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Oregon Supreme Court

March 19, 2021

Via Email

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Re: State ex rel Representative Tina Kotek v. Shemia Fagan (S068364)

Dear Counsel,

The Oregon Supreme Court has identified several questions for the parties in this proceeding, based on a series of tentative amended deadlines set out in Exhibit A to this letter. Please review Exhibit A and then, in addition to any other responsive information that you wish to provide the Court, answer the following questions by March 25, 2021:

- A. If the Court were to determine that it had authority to order amended reapportionment deadlines and were to order the amended deadlines set out in Exhibit A,
1. Would the amended deadlines allow you adequate time to draft a plan giving due consideration to the Census data?
 2. Would the amended deadlines allow you adequate time to respond to objections by electors?
 3. Would the amended deadlines have any negative effect on the 2022 elections, including for those conducting the elections or those running for election?
 4. Would any other applicable deadlines (whether set by constitution, statute, or rule) need to be changed?
 5. Do you have different suggestions for amended deadlines that would result in a reapportionment plan becoming effective (for purposes of Or Const, Art IV, § 6(6)(b) only) no later than February 14, 2022, and that would ensure that electors and the Court would have substantially the same time to object to and review the plan as is currently provided?
- B. The Court understands the Secretary of State to assert that, by July 1, the Legislative Assembly could complete a plan using information from the Population Research Center and that such a plan would be sufficiently accurate that it could be the basis for initial objections by electors and judicial review, and could be corrected and refined during that process.



1. To the Secretary of State -- Is that your position?
2. To the Legislative Assembly -- Do you agree with those assertions, and, if not, why?
3. To all parties:
 - a. Would the amended deadlines significantly improve the likelihood that the initial plan, whether from the Legislative Assembly or the Secretary of State, would be accurate?
 - b. Would there still be a need for correction and refinement due to the delay in receipt of the Census data?

Please include in your responses any information that supports your client's positions regarding the extent to which the data available from the Population Research Center (or other source of population information) is likely to be different from the published enumeration in the 2020 census and the expected nature of any deviation. Pertinent information might include analyses of past deviations and analyses or reports regarding predicted margin of error for 2020.

The court appreciates your assistance.

Sincerely,

Lisa Norris-Lampe
Appellate Legal Counsel

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EXHIBIT A

TENTATIVE ALTERNATIVE DEADLINES

The following deadlines would result in a final plan being effective no later than Monday, February 14, 2022:

1. Census data provided "by [Thursday,] September 30, 2021."
2. Initial plan of reapportionment:
 - a. Legislative Assembly plan is due on or before ***Friday, October 15, 2021***
 - i. (changes from three months to two weeks, on presumption that Legislative Assembly will be able to lay groundwork for plan prior to final census data becoming available).
 - b. If Legislative Assembly fails to enact a plan, Secretary of State's plan is due ***Friday, October 22, 2021***
 - i. (changes from six weeks to one week, again on presumption that Secretary of State can also lay groundwork for plan prior to final census data becoming available).
3. Objections to plan:
 - a. Objections by electors are due by ***Friday, November 19***
 - i. (substantially same amount of time as currently allowed; note that briefs are due the same date per ORAP 11.35(5)).
 - b. Responses by Legislative Assembly, Secretary of State, or others are due ***Friday, December 3, 2021***
 - i. (changes from 10 business days to 9 business days; see ORAP 11.35(6)).
 - c. Any reply briefs, though discouraged, are due ***Friday, December 10, 2021***
 - i. (same amount of time as currently allowed; see ORAP 11.35(7)).



4. Judicial review:
 - a. If Supreme Court approves initial plan:
 - i. Supreme Court opinion approving plan will be filed by *Friday, December 17, 2021*
 1. (substantially same amount of time as currently allowed)
 - ii. Reapportionment plan will become effective *Monday, January 3, 2022*
 1. (substantially same amount of time as currently allowed; two days after current schedule)
 - b. If Supreme Court rejects initial plan:
 - i. Supreme Court opinion rejecting plan will be filed by *Friday, December 31, 2021*
 1. (substantially same amount of time as currently allowed)
5. Secretary of State's revised plan is due by *Friday, January 28, 2022*
 - a. (substantially same amount of time as currently allowed, if court has rejected initial plan by Secretary of State; two weeks more than currently allowed if court has rejected initial plan by Legislative Assembly)
6. Supreme Court final revisions and approval will be filed by *Friday, February 11, 2022*
 - a. (substantially same amount of time as currently allowed)
7. Reapportionment plan becomes finally effective, for purposes of Or Const, Art IV, § 6(6)(b), on *Monday, February 14, 2022* (no change to effective date under Or Const, Art IV, § 6(6)(a))
 - a. (changes from two weeks to three days; new effective date would be six weeks after current effective date)