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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

**BEVERLY CLARNO, GARY
WILHELMS, JAMES L. WILCOX, and
LARRY CAMPBELL,**

Petitioners,

v.

SHEMIA FAGAN, in her official capacity as
Oregon Secretary of State,

Respondent,

and

**JEANNE ATKINS, SUSAN CHURCH,
NADIA DAHAB, JANE SQUIRES,
JENNIFER LYNCH, and DAVID
GUTTERMAN,**

Intervenor-
Respondents.

Case No. 21CV40180

INTERVENTION PETITION

Intervenor-Respondents Jeanne Atkins, Susan Church, Nadia Dahab, Jane Squires,
Jennifer Lynch, and David Gutterman, by and through their undersigned counsel, file this
Intervention Petition in the above-captioned proceeding and allege as follows:

1 **INTRODUCTION**

2 **1.**

3
4 As the United States Supreme Court has noted, “[p]olitics and political considerations are
5 inseparable from districting and apportionment.” *Gaffney v. Cummings*, 412 US 735, 753, 93 S Ct
6 2321, 37 L Ed 2d 298 (1973). But just because the redistricting process is inherently political does
7 not mean that a resulting map is impermissibly partisan—or that neutral criteria were not fairly
8 and conscientiously applied in its enactment.

9 **2.**

10 Following a deliberative process that invited and incorporated comments and contributions
11 from elected officials, community leaders, members of the public, and Republican legislators, the
12 Oregon Legislative Assembly enacted a new congressional map that readily satisfies the
13 requirements of the United States Constitution, the Oregon Constitution, and applicable state and
14 federal statutes. The map is the product of legislative compromise, and it both honors the neutral
15 criteria prescribed by state law and ensures that the voices of all Oregonians will be fairly and
16 freely heard.

17 **3.**

18
19 Although Petitioners Beverly Clarno, Gary Wilhems, James L. Wilcox, and Larry
20 Campbell do not favor this new map, it is the members of the Legislative Assembly—not
21 Petitioners—who are charged by the United States Constitution with redrawing Oregon’s
22 congressional districts.

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4.

Because the Legislative Assembly complied with all applicable statutes and the state and federal constitutions when they drew the new map, Petitioners' claims necessarily fail, and this Court must affirm the properly enacted districting plan.

JURISDICTION AND VENUE

5.

This Court has jurisdiction over the above-captioned case and this Petition pursuant to Senate Bill 259 (2021) ("SB 259").

6.

Venue is proper in the County of Marion pursuant to SB 259.

PARTIES

7.

Intervenor-Respondent Jeanne Atkins is a citizen and resident of Oregon and a qualified registered voter and elector in the First Congressional District of Oregon.¹ Ms. Atkins was Oregon Secretary of State from 2015 to 2017.

8.

Intervenor-Respondent Susan Church is a citizen and resident of Oregon and a qualified registered voter and elector in the Second Congressional District of Oregon.

¹ Because SB 881 has been signed into law, this Intervention Petition refers to the new congressional districts unless otherwise noted.

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Intervenor-Respondent Nadia Dahab is a citizen and resident of Oregon and a qualified registered voter and elector in the Third Congressional District of Oregon.

10.

Intervenor-Respondent Jane Squires is a citizen and resident of Oregon and a qualified registered voter and elector in the Fourth Congressional District of Oregon.

11.

Intervenor-Respondent Jennifer Lynch is a citizen and resident of Oregon and a qualified registered voter and elector in the Fifth Congressional District of Oregon.

12.

Intervenor-Respondent David Gutterman is a citizen and resident of Oregon and a qualified registered voter and elector in the Sixth Congressional District of Oregon.

13.

Respondent Shemia Fagan is the Oregon Secretary of State, charged under the laws of the State of Oregon with overseeing the conduct of elections and the responsibility to administer and enforce this state’s election laws.

FACTUAL ALLEGATIONS.

14.

Last year, the United States Census Bureau conducted a decennial census (the “2020 Census”) throughout the nation pursuant to Article I, section 2, of the United States Constitution.

1 **15.**

2 Under 2 USC sections 2a and 2c, as well as 13 USC section 141(c), the Census Bureau, on
3 or about April 26, 2021, announced and certified the actual enumeration of Oregon’s resident and
4 apportionment populations. Oregon’s resident population is 4,237,256.
5

6 **16.**

7 Following the 2010 decennial census (the “2010 Census”), Oregon was apportioned five
8 congressional seats. Once the results of the 2020 Census were tallied, Oregon’s apportionment
9 population entitled it to an additional seat in the United States House of Representatives pursuant
10 to Article I, section 2, of the United States Constitution and 2 USC section 2a. Accordingly, under
11 2 USC section 2c, Oregon was required to establish a sixth congressional district from which its
12 sixth representative would be elected.

13 **17.**

14 Moreover, significant population shifts since the 2010 Census generated substantial
15 inequalities among the resident populations of Oregon’s five previous congressional districts.
16 Oregon’s congressional districts ranged from a low of 823,608 residents in the then-Fourth
17 Congressional District to a high of 864,052 in the then-First Congressional District. All were
18 unequal in population size.
19

20

District	2010 Population	2020 Population
1	766,216	864,052
2	766,215	850,971
3	766,215	851,078
4	766,214	823,608
5	766,214	847,547

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1 **18.**

2 Article I, section 2, of the United States Constitution provides, in relevant part, that
3 “Representatives . . . shall be apportioned among the several States . . . according to their
4 respective Numbers” and that “[t]he House of Representatives shall be composed of Members
5 chosen every second Year by the People of the several States.” These provisions establish a
6 constitutional guarantee of “one person, one vote,” shorthand for the principle that equal
7 apportionment of a state’s population in each of its congressional districts guarantees equal
8 representation in the United States House of Representatives for all persons within the state.
9

10 **19.**

11 Under Article I, sections 2 and 4, of the United States Constitution, Oregon has the
12 responsibility for redrawing its congressional districts unless Congress directs otherwise. To
13 establish new congressional districts, legislation must be passed by both the Oregon Senate and
14 Oregon House of Representatives and signed into law by the Governor. *See Hartung v. Bradbury*,
15 332 Or 570, 581, 33 P3d 972 (2001).

16 **20.**

17 The Oregon Legislative Assembly commenced its redistricting efforts by constituting
18 Special Committees on Redistricting in the Senate and House of Representatives and holding
19 hearings on congressional reapportionment during the 2021 legislative session. Initially, both the
20 House and Senate committees were populated by a majority of Democratic legislators,
21 proportionate to majorities held by Democrats in both chambers. However, on or about April 15,
22 2021, House Speaker Tina Kotek agreed to change the composition of the House committee so it
23 would be split evenly between Democrats and Republicans. This agreement was based on an
24 understanding that Republicans and Democrats would work collaboratively to develop
25 redistricting proposals.
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21.

Due to a delay in the Census Bureau’s dissemination of population data caused by the ongoing pandemic, the Legislative Assembly postponed the process for congressional redistricting with the enactment of SB 259. The Legislative Assembly then convened in a special session on September 20 to consider and vote on plans for congressional and legislative districting.

22.

On September 3, in preparation for the upcoming special session, the Legislative Assembly released congressional and legislative map proposals for public scrutiny and comment. Two proposals for congressional district boundaries were released: “Plan A” was offered by the Redistricting Committees’ Democratic members; “Plan B” was offered by the Redistricting Committees’ Republican members. The Redistricting Committees also invited members of the public to submit their own proposals.

23.

In preparation for the special session, and exceeding the statutory requirement of ORS 188.016, the Redistricting Committees held 28 public hearings between August 18 and September 13, 26 of which occurred after the release of Plan A and Plan B. The Redistricting Committees accepted testimony in both oral and written form.

24.

On September 20—the first day of the special session—the Oregon Senate passed Senate Bill 881 (2021) (“SB 881”) relating to congressional redistricting in Oregon, which was substantively identical to Plan A. SB 881 passed in the Senate by a vote of 18 to 11.

25.

Although Speaker Kotek initially gave Republicans disproportionate representation on the House Redistricting Committee, House Republicans refused to work collaboratively with House

1 Democrats in developing redistricting proposals. *See* Video Recording, House, SB 881, Sept 20,
2 2021, at 2:29:05. Though they had been invited to meet and collaborate with Democrats numerous
3 times prior to the special session, they refused. *See* Video Recording, House Special Committee
4 on State Legislative Redistricting, SB 881, Sept 20, 2021, at 11:43, 13:10, 14:25, 15:10, 16:35,
5 22:55. Republican members of the House Redistricting Committee also sought to prevent SB 881
6 from receiving a vote on the House floor. In response, Speaker Kotek exercised her prerogative to
7 reconstitute the committee again: she divided it into two committees—one for legislative and one
8 for congressional redistricting—and restored proportionate Democratic majorities. *See* Video
9 Recording, House, SB 881, Sept 20, 2021, at 2:14:50.

10 **26.**

11 Thereafter, House Republican leader Christine Drazan, who opposed the Senate-passed
12 reapportionment plan, publicly threatened that her caucus would stage a walkout to deprive the
13 House chamber of a quorum—and thus obstruct passage of SB 881. *See* Zoe Strozewski, *Oregon*
14 *GOP Mulling Walkout After Democratic House Speaker Retracts Terms for Redistricting*,
15 *Newsweek* (Sept 22, 2021), [https://www.newsweek.com/oregon-gop-mulling-walkout-after-](https://www.newsweek.com/oregon-gop-mulling-walkout-after-democratic-house-speaker-retracts-terms-redistricting-1631717)
16 [democratic-house-speaker-retracts-terms-redistricting-1631717](https://www.newsweek.com/oregon-gop-mulling-walkout-after-democratic-house-speaker-retracts-terms-redistricting-1631717). When the House later convened
17 on September 25 for the second reading of the Senate’s bill, the Republican caucus carried through
18 on its threat and only one Republican representative appeared on the House floor. *See* Video
19 Recording, House, SB 881, Sept 25, 2021, at 30:45–4:34:43. The Republican walkout denied the
20 House the quorum necessary for it to conduct a vote on the Senate-passed congressional districts
21 and any other business that day. *See id.* at 30:45–4:34:43.

22 **27.**

23
24 During the course of the special session, leaders of the Legislative Assembly from both
25 parties and both chambers engaged in extensive negotiations over SB 881. As leverage, House
26

1 Minority Leader Drazan wielded her caucus’s ability to obstruct passage of a redistricting plan by
2 depriving the House of a quorum.

3 **28.**

4
5 Ultimately, in response to objections to SB 881 raised by House Minority Leader Drazan
6 and her Republican colleagues, the leaders of the Legislative Assembly proposed concessions and
7 compromises that were responsive to public testimony that the Redistricting Committees had
8 received on Plan A. In response, House Minority Leader Drazan agreed to recommend to her
9 caucus’s members that they appear for a vote and thus allow the House to conduct business and
10 vote on the modified redistricting plan.

11 **29.**

12 Consequently, on September 25, Senate President Peter Courtney proposed an amendment
13 to SB 881² that redrew the original map based on the feedback the Redistricting Committees had
14 received and the negotiations with Republican lawmakers, resulting in a new map (the
15 “Compromise Map”). *See* Video Recording, House Special Committee on Congressional
16 Redistricting , SB 881, Sept 27, 2021, at 8:25. The Compromise Map is the congressional
17 redistricting plan that House Minority Leader Drazan had acceded to in negotiations.

18 **30.**

19 On September 27, consistent with House Minority Leader Drazan’s agreement, Republican
20 representatives appeared on the House floor and helped established the quorum needed to conduct
21 business. *See* Video Recording, House, SB 881, Sept 27, 2021, at 28:00. Indeed, not only did
22 House Republicans appear in order to establish a quorum, they also voted to suspend House rules
23 to allow a vote on the Compromise Map that day. *See id.* at 28:46–31:25. Had they not voted to
24

25 ² Once SB 881 was amended, it came to be known in legislative proceedings as “SB 881-A.” But
26 the enrolled version of the bill, which Governor Kate Brown ultimately signed into law, is
identified as “SB 881.” Thus, this Intervention Petition does not use the “-A” designation to
describe the amended and final versions of the bill.

1 suspend the rules, the House could not have held a vote that day; it would have needed to wait
2 until at least the following day, which would have gone beyond the Legislative Assembly's self-
3 imposed deadline.

4 **31.**

5 Acting pursuant to the Republican-supported rules suspension, Speaker Kotek sent SB 881
6 back to the House Redistricting Committee to consider and vote on the amendment proposed by
7 President Courtney. *See id.* at 28:46–31:25. The amendment was considered and the Compromise
8 Map was adopted by the House Redistricting Committee. *See* Video Recording, House Special
9 Committee on Congressional Redistricting, SB 881, Sept 27, 2021, at 17:30.

10 **32.**

11
12 That afternoon, the House reconvened to debate and vote on the Compromise Map. Again,
13 House Republicans appeared on the floor to establish a quorum. *See* Video Recording, House,
14 SB 881, Sept 27, 2021, at 40:40. And again acting pursuant to the Republican-supported rules
15 suspension, the House debated, voted on, and passed the Compromise Map. *See id.* at 41:12–30,
16 1:55:40.

17 **33.**

18
19 Immediately thereafter, the Senate convened to debate and vote on the House-passed
20 Compromise Map. Senate Republicans, like their House counterparts, appeared on the Senate floor
21 to establish a quorum. *See* Video Recording, Senate, SB 881, Sept 27, 2021, at 7:49. Senate
22 Republicans then voted in support of a suspension of Senate rules, which allowed for immediate
23 debate and a vote. *See id.* at 23:25–24:40. The Compromise Map passed the Senate. *See id.* at
24 50:38.

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34.

In the debate on the Senate floor, Republicans acknowledged the tough negotiations and mutual compromise that had brought about the Compromise Map. Senate Minority Leader Fred Girod acknowledged that the Compromise Map was “an improvement from the original map,” referring to the Senate-passed Plan A. *Id.* at 29:18. The ranking Republican member of the Redistricting Committee, Senator Tim Knopp, recognized that the Compromise Map adopted many, though not all, of the changes to the Plan A map that had been suggested in public testimony. *See id.* at 32:10. Republican Senator Lynn Findley echoed this sentiment, saying that the Compromise Map “reflects a lot of that testimony, which I think is a great thing.” *Id.* at 38:03. He further commended the Compromise Map for “answer[ing] several of the things I spoke about last week,” harkening back to criticisms of Plan A he had levied in the Senate’s initial floor debate on SB 881 and praising the Compromise Map for addressing them. *Id.* at 38:44.

35.

Later that evening, Governor Kate Brown signed the House- and Senate-passed Compromise Map into law. In a public statement, Governor Brown also recognized that the Compromise Map was the product of negotiation and agreement. She said, “I’d like to thank the Legislature for coming together, through adversity, to pass legislation for redistricting. We do not always all agree, but when we find common ground, we can work together to do what is best for Oregon.” Press Release, *Governor Kate Brown Signs Redistricting Bills*, State of Or Newsroom (Sept 27, 2021), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64420>.

36.

Ultimately, both the public and legislative records confirm what various news outlets reported: that the congressional map enacted by the Legislative Assembly and signed by Governor Brown was the result of a compromise among legislative leaders. *See, e.g.,* Dirk VanderHart,

1 *Oregon Lawmakers Pass Plans for New Political Maps, After Republicans End Boycott*, OPB
2 (Sept 27, 2021), [https://www.opb.org/article/2021/09/27/oregon-resdistricting-vote-republicans-](https://www.opb.org/article/2021/09/27/oregon-resdistricting-vote-republicans-democrats-quorum-political-maps)
3 [democrats-quorum-political-maps](https://www.opb.org/article/2021/09/27/oregon-resdistricting-vote-republicans-democrats-quorum-political-maps).

4 **37.**

5
6 In addition to representing the product of negotiation and public input, the Compromise
7 Map satisfies the requirements of state and federal law and reflects the neutral redistricting criteria
8 mandated by statute.

9 **38.**

10 Because Oregon’s resident population of 4,237,256 is not evenly divisible by six, the ideal
11 result for its congressional districts is four districts with populations of 706,209 persons and two
12 districts with populations of 706,210 persons. Under the Compromise Map, the populations of
13 Oregon’s six required congressional districts satisfy this ideal:

District	Ideal Population	Actual Population	Deviation
1	706,209	706,209	0 percent
2	706,209	706,209	0 percent
3	706,209	706,209	0 percent
4	706,209	706,208	0 percent
5	706,209	706,209	0 percent
6	706,209	706,212	0 percent

22 **39.**

23
24 By providing each district with virtually identical populations to the greatest extent
25 possible, the Compromise Map satisfies the constitutional guarantee of “one person, one vote” set
26 forth in Article I, section 2, of the United States Constitution. The Compromise Map also satisfies

1 2 USC section 2c by including a sixth congressional district. And the Compromise Map is
2 consistent with section 2 of the Voting Rights Act because its adoption will not result in the denial
3 or abridgement of the right to vote based on race, color, or membership in a language minority.
4

5 **40.**

6 The Compromise Map is consistent with the Privileges and Immunities Clause of the
7 Oregon Constitution by providing each district with virtually identical populations to the greatest
8 extent possible.

9 **41.**

10 The Compromise Map likewise satisfies the statutory criteria set forth in ORS 188.010. As
11 nearly as practicable, each congressional district in the Compromise Map is contiguous, of equal
12 population, utilizes existing geographic and political boundaries, does not divide communities of
13 common interest—including economic, social, and cultural interests—and is connected by
14 transportation links. *See* ORS 188.010(1)(a)–(e). Moreover, no districts in the Compromise Map
15 were drawn for the purpose of diluting the voting strength of any language or ethnic minority group
16 or for the purpose of favoring any political party, incumbent, or other person. *See* ORS 188.010(2)–
17 (3).
18

19 **42.**

20 The First Congressional District unifies communities of common interest and relies on
21 critical transportation links and geographic boundaries running between Portland and the North
22 Coast. As Representative Andrea Salinas stated on the House floor, “District 1 maintains the
23 critical links from the North Coast to Portland,” taking into account the substantial volume of
24 “[c]ommercial trade . . . at our ports, including along the Columbia River.” Video Recording,
25 House, SB 881, Sept 27, 2021, at 44:57. The district also “keep[s] together critical infrastructure,
26 like Highway 26, which is a major transportation link between the two regions and . . . a critical

1 evacuation route for coastal communities in the event of an earthquake or tsunami.” *Id.* at 45:08.
2 The district likewise unifies Tillamook County and Clatsop County, which had been divided in
3 previous maps. And the district brings in “parts of Portland’s inner Eastside” which, as
4 Representative Salinas explained, now “more closely resembles Portland’s Westside and
5 downtown,” with “[b]oth the inner Eastside and downtown Portland hav[ing] similar policy
6 concerns, including skyrocketing housing, issues with homelessness, and thriving businesses.” *Id.*
7 at 46:11.

8 **43.**

9
10 The Second Congressional District, which covers much of eastern Oregon, relies on
11 existing political boundaries, is connected by extensive transportation links, and maintains
12 communities of common interest. In her speech on the House floor, Representative Salinas
13 explained that, in drawing the district, lawmakers had “respected the voices of our rural neighbors,
14 who have asked for a district that will have a uniquely rural voice.” *Id.* at 46:44. She continued,
15 observing that “Congressional District 2, while covering a large geographic area, is connected by
16 ample transportation links, adheres to county boundaries, as much as possible, and is united by
17 communities of interest that represent the needs of eastern Oregon.” *Id.* at 46:53. Although the
18 district excludes more populous cities like Bend and Redmond, which are now in the Fifth
19 Congressional District, Representative Jason Kropf of Bend explained that those communities “are
20 distinct from our neighbors in eastern Oregon” and home to industries that are “much more
21 similar” to those in “Oregon City, Milwaukie, . . . and the other cities of [new] Congressional
22 District 5.” *Id.* at 1:24:25.

23 **44.**

24 The Third Congressional District relies on the pervasive commercial, transportation,
25 cultural, and environmental links between the Portland area and the Hood River and Mount Hood
26 areas. As Representative Salinas stated on the House floor, “the Columbia Gorge—from Troutdale

1 in Multnomah County to Hood River and Hood River County—shares important natural,
2 geographic, economic, cultural, and commercial ties.” *Id.* at 48:36. The Columbia Gorge, in turn,
3 is connected to Portland via a robust tourism economy and “existing transportation infrastructure,
4 such as I-84, Highway 30, and the Columbia Area Transit Bus.” As one resident of the district
5 explained, “[t]he new boundaries respect this [interconnectedness] within CD 3” and “maintain[]
6 transportation connections [of] U.S. 26, I-84, U.S. 97, OR-35, OR-126, and the Cline Falls
7 Highway.” *Id.* at 49:06. Representative Anna Williams of Hood River also observed that the
8 district reflects an understanding that, “while tourism uplifts our local economies, it also leads to
9 countless challenges around affordable housing and transportation infrastructure, challenges that
10 speak to the need for a representative who understands the interconnected nature of our state’s
11 rural and urban communities.” *Id.* at 1:18:22.

12 **45.**

13
14 The Third Congressional District also keeps together communities of common interest in
15 East and North Portland. Representative Salinas recounted that the new district “responds to
16 feedback from . . . advocates who expressed an interest in keeping North and Northeast Portland
17 connected to the rest of Portland’s Eastside.” *Id.* at 47:13. This is because, “as housing prices have
18 increased, and as North and Northeast Portland have become gentrified, it is well documented that
19 Black families who have lived in Portland’s historically Black neighborhoods have been pushed
20 out to outer East Portland and east Multnomah County.” *Id.* at 47:38. Nevertheless, “Black
21 community members in outer East Portland still visit Black businesses, restaurants, and places of
22 worship in North and Northeast Portland.” *Id.* at 47:50. As Representative Salinas concluded,
23 “[t]his district respects that . . . and this change in CD 3 keeps those communities together.” *Id.* at
24 47:58.

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46.

The Fourth Congressional District maintains communities of common interest and relies on transportation links, county lines, and geographic boundaries running from the Central Coast through the Southern Coast. The district contains all of Curry, Coos, Lane, Lincoln, and Benton counties, as well as a portion of Douglas County. In her speech on the House floor, Representative Salinas explained that, in addition to maintaining existing political boundaries, the district is “connected by I-5, US 101, OR-126, US 20, OR-58, and OR-99W.” *Id.* at 49:27. The district also “includes two of Oregon’s major institutions of higher education, the University of Oregon and Oregon State University, clearly keeping two state educational interests together.” *Id.* at 49:36.

47.

The Fifth Congressional District is connected by transportation links, communities of common interest, and shared environmental challenges. The district brings in the Deschutes County communities of Sisters, Sunriver, Tumalo, Redmond, and Bend, which are connected to the rest of the district by US 20 and OR-22. In a speech on the House floor, Representative Salinas explained that the contours of the district “reflect[] the input from public testimony that Jefferson County and Wasco County should be in District 2 and that Bend and Deschutes communities could be joined with Marion and Linn counties.” *Id.* at 50:16. Representative Kropf of Bend likewise noted that, over the past decade, the Bend area has “seen significant growth and change as new industries, attitudes, and communities of interest have emerged that are distinct from our neighbors in eastern Oregon.” *Id.* at 1:24:16. As a result, Bend’s communities and industries “are much more similar to that of Oregon City, Milwaukie, Redmond, and the other cities” in the new Fifth Congressional District. *Id.* at 1:24:35. “It is also sensible,” Representative Kropf observed, “that this new district would connect Bend with Marion, Linn, and Clackamas counties, as [they] share many policy concerns, chief among them fire mitigation and preparedness.” *Id.* at 1:25:27.

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48.

The Sixth Congressional District, which includes the agricultural corridor running along I-5 and out to the boundaries of Yamhill and Polk counties, relies on transportation links and communities of common interest in one of Oregon's fastest growing regions. As Representative Teresa Alonso Leon of Woodburn explained in a speech on the House floor, "I am proud that this map acknowledges the links between Salem, Woodburn, Polk County, Yamhill County, and the rural parts of Washington County." *Id.* at 59:42. "This new district," she continued, "will truly be the breadbasket of Oregon, producing many of the agricultural products that fuel our economy and feed our communities here in Oregon and abroad. I cannot overemphasize the importance of having a district that represents the agricultural community and its workers who make Oregon renowned nationally." *Id.* at 1:00:30. As one resident of the district explained, "these communities are newer, and their needs are different from other parts of the state. Looking at its boundaries, I also believe that this district does a great job of encompassing many of our state's suburban population centers: Sherwood, Woodburn, McMinnville, Salem, and Dallas, [which] have sizable population and face some similar challenges." *Id.* at 50:44. Those communities, which are connected by I-5, OR-99W, OR-217, OR-210, OR-47, and OR-219, will remain together in this new district.

49.

At base, the fatal flaw in Petitioners' challenge to the Compromise Map is their erroneous assertion that it "is a clear, egregious partisan gerrymander." Petition ¶ 9. As reflected by the descriptions above, the new congressional districts were not drawn for any partisan purpose, and instead are based on the neutral redistricting criteria enumerated in ORS 188.010. All four of Petitioners' claims, as such, necessarily fail.

1 **50.**

2 Other factual and legal errors abound in Petitioners' filing.

3 **51.**

4
5 Petitioners claim that “[t]he Democrat [sic] members of the House and Senate Redistricting
6 Committees never negotiated proposed congressional maps with their Republican committee-
7 member counterparts.” *Id.* ¶ 6. But this misleading assertion neglects to mention that
8 (1) Republican committee members *refused* to collaborate with their Democratic counterparts
9 prior to the special session, and (2) extensive negotiations took place between leaders of the House
10 and Senate—including House Republican leader Drazen—which is precisely what brought about
11 the Compromise Map.

12 **52.**

13
14 Petitioners assert that the House Redistricting Committee approved the Compromise Map
15 “without holding any meetings where the public could participate.” *Id.* ¶ 8. But as acknowledged
16 by even Republican senators, the Compromise Map was developed in order to address the
17 extensive public comments prompted by its predecessor, Plan A. Far from shutting out public
18 comment, the drawers of the Compromise Map took into account exhaustive public feedback.

19 **53.**

20
21 Petitioners devote substantial attention to Speaker Kotek’s decision to reform the House
22 Redistricting Committee during the special session. It is unclear why. Speaker Kotek’s decision
23 was well within her prerogatives as the chamber’s presiding officer—and Petitioners do not claim
24 otherwise. The effect of her decision was merely to allow the Compromise Map to reach the House
25 floor for a vote—the same map that had been negotiated with the House Republican leader, and
26 the same map for which House Republicans granted a quorum and supported rules suspension to

1 enable passage. Speaker Kotek’s decision did not pass the Compromise Map; aye votes by
2 majorities in both chambers did.

3 **54.**

4
5 Petitioners assert that under the Compromise Map, “the Democrats are projected to win
6 five of the six congressional seats in Oregon in a typical year.” *Id.* ¶ 10. But analyses by
7 independent media outlets refute this statement. Several publicly available analyses indicate that
8 the Compromise Map has three competitive districts, two of which (the Fourth and Sixth) lean
9 Democratic and one of which (the Fifth) is tied or leans Republican. Indeed, Oregon Catalyst—a
10 conservative political blog—predicts that a strong electoral season for Republicans could yield
11 “victories for the Republicans in three congressional districts and victories for the Democrats in
12 only two districts, with Oregon’s 4th congressional district too close to call.” Jim Pasero, *Hidden*
13 *Opportunities for GOP in New Redistricting Maps*, Oregon Catalyst (Oct 5, 2021), [https://](https://oregoncatalyst.com/55573-hidden-opportunities-gop-redistricting-maps.html)
14 oregoncatalyst.com/55573-hidden-opportunities-gop-redistricting-maps.html.

15 **55.**

16 Petitioners claim that the Compromise Map made “insubstantial adjustments” to the
17 Senate-passed Plan A map. Petition ¶ 41. This outrageously false assertion is refuted by a cursory
18 review of the two maps, which are significantly different from one another. These differences were
19 acknowledged even by Republican legislators, who recognized that the Compromise Map was
20 designed to address points made in testimony about Plan A.

21 **56.**

22
23 Petitioners assert that the Compromise Map “splits 13 counties into two or more
24 congressional districts.” *Id.* ¶ 46. But many of these asserted county divisions are de minimis. For
25 instance, the Compromise Map’s boundary between the Fourth and Fifth Congressional Districts
26 follows the Linn-Benton county line (which is also the Willamette River), except where a small

1 tract of Linn County with minuscule population falls in the Fourth Congressional District. This
2 immaterial deviation is likely the result of needing to achieve population balance between districts.
3 Similarly, the southwest tip of Jefferson County—again, a tract with virtually no population—is
4 drawn into the Fifth Congressional District in order to keep OR-20 (the Santiam Pass) contiguous
5 within the district. This slight deviation from county boundaries is otherwise of no consequence.
6 To be sure, the Compromise Map deviates materially from county lines with respect to six
7 counties—all for sound reasons—but to say that it “splits 13 counties” is simply misleading.

8 **57.**

9
10 Petitioners claim that the Compromise Map does not connect districts by transportation
11 links, offering as an example that the Fifth District “stretch[es] . . . across mountains that can be
12 impassible during winter conditions.” *Id.* ¶ 52. But in fact, OR-20 and OR-22 together constitute
13 one of the state’s main arteries connecting central Oregon to the Willamette Valley. The suggestion
14 that the Santiam Pass is not a transportation link because it is occasionally impassible in winter is
15 unserious. Indeed, difficulties traversing the Santiam Pass in winter is a concern that *unites*
16 communities along OR-20 and OR-22, and for which the focused attention of a representative in
17 Congress would be beneficial.

18 **58.**

19 Finally, the Petition filed by Petitioners does not include “[t]he legislatively adopted
20 reapportionment plan that is being challenged,” as required by section 1(5)(b) of SB 259, nor does
21 it propose an alternative reapportionment plan.

22 **59.**

23 WHEREFORE, Intervenor-Respondents respectfully request that this Court:
24

- 25 1. Find that the legislatively adopted reapportionment plan of SB 881 complies with
26 all applicable statutes and the state and federal constitutions;

- 1 2. Enter judgment affirming the legislatively adopted reapportionment plan of
- 2 SB 881;
- 3 3. Dismiss the Petition that challenges the legislatively adopted reapportionment plan
- 4 of SB 881;
- 5 4. Reject and deny all other relief sought by the Petition and Petitioners;
- 6 5. Award Intervenor-Respondents their costs and reasonable attorneys' fees consistent
- 7 with the ruling of the Oregon Supreme Court in *Armatta v. Kitzhaber*, 327 Or 250, 959 P2d
- 8 49 (1998), or, in the alternative, as otherwise allowed by law; and
- 9 6. Grant Intervenor-Respondents such further relief as may be appropriate, just, and
- 10 equitable.

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1 DATED: October 18, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **INTERVENTION PETITION** on the following:

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to be sent by the following indicated method or methods, on the date set forth below:

- by **sending via the court’s electronic filing system**
- by **email**
- by **mail**
- by **hand delivery**

DATED: October 18, 2021

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