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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5  
6 FOR THE COUNTY OF MARION

7 BEVERLY CLARNO, GARY )  
8 WILHELMS, JAMES L. WILCOX, AND )  
9 LARRY CAMPBELL, )

10 Petitioners, )

Case No. 21CV40180

11 vs. )

12 SHEMIA FAGAN, in her official )  
13 capacity as Secretary of State of )  
14 Oregon )

ORDER ON RESPONDENT'S  
MOTION TO MAKE MORE DEFINITE  
AND CERTAIN

15 Respondent, )

16 vs. )

17 JEANNE ATKINS, SUSAN CHURCH, )  
18 NADIA DAHAB, JANE SQUIRES, )  
19 JENNIFER LYNCH, AND DAVID )  
20 GUTTERMAN. )

Intervenors. )

21 Respondent moves to make more definite and certain two paragraphs of the  
22 petition. Paragraph 104 states that it is practicable to draw an alternative map that  
23 complies with the various statutory requirements. Paragraph 105 is a prayer that the  
24 court adopt such a map. Respondent argues that Petitioners should identify the  
25 alternate plan they ask the court to order. In their Response, Petitioners state they  
26 intend to submit a remedial map and welcome guidance on when such a submission  
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1 would be welcome. SB 259 only requires that the petition include a proposed  
2 reapportionment plan *if no legislatively adopted reapportionment plan was passed*. SB  
3 259 Sect. 1(5). Otherwise, the petition *may include any materials from the legislative*  
4 *record relating to congressional reapportionment plans, Id.*, including proposed plans  
5 found in that record. Respondent's motion is, therefore denied.  
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7 With respect to Petitioner's request for a timeframe, the Scheduling Order  
8 provides that the Special Master is authorized to receive evidence and to prepare  
9 recommended findings of fact. Supporting evidence in support of the petition or in  
10 objection to the petition must be filed on or before October 25, 2021, at 4 P.M. There is  
11 no need to provide further guidance on the submission of such evidence.  
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13 With respect to the overall sufficiency of the Petition's factual allegations, ORCP  
14 21 D states, in full:

15 "Upon motion made by a party before responding to a pleading, or if no  
16 responsive pleading is permitted by these rules upon motion by a party within 10 days  
17 after service of the pleading, or upon the court's own initiative at any time, the court may  
18 require the pleading to be made definite and certain by amendment when the  
19 allegations of a pleading are so indefinite or uncertain that the precise nature of the  
20 charge, defense, or reply is not apparent. If the motion is granted and the order of the  
21 court is not obeyed within 10 days after service of the order or within such other time as  
22 the court may fix, the court may strike the pleading to which the motion was directed or  
23 make such order as it deems just."  
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26 The legal standard in the text of the rule is that the court may require that a  
27 pleading be made definite and certain by amendment "when the allegations of a  
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1 pleading are so indefinite or uncertain that the precise nature of the charge, defense, or  
2 reply is not apparent.” When the precise nature of the claim is apparent from the  
3 language in the claim, it is not error to deny the motion. *State by & through Dep’t of*  
4 *Transp. v. Weston Inv. Co.*, 134 Or App 467, 473 (1995).

5 Th Court may make its own motion (“upon the court’s own initiative at any time”)  
6 to make more definite or certain. In considering whether to require that the Petition be  
7 more definite and certain, the Court considers the allegations of the Petition in the  
8 framework of the statute’s specific factual requirements.

9 SB 259 provides that the Petition “must include the legislatively adopted  
10 reapportionment plan that is being challenged and an explanation of the factual and  
11 legal defects in the plan.” The petition alleges four factual defects:  
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- 13 1. The plan was created with impermissible partisan intent;
- 14 2. The plan impermissibly divided communities of common interest;
- 15 3. The plan created districts not connected by transportation lines; and
- 16 4. The plan failed to consider existing geographic or political boundaries.

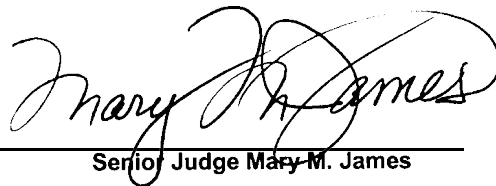
17 The Petition alleges facts on information and belief as to the first alleged defect.  
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19 Pet. ¶¶ 9–10, and various other paragraphs. In Paragraph 12, the Petition alleges that  
20 the plan divides communities of interest “by unnecessarily splitting counties and  
21 communities of common interest, while ignoring political and geographic boundaries”  
22 (merging alleged defects 2 and 4); in paragraph 45, “SB 881-A does not utilize existing  
23 geographic or political boundaries”; and in paragraph 46, “[It] splits 13 counties into two  
24 or more congressional districts.” (Alleged defect 4). The Petition does not allege what  
25 communities of interest are allegedly split, unless one is to infer that parts of Portland  
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1 and the Greater Portland area constitute a community of interest. (Pet., ¶ 49.) The  
2 Petition alleges districts are not “connected by transportation links,” by stretching District  
3 5 across mountains that can be impassible during winter conditions. Petition, ¶ 52  
4 (alleged defect 3).

5 At least as to most of the alleged factual defects, the Petition makes some  
6 reference. Distinct from the requirements of ORCP 18, SB 259 requires more than only  
7 a “plain and concise statement of the ultimate facts constituting a claim for relief”, ORCP  
8 18A–B; it requires the Petition to provide “an explanation of the factual defects in the  
9 plan.” The factual explanation in Petitioners’ Challenge to the Reapportionment Plan is  
10 what it must rely on for the proof of its claims. Accordingly, the Court declines to require  
11 that the Petition be made more definite and certain. Further Amendment is denied.  
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14 IT IS SO ORDERED.

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17 Senior Judge Mary M. James  
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