

IN THE SUPREME COURT OF THE STATE OF OREGON

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State ex rel Representative Tina  
Kotek and Senator Peter  
Courtney, on behalf of the  
Oregon Legislative Assembly,

Plaintiffs-Relators,

v.

Oregon Secretary of State  
Shemia Fagan,

Defendant-Adverse Party.

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Supreme Court No. S\_\_\_\_\_

**MANDAMUS PROCEEDING**

**REPRESENTATIVE TINA KOTEK AND SENATOR PETER  
COURTNEY'S, ON BEHALF OF THE OREGON LEGISLATIVE  
ASSEMBLY, MEMORANDUM IN SUPPORT OF PETITION FOR A  
PREEMPTORY WRIT OF MANDAMUS, AND APPENDIX**

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## INTRODUCTION

Representative Tina Kotek and Senator Peter Courtney, in their capacities as Speaker of the Oregon House of Representatives and President of the Oregon State Senate, respectively, on behalf of the Oregon Legislative Assembly (“Relators”), petition this Court for a preemptory or alternative writ of mandamus enjoining Shemia Fagan, in her official capacity as Oregon Secretary of State, from reapportioning districts for the Oregon House of Representatives and Oregon State Senate until three calendar months after the United States Census Bureau releases the 2020 Census data needed to reapportion those legislative districts. Relators further request that this Court extend the deadline for the Legislative Assembly to reapportion legislative districts until three calendar months after the 2020 Census data is released and allow reapportionment to occur in an emergency legislative session.

In an ordinary reapportionment year, the Census Bureau provides data needed to reapportion legislative districts by April 1. Article IV, section 6 of the Oregon Constitution then gives the Legislative Assembly until July 1 (*i.e.*, three calendar months) to enact any reapportionment; if it “fails” to do so, the reapportionment duties pass to the Secretary of State. She must complete those duties by August 15, 2021.

This is not an ordinary reapportionment year. Instead of providing 2020 Census data by April 1, delays caused by (among other things) the COVID-19 pandemic will prevent the Census Bureau from providing it until sometime after July 1, 2021—and likely as late as September 30, 2021. The Legislative Assembly will therefore be unable to perform its constitutionally delegated reapportionment duties by the July 1, 2021, deadline, at which time the Legislative Assembly cedes its duties to the Secretary of State.

Thus, unless this Court (1) enjoins the Secretary of State from moving forward with apportionment and (2) extends the deadlines set forth in Article IV, section 6 (and allows reapportionment to occur in a special legislative session), reapportionment will either not be done at all or will be done using old Census data that will result in malapportioned legislative districts.<sup>1</sup> Neither result is constitutionally palatable.

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<sup>1</sup> The Legislative Assembly recognizes that its own deadlines are not the only ones implicated by this delay. The Secretary of State and this Court have deadlines that rise and fall on what the Legislative Assembly does or does not do. Relators suggest that, consistent with the arguments herein, each branch retain the same amount of time as it currently has under Article IV, section 6 to conduct its respective duties—as measured from the date that the Census Bureau delivers the data.

## ARGUMENT

### A. Background

Article IV of the Oregon Constitution sets forth, among other things, the Legislative Assembly's powers and duties. Article IV, section 6(1) provides, "At the odd-numbered year regular session of the Legislative Assembly next following" a decennial Census, "the number of Senators and Representatives shall be fixed by law and apportioned among legislative districts according to population." "[I]f the Legislative Assembly fails to enact any reapportionment by July 1[.]" then "[t]he Secretary of State shall make a reapportionment of the Senators and Representatives" and "[t]he reapportionment so made shall be filed with the Supreme Court by August 15[.]" Or Const, art IV, § 6(3).

Oregon voters added these constitutional requirements to Article IV, section 6 in 1952. At the time, the Legislative Assembly had not reapportioned legislative districts since 1910 to preserve the power of some populations at the expense of others. Thus, the purpose of the measure was to "requir[e] legislature following each federal census to reapportion legislative representatives" and, if the legislature "fails to enact[.]" the Secretary of State undertakes those duties. (Sec'y of State, State of Oregon, Official Voters' Pamphlet for the Regular General Election 81 (Nov 4, 1952), App 1.)



Since early 2020, the COVID-19 global pandemic and resulting public-health crisis has impacted nearly every aspect of daily life. The 2020 Census is no exception. Although federal law requires redistricting data from the 2020 Census to be released by April 1, 2021, 13 USC § 141(b), it will now be released as late as September 30, 2021:

The U.S. Census Bureau announced today that it will deliver the Public Law 94-171 redistricting data to all states by Sept. 30, 2021. COVID-19-related delays and prioritizing the delivery of the apportionment results delayed the Census Bureau's original plan to deliver the redistricting data to the states by March 31, 2021.

\* \* \*

The redistricting data includes counts of population by race, ethnicity (Hispanic or Latino origin), voting age, housing occupancy status, and group quarters population, all at the census block level. This is the information that states need to redraw or "redistrict" their legislative boundaries.

(<https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>) ("Census timeline") (last visited March 10, 2021).)

Meanwhile, the Census Bureau has provided tools to the states that will "help them begin to design their redistricting systems. \* \* \* This will

enable states to redistrict promptly upon receipt of their 2020 Census tabulation data.” (*Id.*<sup>2</sup>)

Although, under these extraordinary circumstances, the Legislative Assembly cannot perform its constitutional reapportionment duties by July 1, 2021, it will not “fail” to do so; it is prevented from reapportioning districts due to events outside of its control. The Legislative Assembly fully intends to reapportion districts as required by the Oregon Constitution—but will lack the necessary Census data to do so until the July 1, 2021, deadline has passed. Also, due to the delay and strict limits on the number of days in which the Legislative Assembly may be in regular Session, reapportionment cannot happen during the 2021 regular legislative session.

**B. This Court has original jurisdiction over this matter.**

This Court has original jurisdiction pursuant to Article VII (amended), section 2, of the Oregon Constitution and ORS 34.120 to decide issues of major public importance that must be resolved promptly. *See, e.g., State ex rel. Sajo v. Paulus*, 297 Or 646, 648, 688 P2d 367 (1984); *State ex rel. Kelly v. Plummer*, 97 Or 518, 525, 189 P 405 (1920). Relators seek relief in this Court rather than a lower court because this case involves precisely that type of issue: whether

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<sup>2</sup> Oregon is just one of over two dozen states impacted by the delay. (*See* <https://www.ncsl.org/research/redistricting/2020-census-delays-and-the-impact-on-redistricting-637261879.aspx> (last visited March 10, 2021).)

the Legislative Assembly can draw district lines that meet constitutional requirements in time for elections officials and candidates to conduct orderly elections in the new districts.<sup>3</sup>

For example, in *Sajo*, the plaintiffs brought a mandamus proceeding against the Secretary of State, asserting that improper procedures were used in the initiative process to verify signatures for ballot measures. 297 Or at 648. This Court “allowed the alternative writ in [*Sajo*] because of the importance and the novelty of the statutory and constitutional issues raised by the petition.” *Id.* The Court added, “[W]e considered the issues in this case to be of sufficient public importance \* \* \* to deserve this court’s resolution for such guidance as one decision can give the responsible officials and the legislature.” *Id.* at 649; *see also Kelly*, 97 Or at 525 (exercising original jurisdiction because the issue “affects the interests of a great many people”).

This Court therefore exercises discretionary mandamus jurisdiction when a case involves issues of major public importance that require speedy and final resolution. This is precisely that type of case.

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<sup>3</sup> By vesting this Court with original jurisdiction to review certain reapportionment issues (Or Const art IV, § 6), Oregon voters recognized the importance of this Court’s review of those type of issues.

**C. This Court should exercise its original jurisdiction and provide the requested mandamus relief.**

The Census Bureau's failure to provide redistricting data by federally prescribed deadlines creates constitutional turmoil that warrants this Court's exercise of original mandamus jurisdiction. Article I, section 2 of the United States Constitution requires a decennial Census. The decennial Census supports several constitutional purposes: it provides the data necessary to ensure that "the number of Senators and Representatives [is] apportioned among legislative districts according to population," as required by Article IV, section 6 of the Oregon Constitution, and it also ensures that each district meets the equal population standards of the Equal Protection Clause of the Fourteenth Amendment.<sup>4</sup> The decennial Census also provides data on race and ethnicity in all the census blocks in Oregon necessary to ensure compliance with the federal Voting Rights Act. For example, voter data is necessary to perform a racially polarized voting analysis, which in turn is necessary to determine whether a

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<sup>4</sup> In *Reynolds v. Sims*, the U.S. Supreme Court held that the Equal Protection Clause requires substantially equal legislative districts: "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living on other parts of the State." 377 US 533, 568 (1964).

voter in a legislative district may raise concerns under section 2 of the Voting Rights Act. *See Thornburg v. Gingles*, 478 US 30 (1986).

Because of the delayed Census data release, the Legislative Assembly is faced with two choices: (1) do nothing, which then takes away the Legislative Assembly's reapportionment duties and shifts them to the Secretary of State; or (2) perform its constitutional reapportionment duties using outdated Census data to meet the July 1, 2021, deadline set forth in Article IV, section 6.<sup>5</sup>

Neither option is constitutionally feasible. If the Legislative Assembly does nothing, reapportionment duties shift to the Secretary of State; but the Secretary of State is no more able to carry out those duties in the absence of 2020 Census data. And using outdated Census data would likely lead to malapportioned legislative districts, in turn creating two additional potential constitutional issues: violation of Article IV, section 6 itself (requiring districts to be apportioned "according to population"), as well as the Equal Protection Clause and the Voting Rights Act. *See Hovet v. Myers*, 260 Or 152, 489 P2d 684 (1971) (where strict compliance with Article IV, section 6 is impossible because compliance under the state Constitution would violate the federal

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<sup>5</sup> As described below, no alternate adequate (and current) data set exists that would allow the Legislative Assembly to move forward with apportionment in the absence of the Census Bureau data.

Constitution, the state Constitution must yield). Enjoining the Secretary of State from exercising her authority to reapportion legislative districts until the Census Bureau delivers the data and allowing the Legislative Assembly the opportunity to reapportion after July 1 and outside of a regular session avoids those results and preserves the constitutional process voters approved in 1952.<sup>6</sup>

**D. Other than a writ of mandamus, Relators have no “plain, speedy, and adequate remedy.”**

Relators have no other plain, speedy and adequate remedy. “Ordinarily, the court will not issue a writ of mandamus if there is a plain, speedy, and adequate remedy in the ordinary course of the law, such as an appeal.” *State v. Burleson*, 342 Or 697, 701-02, 160 P3d 624 (2007) (citation omitted). But the remedy must “be equally convenient, beneficial, and effective.” *State ex rel. Pierce v. Slusher*, 117 Or 498, 501, 244 P 540 (1926) (citation omitted). “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). Finally, mandamus “may issue even where other remedies exist, if they are not sufficiently speedy to prevent material injury.”

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<sup>6</sup> The California Supreme Court recently issued a writ of mandamus in similar circumstances. *Legislature v. Padilla*, 9 Cal 5th 867, 469 P3d 405 (2020). The Court there determined that it would issue a writ to extend statutory and constitutional deadlines because the pandemic made compliance with those deadlines impossible. *Id.* at 877-80.

*State ex rel. Ricco v. Biggs*, 198 Or 413, 425, 255 P2d 1055 (1953), *overruled on other grounds by State ex rel. Maizels v. Juba*, 254 Or 323, 460 P2d 850 (1969); *see also Dewberry*, 346 Or at 272 (same).

Here, there is no remedy as sufficient, convenient, and effective as mandamus. Although the Legislative Assembly could attempt to refer a constitutional amendment to Oregon voters in the May 18, 2021 election, doing so in that timeframe would require bypassing the process set forth in multiple statutes, *see, e.g.*, ORS 250.085, 250.125, 250.127, ORS 251.205, 251.215, 251.225, 251.230, and would be costly. It is also not certain that the voters would approve the amendment. Furthermore, this option would require the Legislative Assembly (operating during a pandemic) to divert effort and resources to preparing a proposed amendment.

Simply put, the amendment option is neither speedy nor certain. And if the voters did not approve the amendment, the Legislative Assembly would lose its constitutionally delegated right to reapportion districts for the Oregon House of Representatives and Oregon State Senate if the July 1, 2021, deadline is not extended. In other words, time is of the essence—and the Legislative Assembly does not have a “plain, speedy, and adequate remedy in the ordinary course of the law”—because a delay in providing the requested relief “would practically amount to a denial of justice.” *Kelly*, 97 Or at 525. Action by this Court is

critical to ensuring that the 2022 legislative elections are held in districts that satisfy the requirements of the state and federal Constitutions.

Finally, no alternate adequate data set currently exists. To be sure, Portland State University is home to the Population Research Center (“PRC”), which produces annual population “estimates” and population “forecasting”—and can provide expertise in “population estimates, analysis, and forecast on a fee basis.” (<https://www.pdx.edu/population-research/> (last visited on March 10, 2021).) Yet to Relators’ knowledge, PSU has no current body of data that is comparable to the Census Bureau data; thus, it cannot be viewed as a certain and viable alternate to this mandamus. And to the extent that PSU could provide “estimates” or “forecasts” of Oregon’s population, those estimates and forecasts fall well short of the Census Bureau’s data collection, which attempts to visit every household and is therefore an actual count of people. The Census Bureau’s data is thereby the best source of data that will allow the Legislative Assembly to reapportion in a manner that adheres to the federal Constitution and Voting Rights Act.

**E. Because it is certain that 2020 Census data will not be released until after July 1, 2021, this issue is ripe for adjudication now.**

Although the constitutional deadlines have not yet passed, this case is nonetheless ripe. As noted, there is no doubt that 2020 Census data will not be provided before July 1, 2021—and likely not before September 30, 2021.



When an “official result clearly can be forecasted[.]” that official result is ripe for adjudication. *League of Oregon Cities v. State*, 334 Or 645, 663, 56 P3d 892 (2002) (finding issue ripe even though “the Secretary of State has not yet completed canvassing the votes \* \* \* and the Governor has not yet proclaimed that the measure has passed”). Here, the fact that the Legislative Assembly cannot perform its reapportionment duties using 2020 Census data can “clearly can be forecasted” because it is certain that the Census Bureau will not provide Census data until after July 1, 2021.

What is more, this Court has dispensed with traditional justiciability principles in cases involving matters of public interest. *Couey v. Atkins*, 357 Or 460, 520, 355 P3d 866 (2015) (“there is no basis for concluding that the court lacks judicial power to hear public actions or cases that involve matters of public interest that might otherwise have been considered nonjusticiable under prior case law”). Cases involving election matters constitute a “public action” or one involving a matter of “public interest.” *Id.* at 521-22. Thus, the traditional framework of ripeness does not govern.

## CONCLUSION

Relators request that this Court (1) exercise its original jurisdiction under Article VII (amended), section 2, of the Oregon Constitution and ORS 34.120; (2) issue a preemptory writ of mandamus enjoining the Secretary of State from

reapportioning legislative districts until three calendar months after the Census Bureau releases the 2020 Census data; and (3) extend the Article IV, section 6 deadline for the Legislative Assembly to reapportion legislative districts until three calendar months after the 2020 Census data is released and allow reapportionment to occur in an emergency legislative session.

Alternatively, if this Court does not immediately issue a preemptory writ, Relators request the Court to issue an alternative writ directing the Secretary of State to delay reapportioning legislative districts until three calendar months after the Census Bureau releases the 2020 Census data, extending the Article IV, section 6 deadline for the Legislative Assembly to reapportion districts until three calendar months after the 2020 Census data is released, and allowing reapportionment to occur in an emergency legislative session.

DATED this 10th day of March, 2021.

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# Official Voters' Pamphlet

For the

## Regular General Election

**November 4, 1952**



Compiled and Distributed by

**EARL T. NEWBRY**

Secretary of State

**MARION COUNTY**

**25**

## (On Official Ballot, Nos. 334 and 335)

**CONSTITUTIONAL LEGISLATIVE SENATOR AND REPRESENTATIVE  
APPORTIONMENT ENFORCEMENT AMENDMENT**

Proposed by Initiative Petition filed in the office of the Secretary of State July 3, 1952,  
in accordance with the provisions of section 1 of article IV of the Constitution.

**PROPOSED CONSTITUTIONAL  
AMENDMENT**

Be It Enacted by the People of the State of Oregon:

That section 6 of article IV of the Constitution of the State of Oregon be and the same hereby is amended so as to read as follows:

**Article IV**

Section 6. (1) The number of senators and representatives shall, at the session next following an enumeration of the inhabitants by the United States government [or this state], be fixed by law [,] and apportioned among the several counties according to the [number of white] population in each. [And the] The ratio of senators and representatives, respectively, shall be determined by dividing the [whole number of white] total population of [such county or district,] the state by the number of senators and by the number of representatives. The number of senators and representatives for each county or district shall be determined by dividing the total population of such county or district by such respective ratios; and when a fraction [shall result from such division, which shall exceed one-half of said ratio] exceeding one-half results from such division, such county or district shall be entitled to a member for such fraction. [And in] In case any county [shall] does not have the requisite population to entitle [such county] it to a member then such county shall be attached to some adjoining county or counties for senatorial or representative purposes.

(2) (a) Original jurisdiction hereby is vested in the Supreme Court upon the petition of any qualified elector of the state filed with the Clerk of the Supreme Court prior to September 1 of the year in which the Legislative Assembly enacts a reapportionment measure, to review any measure so enacted.

(b) If the Supreme Court determines that the measure thus reviewed complies with subsection (1) it shall dismiss the petition by written opinion prior to October 1 of the same year and the legislative enactment shall become operative upon the date of the opinion.

(c) If the Supreme Court determines that the measure does not comply with subsection (1) of this section, said measure shall be null and void, and the Supreme Court shall direct the Secretary of State to draft a reapportionment of the senators and representatives in compliance with

subsection (1), and return the draft to the Supreme Court by October 1 of the same year. The Supreme Court shall review the draft thus returned to it and if it be in compliance with subsection (1), shall file it with the Governor prior to November 1 of the same year and it shall become law upon the date of filing.

(d) If the Supreme Court shall determine that the draft returned to it by the Secretary of State as provided in paragraph (c) above does not comply with subsection (1) of this section, the Supreme Court shall return it forthwith to the Secretary of State accompanied by a written opinion specifying with particularity wherein the draft fails to comply with the requirements of subsection (1) of this section. The opinion shall further direct the Secretary of State to correct the draft in those particulars and in no others, and file the corrected reapportionment with the Governor prior to November 1 of the same year and it shall become law upon the date of filing.

(3) (a) If the Legislative Assembly fails to enact any reapportionment measure by July 1 of the year of the session of the Legislative Assembly next following an enumeration of the inhabitants by the United States Government, the Secretary of State shall make a reapportionment of the senators and representatives in accordance with the provisions of subsection (1) of this section. The reapportionment so made shall be filed with the Governor by August 1 of the same year, and shall become law upon the date of filing.

(b) Original jurisdiction hereby is vested in the Supreme Court upon the petition of any qualified elector of the state filed with the Clerk of the Supreme Court prior to September 1 of the same year to review any reapportionment so made by the Secretary of State.

(c) If the Supreme Court determines that the reapportionment law thus reviewed complies with subsection (1), it shall dismiss the petition by written opinion prior to October 1 of the same year and the reapportionment law shall become operative upon the date of the opinion.

(d) If the Supreme Court determines that the reapportionment law thus reviewed as provided in paragraph (c) above does not comply with subsection (1) of this section, said reapportionment law shall be null and void, and the Supreme Court shall return it forthwith to the Secretary of State accompanied by a written opinion

specifying with particularity wherein the reapportionment fails to comply with subsection (1) of this section. The opinion shall further direct the Secretary of State to correct the reapportionment in those particulars, and in no others, and file the corrected reapportionment with the Governor prior to November 1 of the same year, and it shall become law upon the date of filing.

(4) Until the effective date of the reapportionment following the next enumeration of inhabitants by the United States Government, the senators and representatives are apportioned as follows:

(a) The senatorial districts, the counties constituting the districts and the number of senators to which the districts are entitled are as follows:

District	Counties	No. of Senators
1st	Marion	2
2nd	Linn	1
3rd	Lane	2
4th	Douglas	1
5th	Jackson	1
6th	Josephine	1
7th	Coos and Curry	1
8th	Polk	1
9th	Yamhill	1
10th	Washington	1
11th	Clackamas	2
12th	Multnomah	7
13th	Benton	1
14th	Clatsop and Columbia	1
15th	Tillamook and Lincoln	1
16th	Hood River, Sherman, Gilliam, Morrow, Wasco and Wheeler	1
17th	Jefferson, Deschutes, Crook and Lake	1
18th	Klamath	1
19th	Umatilla	1
20th	Union, Wallowa and Baker	1
21st	Grant, Malheur and Harney	1

(b) The representative districts, the counties constituting the districts and the number of representatives to which the districts are entitled are as follows:

District	Counties	No. of Representatives
1st	Clatsop	1
2nd	Columbia	1
3rd	Tillamook	1
4th	Washington	2
5th	Yamhill	1
6th	Washington and Yamhill	1
7th	Multnomah	16
8th	Clackamas	3

District	Counties	No. of Representatives
9th	Lincoln	1
10th	Polk	1
11th	Benton	1
12th	Marion	4
13th	Linn	2
14th	Lane	5
15th	Douglas	2
16th	Coos	1
17th	Coos and Curry	1
18th	Josephine	1
19th	Jackson	2
20th	Hood River	1
21st	Wasco	1
22nd	Morrow, Gilliam, Sherman and Wheeler	1
23rd	Umatilla	2
24th	Union and Wallowa	1
25th	Jefferson and Crook	1
26th	Baker	1
27th	Deschutes	1
28th	Lake, Harney and Grant	1
29th	Malheur	1
30th	Klamath	2

(c) Any senator elected or appointed to the office of senator for a term expiring either the day after the regular general election in 1956 or on the Sunday preceding the first Monday in January, 1957, shall continue, for the duration of his term, to hold office as senator, representing the district established under paragraph (a) of subsection (4) of this section in which is located the county in which he resided at the time of his election or appointment; except that the senator representing the former seventeenth district for a term expiring on either of the above days shall continue to hold office and shall represent the seventeenth and eighteenth districts as established by this section until the expiration of his term, and except that the senator representing the former sixteenth district and the senator representing the former eighteenth district for terms expiring on either of the above days shall continue to hold office and shall represent the sixteenth district as established under this section until the expiration of their terms.

(5) This amendment shall not become operative until the day of the regular general election in 1954, except that it shall be operative prior thereto for the purpose of nomination of candidates to be voted upon for the office of senator or representative at the regular general election in 1954.

NOTE—The amendment would delete words in brackets, and add matter in italic type.

## BALLOT TITLE

**CONSTITUTIONAL LEGISLATIVE SENATOR AND REPRESENTATIVE APPORTIONMENT ENFORCEMENT AMENDMENT**—Purpose: Amends section 6, Article IV of the constitution, requiring legislature following each federal census to reapportion legislative representatives among counties of state according to population. The ratios are determined by dividing total population by number of senators and representatives, respectively. When fraction exceeding one-half results such county or district shall be entitled to a member; otherwise such county to be attached to adjoining county or counties. Secretary of state to reapportion if legislature fails to enact. Original jurisdiction vested in supreme court to enforce compliance. Amendment reapportions senators and representatives, which becomes operative for primary and general elections of 1954.

Vote YES or NO

334 Yes. I vote for the proposed amendment.

335 No. I vote against the proposed amendment.

## EXPLANATION

## OF CONSTITUTIONAL LEGISLATIVE SENATOR AND REPRESENTATIVE APPORTIONMENT ENFORCEMENT AMENDMENT

(Ballot Nos. 334 and 335)

The Constitution of the State of Oregon since 1857 has required that representation in the State Legislature be apportioned on the basis of white population only in the various districts or counties of the State and further provides that reapportionment be made by the Legislature every ten years to compensate for changes in population. The Legislature, however, has failed to make any reapportionment since 1911.

The Constitutional amendment herewith presented for consideration would make only the following Constitutional changes:

(1) The requirement that only "white" population be counted would be eliminated.

(2) The Legislature would still have the duty of making a reapportionment after each Federal census and if not done by the Legislature, the duty would be imposed upon the Secretary of State, in either case, subject to review and approval by the Oregon Supreme Court.

(3) The amendment makes a temporary reapportionment to continue in effect until the next Federal census in 1960.

At the present time and because the Legislature has failed to make any reapportionment for over 40 years, some Counties or Districts have more legislative representation than they are entitled to under the present Constitution. Others have less representation. This amendment would bring about an immediate reapportionment on the population basis now provided by the Constitution and would assure that such a reapportionment would hereafter be made every ten years.

Basically a difference in the philosophies of representation is involved. It is contended by some that legislative representation should not be made upon the basis of population alone but that Counties as such should be represented in the Oregon

Legislature, representation in one house being on the basis of population and in the other on a plan comparable to that of the Federal system in which each State is entitled to two senators regardless of population. It is contended by those favoring such a plan that apportionment on the basis of population alone would place legislative control in the hands of the metropolitan areas by reason of the greater representation, to the disadvantage of the rural areas. To the contrary, those favoring this measure do not believe that the rights of the rural areas would be prejudiced, but do believe that every citizen is entitled to have his legislator represent substantially the same number of people as does any other legislator. The proponents believe that the provisions of the present Oregon Constitution on reapportionment should be carried out effectively, and they believe that area is properly represented through the system used in the Constitution.

The issue generally is one as to whether or not the people of any given area of the State should be entitled to representation in accordance with the number of people residing therein, and in proportion to the number of people residing in any other given area. Accordingly, those who favor legislative representation on the basis of population and believe that reapportionment on that basis should be enforced every ten years should be in favor of this measure. Those who do not so believe, but who believe in some other basis, such as the Federal plan, should oppose the measure.

JOHN C. BEATTY, JR., Portland  
E. R. FATLAND, Condon  
PAUL E. GEDDES, Roseburg  
Committee designated pursuant to  
Chapter 546, Oregon Laws 1951.



### ARGUMENT

*Submitted by the Non-Partisan Committee for Constitutional Reapportionment,  
in favor of the*

#### CONSTITUTIONAL LEGISLATIVE SENATOR AND REPRESENTATIVE APPORTIONMENT ENFORCEMENT AMENDMENT

(Ballot Nos. 334 and 335)

IN OREGON we have minority rule.

OUR STATE LEGISLATURE represents the state population of 1911—not 1952.

SEATS IN THE LEGISLATURE have not been re-divided among the counties of the state since 1911. Oregon's population has grown and shifted tremendously since then. But we're still limping along with a 1911 legislature—a majority of whose members are now elected by a minority of the population.

OUR STATE CONSTITUTION clearly states that positions in the State Senate and House of Representatives shall be re-divided among the counties every ten years—on the basis of population.

FOR 40 YEARS our legislators have refused to honor this fundamental provision of the State Constitution.

Our constitution calls for fair and decent majority rule, but it lacks a means of enforcement.

THIS AMENDMENT WILL ENFORCE THE CONSTITUTION. IT WILL GIVE EACH VOTER AN EQUAL VOICE IN ELECTING THE LEGISLATURE.

IT IS SPONSORED BY:

League of Women Voters of Oregon  
Young Republican Federation of Oregon  
Young Democratic Clubs of Oregon.

IT IS ENDORSED BY leading newspapers in Eastern and Western Oregon, including the Bend Bulletin and the Salem Statesman, the Pendleton East Oregonian and the Portland Oregonian.

HOW DOES IT WORK? It directs the Secretary of State to reapportion the legislature, according to the Constitution, if the legislature fails to do so. It gives the State Supreme Court the power to review their work.

HERE'S WHAT IGNORING THE CONSTITUTION MEANS TO YOU:

Example: One voter in Wallowa County now has as much voice in the House of Representatives as 6 voters in Lane County.

Example: One voter in Gilliam, Sherman or Wheeler County has as much representation in the State Senate as 10 voters in Klamath, Lake, Deschutes, Crook or Jefferson County.

OPPONENTS OF CONSTITUTIONAL REAPPORTIONMENT would have you believe that it is a device to permit domination of the legislature by Multnomah County. This is completely untrue. Many counties will gain representation when the legislature is reapportioned, and several will gain far more than Multnomah. For example: Lane County's representation in the House will increase 66%, Klamath County's representation in the Senate will increase five-fold, Washington County's representation in the House will increase 25% — as compared with Multnomah County's gain of 18½% in the House and 10½% in the Senate.

WE ASK YOUR VOTE FOR CONSTITUTIONAL REAPPORTIONMENT IF . . .

IF you want the interests of your county and district fairly represented in the state legislature.

IF you care who spends your tax dollar . . . if you are opposed to taxation without representation.

IF you want your State Constitution enforced.

STANLEY R. DARLING, Chairman, Non-Partisan Committee for Constitutional Reapportionment, 2720 Elinor St., Eugene.

EMILY P. LOGAN, President, League of Women Voters of Oregon, Corvallis.

H. CLAY MYERS, JR., Chairman, Young Republican Federation of Oregon, Portland.

WALTER J. DENNIS, President, Young Democratic Clubs of Oregon, Portland.

MRS. GENEVIEVE O. ROGERS, Salem.

## STATEMENTS AND ARGUMENTS IN BEHALF OF CANDIDATES

GENERAL ELECTION, NOVEMBER 4, 1952

The fees prescribed by law were paid for publishing the individual statements and pictures which appear herein. Space is not available to unopposed candidates, and no material was filed for a few others, but as directed by Chapter 222, Oregon Laws 1951, a complete list follows of all Republican (R) and Democratic (D) nominees, and Independent (Ind) candidates, for National, State, and District offices to be voted upon in the county or counties for which this edition of the pamphlet is printed. (Candidates who do not file with the Secretary of State—those for offices in counties, cities, and other local governmental units—are not listed.)

**FOR PRESIDENT OF THE UNITED STATES**—Dwight D. Eisenhower (R); **FOR VICE-PRESIDENT**—Richard M. Nixon (R); **FOR ELECTORS**—Niel R. Allen, Josephine County; Margaret (Mrs. R. E.) Bondurant, Henry A. Buehner and William C. Robison, Multnomah County; Freeda F. Peterson, Polk County; Wendell W. Wyatt, Clatsop County.

**FOR PRESIDENT OF THE UNITED STATES**—Adlai E. Stevenson (D); **FOR VICE-PRESIDENT**—John J. Sparkman (D); **FOR ELECTORS**—Jan E. Bauer, Leonie N. Brooke, C. Girard Davidson and Harry Winkler, Multnomah County; Max H. Friedman, Clackamas County; Lena M. Hewitt, Marion County.

**FOR PRESIDENT OF THE UNITED STATES**—Vincent Hallinan (Ind); **FOR VICE-PRESIDENT**—Charlotta A. Bass (Ind); **FOR ELECTORS**—Melburn H. Black, Clackamas County; Donald W. Brown, Coos County; A. M. Church, Marion County; Roy Stauffer, Lane County; Helen Margaret Neuenschwander and William K. Patrick, Multnomah County.

**FOR REPRESENTATIVE IN CONGRESS, 1st DISTRICT**—Robert B. (Bob) Jones (D), Clackamas County; Walter Norblad (R), Clatsop County.

**FOR SECRETARY OF STATE**—Edith S. Green (D), Multnomah County; Earl T. Newbry (R), Jackson County.

**FOR STATE TREASURER**—Francis Lambert (D), Multnomah County; Sig Unander (R), Multnomah County.

**FOR ATTORNEY GENERAL**—John B. McCourt (R), Multnomah County; Robert Y. Thornton (D), Tillamook County.

**FOR REPRESENTATIVES IN LEGISLATURE, 12th DISTRICT**, Marion County (*Four to Elect*)—Cornelius Bateson (D); W. W. Chadwick (R-D); Robert L. Elfstrom (R); Mark O. Hatfield (R); Lee V. Ohmart (R); A. M. Vistica (D).

**FOR DISTRICT ATTORNEY, MARION COUNTY**—Kenneth E. Brown (R).

### ON NONPARTISAN JUDICIARY BALLOT

**FOR JUDGE OF SUPREME COURT**, Position No. 7—George Rossman, Multnomah County.

**FOR JUDGE OF CIRCUIT COURT, 3rd Judicial District**, Marion County, Position No. 3—Joseph B. Felton.

## CERTIFICATE OF SERVICE AND FILING

I hereby certify that I served the foregoing **REPRESENTATIVE TINA KOTEK AND SENATOR PETER COURTNEY'S, ON BEHALF OF THE OREGON LEGISLATIVE ASSEMBLY, MEMORANDUM IN SUPPORT OF PETITION FOR A PREEMPTORY WRIT OF MANDAMUS, AND APPENDIX** on March 10, 2021, on the parties listed below in the manner indicated:

Attorney General of the State of Oregon  
Office of the Solicitor General  
400 Justice Building  
1162 Court Street, NE  
Salem, OR 97301-4096

- ☒ U.S. First Class Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☒ Email:  
Benjamin.Gutman@doj.state.or.us
- ☐ Oregon Appellate Court eFiling system

Ms. PK Runkles-Pearson  
Oregon Secretary of State  
255 Capitol Street NE, Suite 151  
Salem, OR 97310

- ☒ Email (courtesy copy):  
P.K.Runkles@oregon.gov

I further certify that I filed the foregoing **REPRESENTATIVE TINA KOTEK AND SENATOR PETER COURTNEY'S, ON BEHALF OF THE OREGON LEGISLATIVE ASSEMBLY, MEMORANDUM IN SUPPORT OF PETITION FOR A PREEMPTORY WRIT OF MANDAMUS, AND APPENDIX** with the Appellate Court Administrator on March 10, 2021, via the Oregon Appellate Court eFiling system.

s/Anna M. Joyce

Anna M. Joyce, OSB #013112

AnnaJoyce@MarkowitzHerbold.com

*For Representative Tina Kotek and Senator  
Peter Courtney, on behalf of the Oregon  
Legislative Assembly*