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

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

Petitioners,

v.

9  
10 **SHEMIA FAGAN**, in her official capacity as  
Secretary of State of Oregon,

11 Respondent.

Case No. 21CV40180

**OPPOSITION TO MOTION TO MAKE  
MORE DEFINITE AND CERTAIN (ORCP  
21D)**

12 **OPPOSITION TO MOTION TO MAKE MORE DEFINITE AND CERTAIN (ORCP 21D)**

13 Petitioners oppose Respondent’s Motion To Make More Definite And Certain, *Clarno v.*  
14 *Fagan*, No. 21CV40180 (Or. Cir. Ct. Marion Cnty. Oct. 18, 2021) (hereinafter “Motion” or  
15 “Mot.”). This Court should deny Respondent’s Motion because the Petition is more than adequate  
16 to apprise Respondent of the nature of Petitioners’ claims. The details that Respondent seeks are  
17 beyond the purview of a well-stated Petition and would ordinarily be disclosed and explored in  
18 discovery. However, by opposing Petitioners’ discovery requests and their motion to amend the  
19 scheduling order, Respondent effectively has opposed all discovery that Petitioners are entitled to.  
20 In order words, Respondent is trying to have it both ways by conducting discovery through a  
21 motion to make more certain, while opposing any discovery that Petitioners seek. Having said all  
22 of that, Petitioners do intend to submit a remedial map to this Court, and would welcome this  
23 Court’s guidance as to when such a submission would be most beneficial to this Court.

24 **I. Legal Standard**

25 Under Oregon Rule of Civil Procedure 21D, upon a motion by a party, “the court may  
26 require the pleading to be made definite and certain” if the petition’s allegations “are *so indefinite*

1 *or uncertain*” that “the precise nature of the charge . . . is not apparent.” ORCP 21D (emphasis  
2 added). As a matter of pleading, a petitioner is “under no obligation to specify the evidence in  
3 support of its claim” as long as “[t]he precise nature of [the] claim is apparent from the language  
4 in the claim,” *State by and through Dep’t of Transp. v. Weston Inv. Co.*, 134 Or. App. 467, 473  
5 (Ct. App. 1995), and only a “plain and concise statement of the ultimate facts constituting a claim  
6 for relief” and a “demand of the relief which the party claims” are necessary, ORCP 18A–B. A  
7 motion under ORCP 21D “is addressed to the trial court’s discretion.” *Lane Cnty. Escrow Serv.,*  
8 *Inc. v. Smith*, 277 Or. 273, 286 (1977); *see also Weihl v. Asbestos Corp., Ltd.*, 204 Or. App. 255,  
9 266 (Ct. App. 2006) (“the trial court’s discretion” governs “a motion under ORCP 21D”).

## 10 **II. Argument**

### 11 **A. The Petition Adequately Advises Respondent Of The Precise Nature Of The** 12 **Claims And Petitioners Are Not Required To Provide Any Proposed** 13 **Reapportionment Plan With Their Petition.**

14 Petitioners’ Petition is sufficiently “definite and certain,” ORCP 21D, to apprise  
15 Respondent of the “precise nature of the claim[s],” *Weston Inv. Co.*, 134 Or. App. at 473. The  
16 Petition specifically challenges SB 881-A, and then articulates the reasons that SB 881-A is  
17 unlawful. To that end, Petitioners included throughout their Petition specific allegations about the  
18 Legislature’s impermissible partisan intent in enacting SB 881-A. *See, e.g.*, Pet. ¶¶ 21–42, 60–61,  
19 68–71, 83–84, 93–94. Petitioners also explained that SB 881-A does not utilize existing  
20 geographic or political boundaries, and creates districts that are not connected by transportation  
21 links, resulting in a map that projects a 5/6 Democratic majority in congressional seats in a typical  
22 year. *See, e.g.*, Pet. ¶¶ 41–52, 62–65, 85, 93–94. Thus, the Petition adequately provides  
23 Respondent with “definite and certain” allegations, apprising her of “the precise nature of the  
24 charge[s],” ORCP 21D; *Weston Inv. Co.*, 134 Or. App. at 473.

25 Contrary to Respondent’s unsupported assertions, Mot. at 2–3, nothing in Oregon law  
26 required the Petitioners to supply remedial maps with their Petition. SB 259-B provides that when

1 “no legislatively adopted reapportionment plan was passed,” the petition must include “the  
2 petitioner’s proposed reapportionment plan.” SB 259-B § 1(5)(b)(B). When—as here—there is a  
3 “legislatively adopted reapportionment plan,” there is no such requirement to submit a “proposed  
4 reapportionment plan.” SB 259-B § 1(5)(b)(A). Instead, SB 259-B provides that “the panel” can  
5 “create its own reapportionment plan.” SB 259-B § 1(8)(a). That textual difference, standing  
6 alone, defeats Respondent’s motion.

7 Respondent is incorrect in arguing that the Petition violates ORCP 18B, *see* Mot. at 3,  
8 which requires a petitioner to specify “[a] demand of the relief which the party claims,” ORCP  
9 18B. Under that rule, only if a plaintiff seeks “recovery of money or damages” must the plaintiff  
10 “state[ ]” specifically the “amount thereof” requested, *id.*, and even the complete omission of a  
11 prayer for relief is insufficient to violate ORCP 18B as long as “the complaint otherwise alerts the  
12 defendants or defendants of the relief sought,” *Ornduff v. Hobbs*, 273 Or. App. 169, 174 (Ct. App.  
13 2015). The Petition adequately explains that the Legislature violated Oregon law and the Oregon  
14 Constitution by, among many other specific allegations, (1) adopting a reapportionment plan that  
15 is unlawful because it was created with impermissible partisan intent, (2) “divid[ing] communities  
16 of common interest,” (3) creating districts not “connected by transportation links,” and (4) failing  
17 to “consider” the criteria of “existing geographic or political boundaries,” ORS § 180.010; and  
18 then seeks a declaration that SB 881-A is unlawful and requests that the Court “[a]dopt a  
19 congressional district plan that complies with the Oregon Constitution and Statutes,” as provided  
20 by SB 259-B § 1(8)(a), *see* Pet. ¶¶ 60–63, 97–101, 105.

21 Finally, Respondent is incorrect when she argues that Petitioners “allege only” a “handful  
22 of details” supporting their claims under ORS § 188.010(1). Mot. at 2–3. As an initial matter,  
23 Petitioners alleged that impermissible partisan intent infected the entire reapportionment map, *see*,  
24 *e.g.*, Pet. ¶¶ 9–10, which would suffice to state a definite and certain claim under the applicable  
25 pleading rules, ORCP 12, 18, 21D, especially given the copious details Petitioners provided  
26 regarding the partisan intent undergirding SB 881-A, Pet. ¶¶ 5–11, 38–44. Further and

1 additionally, Petitioners alleged that “SB 881-A violates ORS § 188.010(1) because the Legislative  
2 Assembly did not consider several of the enumerated criteria and/or did not heed such criteria in a  
3 manner that a reasonable legislature would do, or both.” Pet. ¶ 97. On that basis, Petitioners  
4 explained that SB 881-A “needlessly splits counties,” “does not ‘[u]tilize existing geographic or  
5 political boundaries,’” “ignores the ‘existing geographic boundar[y]’ of the Cascade mountain  
6 range,” and creates districts “not ‘connected by transportation links.” Pet. ¶¶ 46–50, 52, 68, 98–  
7 101 (citation omitted). All of these well-pleaded allegations support Petitioners’ claims, *see*  
8 *Weston Inv. Co.*, 134 Or. App. at 473, and go far beyond the “plain and concise statement of the  
9 ultimate facts constituting a claim for relief” that ORCP 18A requires.

10 **B. Petitioners Believe That This Court Would Benefit From Petitioners Submitting A**  
11 **Proposed Remedial Plan**

12 Having said all of that, Petitioners do intend to present to their proposed remedial map to  
13 this Court. That is why Petitioners presented Respondent with a proposed motion to amend the  
14 Scheduling Order, which included such a timeframe for such a submittal, but Respondent rejected  
15 this proposal. With the proposal rejected, Petitioners had intended to submit their proposed  
16 remedial map to the Special Master, at the deadline for “receiv[ing]” all “Supporting Evidence in  
17 Support of Petition,” 10/14/21 Scheduling Order at 2. Petitioners continue to believe that their  
18 submission of a remedial plan would benefit this Court in “creat[ing] its own redistricting plan,”  
19 SB 259-B § 1(8)(a), and would welcome this Court amending its schedule order to provide  
20 specifically for such a submission, at a time most convenient for the Court.

21 **III. Conclusion**

22 The Court should deny Respondent’s Motion To Make More Definite And Certain.  
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1 DATED: October 19, 2021.

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1 **CERTIFICATE OF SERVICE**

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