or.us/elec/web\\_irr\\_search.record\\_detail?p\\_reference=20220045..LSCYYY](http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20220045..LSCYYY).

adequate remedy in the ordinary course of the law." ORS 34.110. Mandamus may issue, however, "even where other remedies exist, if they are not sufficiently speedy to prevent material injury." *State ex rel. Ricco v. Biggs*, 198 Or 413, 425, 255 P2d 1055 (1953). To that end, other remedies must "be equally convenient, beneficial, and effective." *State ex rel. Pierce v. Slusher*, 117 Or 498, 501, 244 P 540 (1926). "An adequate remedy, therefore, is a remedy that is sufficient and as equally convenient and effective as mandamus." *State ex rel. Dewberry v. Kulongoski*, 346 Or 260, 274, 210 P3d 884 (2009).

This Court has often exercised its mandamus jurisdiction "based on the importance and novelty" of an issue. *State ex rel. Sajo v. Paulus*, 297 Or 646, 648, 688 P2d 367 (1984); *State ex rel. Boe v. Straub*, 282 Or 387, 389, 578 P2d 1247 (1978) (the issue was "one of public importance"); *Kelly*, 97 Or at 525 ("the interests of a great many people" were implicated by the dispute).

The public importance of this matter is shown in Part I of this petition. The novelty of the issue presented is shown in the accompanying Memorandum in support of Petition for Peremptory or Alternative Writ of Mandamus.

#### **IV. TIMELINESS OF PETITION.**

This petition is timely. It is filed before the opening of business on the fourth business day after the Plaintiffs-Relators received the Secretary's three rulings on February 10, 2022.

## V. BYPASSING OF CIRCUIT COURT.

Application was not made to a Circuit Court, because it would be virtually impossible for such a course to provide timely relief. Plaintiffs-Relators must submit at least 112,020 valid Oregon voter signatures by July 8, 2022. They cannot begin obtaining those signatures, until and unless the Secretary prepares and approves combined signature/cover sheets for each initiative petition. Absent her three rulings, such sheets would be provided upon resolution of the ballot title for each petition, which could occur as soon as February 23, 2022 (because the Attorney General issued certified ballot titles for all of them on February 9, 2022).

Challenging the Secretary's rulings via a Circuit Court would inevitably consume sufficient time to preclude the Chief Petitioners from obtaining sufficient signatures. This Court has many times recognized that cases involving election law, and particularly initiatives, typically take much time to resolve. *Couey v. Atkins*, 357 Or 460, 477, 355 P3d 866 (2015) (*Couey*); *Harisay v. Clarno*, 367 Or 116, 474 P3d 378 (2020); *Geddry v. Richardson*, 296 OrApp 134, 142, 437 P3d 1163, 1168 (2019); *Harisay v. Atkins*, 295 OrApp 493, 496, 434 P3d 442, 445 (2018); *State ex rel. Smith v. Hitt (Hitt)*, 291 OrApp 750, 424 P3d 749 (2018) (election law). The court proceedings in most of those cases took years.

Relators in their roles as Chief Petitioners seek immediate and practical relief: the ability to fairly participate in the exercise of initiative rights on behalf of these petitions in this election cycle. Only a writ of mandamus

issued to Defendant from this Court can give these Relators any chance of exercising their annotative powers this cycle.

## **VI. INADEQUACY OF OTHER REMEDIES.**

Plaintiffs-Relators are not aware of any other available remedies that would allow them any reasonable period of time to gather the required signatures on one of their initiative petitions.

To the press, representatives of the Secretary have suggested that the Chief Petitioners resubmit very slightly altered initiative petitions that would satisfy Defendant's view of the full text requirement. That would preclude any opportunity for the Chief Petitioners to gather sufficient signatures by July 8, 2022. Submitting slightly altered initiative petitions would restart the ballot title process, requiring the Chief Petitioners to:

- > file new SEL 310 forms,
- > wait 3 business days for the Secretary to prepare sponsorship cover and signature sheet templates (SIRM, p. 6),
- > submit at least 1,000 valid Oregon voter signatures on each petition,
- > wait 10 business days for the Secretary of State to validate those signatures (SIRM, p. 6),
- > wait 5 business days for the Attorney General to issue a draft ballot title (ORS 250.065(3)),
- > wait 10 business days for anyone to file comments on the draft ballot title (ORS 250.067(1)),
- > wait 10 business days for the Attorney General to issue a certified ballot title (ORS 250.067(2)),

- > wait 10 business days for any commenter to file a challenge to the ballot title in the Oregon Supreme Court (ORS 250.085(3)(a)),
- > wait 7 business days for the Attorney General and any intervenors to file responsive memoranda (ORAP 12.30(6)),
- > wait 5 business days for the challenger to file a reply memorandum (ORAP 12.30(8)),
- > wait an indefinite time for the Oregon Supreme Court to issue a decision on the ballot title challenge, and
- > wait 3 business days for the Secretary to approve the signature/cover sheets for the initiative petition (ORS 250.052(4)(a)).

There are additional delays, if this Court remands the ballot title to the Attorney General for modification. ORS 250.085(9).

A ballot title challenge will inevitably be filed on a serious campaign finance reform initiative. The built-in delay for actions by government officials and opponents of the initiative petition add up to at least 48 business days, equivalent to 9.5 weeks (about 68 calendar days) just to get to the point when a ballot title challenge is filed in this Court. During the 2022 election cycle, an average of 79 calendar days has elapsed from the filing of a ballot title challenge to its resolution by this Court.<sup>5</sup> The total is 147 days. If the Chief Petitioners were to start over, they would get to the stage of ballot title challenges being filed April 18, 2022, and being briefed by May 9, 2022. If the average time from the filing of a ballot title challenge to resolution of 79 days were to prevail, the Chief Petitioners would obtain a decision of the

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5. IP 17 = 95 days. IP 18 = 95 days. IP 26 = 47 days.

Court on about July 11, 2022, three days after the signature submittal deadline of July 8.

## **VII. FEES, COSTS AND DISBURSEMENTS.**

Should Relators prevail on the merits of their request, they intend to seek an award of costs, disbursements and fees. ORS 34.240.

## **VIII. CONCLUSION.**

For the reasons explained above and in the accompanying legal memorandum, this Court should (1) exercise its original mandamus jurisdiction under Article VII, section 2, of the Oregon Constitution and ORS 34.120, and (2) issue a peremptory writ of mandamus requiring the Secretary of State to rescind her disqualification of IPs 43, 44, 45. Alternatively, if this Court does not immediately issue a peremptory writ, this Court should issue an alternative writ of mandamus directing the Secretary of State to show cause why she should not be required to rescind her disqualification of IPs 43, 44, and 45.

Dated: February 16, 2022

Respectfully Submitted,

*/s/ Daniel Meek*

DANIEL W. MEEK  
OSB No. 79124  
10266 S.W. Lancaster Road  
Portland, OR 97219  
503-293-9021 voice  
855-280-0488 fax  
dan@meek.net

**CERTIFICATE OF FILING AND SERVICE**

I certify that on February 16, 2022, I filed by Efile to the Appellate Court Administrator the foregoing:

**MANDAMUS PROCEEDING: PETITION FOR  
PEREMPTORY OR ALTERNATIVE WRIT OF MANDAMUS**

I certify that on February 16, 2022, I served that document on the parties listed below by conventional email and U.S. First Class Mail.

Shemia Fagan  
Secretary of State  
255 Capitol Street N.E.  
Suite 151  
Salem, or 97310-1327  
oregon.sos@sos.oregon.gov

Benjamin Gutman  
Solicitor General of Oregon  
Oregon Department of Justice  
1162 Court St N.E.  
Suite 400  
Salem, OR 97301-4096  
benjamin.gutman@doj.state.or.us

Dated: February 16, 2022

*/s/ Daniel W. Meek*

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Daniel W. Meek