

No. 23-

IN THE
Supreme Court of the United States

MARC THIELMAN, *et al.*,

Petitioners,

v.

LAVONNE GRIFFIN-VALADE, IN HER OFFICIAL
CAPACITY AS OREGON SECRETARY OF STATE, *et al.*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

STEPHEN J. JONCUS
Counsel of Record
JONCUS LAW P.C.
13203 SE 172nd Avenue,
Suite 166 #344
Happy Valley, OR 97086
(971) 236-1200
steve@joncus.net

Counsel for Petitioners

327762



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Confidence in elections directly corresponds to individual freedom. When the public is confident that election processes generate fair outcomes, citizens are free because they govern themselves. On the other hand, when elections are widely understood as unfair (such as in Iran or Venezuela), citizens do not govern themselves and they are not free, despite the public *show* of elections.

The degree of public confidence in election processes is the yardstick for measuring the degree of freedom enjoyed by every citizen. As Justice Thomas has noted: “[E]lections enable self-governance **only when** they include processes that ‘giv[e] citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’” *Republican Party v. Degraffenreid*, 141 S.Ct. 732, 734 (2021) (Thomas, J. dissenting from denial of certiorari) (emphasis added).

In seeking to enjoin aspects of Oregon’s election system, Petitioners *assert actual injury to their freedom* due to the extraordinary confidence-destroying characteristics of that system, characteristics which chill honest public participation and make any political remedy via that same election system impossible to attain.

QUESTION

Do Petitioners have standing to challenge Oregon’s vote-by-mail election system due to the loss of their freedom caused by Oregon’s confidence-destroying election processes?

PARTIES

Petitioners are Oregon registered voters Marc Thielman, Ben Edtl, Janice Dysinger, Don Powers, Sandra Nelson, Chuck Wiese, Loretta Johnson, Terry Noonkester, Steve Corderio, Jeanine Wenning, Diane Rich, Pam Lewis, and Senator Dennis Linthicum.

Respondents are LaVonne Griffin-Valade, in her official capacity as Oregon Secretary of State, Clackamas County, Washington County, Multnomah County, Lane County, Linn County, Marion County, Jackson County, Deschutes County, Yamhill County, Douglas County, Klamath County, and Coos County.

RETRIEVED FROM DEMOCRACYDOCKET.COM

CORPORATE DISCLOSURE STATEMENT

Petitioners are all individuals.

RETRIEVED FROM DEMOCRACYDOCKET.COM

DIRECTLY RELATED CASES

Thielman et al v. Griffin-Valade, et al., No. 23-35452,
U.S. Court of Appeals for the Ninth Circuit. Judgment
entered December 12, 2023.

Thielman et al. v. Fagan et al., No. 3:22-cv-1516,
U.S. District Court for the District of Oregon. Judgment
entered June 29, 2023.

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES	ii
CORPORATE DISCLOSURE STATEMENT	iii
DIRECTLY RELATED CASES	iv
TABLE OF CONTENTS	v
TABLE OF APPENDICES	viii
TABLE OF CITED AUTHORITIES	ix
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
INTRODUCTION	2
STATEMENT OF THE CASE	5
I. Factual Background	5
A. Oregon’s 100 percent vote-by-mail system is inherently insecure	6

Table of Contents

	<i>Page</i>
B. Extraordinary confidence-destroying facts concerning Oregon's election process	8
1. Oregon's failure to maintain voter rolls enables illegal ballot trafficking	8
2. Fake ballots are generated for input into the system	10
3. An ineffective signature check is the only control	11
4. Public observation of elections does nothing but decrease confidence	12
5. There is no chain of custody for ballots	13
6. Computerized systems present an inherent and undeniable security risk	14
7. Respondents thwart attempts to ascertain the integrity of the election process	16

Table of Contents

	<i>Page</i>
8. The insidious practice of ballot harvesting is legal in Oregon.....	17
II. Procedural History.....	17
REASONS FOR GRANTING THE WRIT	18
I. Freedom is literally at stake	18
II. Loss of confidence that votes are fairly counted is an injury in fact.....	22
III. The Ninth Circuit ignores this Court's precedent on standing in elections cases	24
CONCLUSION	28

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 12, 2023	1a
APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON, FILED JUNE 29, 2023	4a
APPENDIX C — RELEVANT STATUTORY PROVISIONS	15a

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Baker v. Carr</i> , 369 U.S. 186 (1962)	24, 27
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013)	28
<i>Colegrove v. Green</i> , 328 U.S. 549 (1946)	24
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008)	24
<i>Democratic National Committee v. Wisconsin State Legislature</i> , 141 S. Ct. 28 (2020)	4-5
<i>FEC v. Akins</i> , 524 U.S. 11 (1998)	27
<i>Griffin v. Roupas</i> , 385 F.3d 1128 (7th Cir. 2004)	7
<i>Husted v. A. Philip Randolph Inst.</i> , 584 U.S. 756 (2018)	8
<i>Illinois State Board of Elections v. Socialist Workers Party</i> , 440 U.S. 173 (1979)	19

Cited Authorities

	<i>Page</i>
<i>Lake v. Fontes</i> , 83 F.4th 1199 (2023)	21, 22, 23
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	22
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803)	21
<i>McCutcheon v. FEC</i> , 572 U.S. 185 (2014)	19
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995)	20
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006)	19, 23, 24
<i>Republican Party v. Degraffenreid</i> , 141 S. Ct. 732 (2021)	i, 4, 5, 6, 7, 19, 20, 21, 23, 24
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	19, 26
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	22, 28
<i>United States v. Mosely</i> , 238 U.S. 383 (1915)	14, 19, 20

Cited Authorities

	<i>Page</i>
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886)	18
STATUTES AND OTHER AUTHORITIES	
U.S. CONST., ART. III	28
U.S. CONST., AMEND. XIV, § 1	1
28 U.S.C. § 1254	1
42 U.S.C. § 1983	4
Adam Liptak, <i>Error and Fraud at Issue as Absentee Voting Rises</i> , N. Y. TIMES (Oct. 6, 2012)	6
Fed. R. Civ. P. 12(b)(2)	18
Fed. R. Civ. P. 12(b)(6)	18
https://www.judicialwatch.org/new-jw-study- voter-registration/ . Last visited March 8, 2024	8
https://www.judicialwatch.org/wp-content/uploads/ 2021/11/CSEO-Or.-11-16-21.pdf Last visited March 8, 2024	9
https://www.nytimes.com/2012/10/07/us/politics/ as-more-vote-by-mail-faulty-ballots-could- impact-elections.html , Last visited March 8, 2024	7

Cited Authorities

	<i>Page</i>
https://sos.oregon.gov/elections/Documents/statistics/vote-by-mail-timeline.pdf , Last visited March 8, 2024	6
https://www.wsj.com/articles/how-venezuela-fell-victim-to-clear-manipulation-in-election-1509615002	3
Lawrence Norden and Christopher Famighetti, <i>America’s Voting Machines at Risk</i> , Brennan Center for Justice (Sep. 15, 2014); https://www.brennancenter.org/our-work/research-reports/americas-voting-machines-risk	15
ORS § 247.019(2)(a)(A).	10, 20
ORS § 247.275	9
ORS § 254.465	6
ORS § 254.470(6)(e)(B)(ii)	10
ORS § 254.470(8)	10, 20
<i>The Declaration of Independence</i> (1776)	5

PETITION FOR A WRIT OF CERTIORARI

Petitioners Marc Thielman, *et al.* respectfully petition for a writ of certiorari to review a judgment of the Ninth Circuit Court of Appeals.

OPINIONS BELOW

The Ninth Circuit's unreported opinion¹ is available at 2023 U.S. App. LEXIS 32730. The District of Oregon's unreported opinion² is available at 2023 U.S. Dist. LEXIS 112236.

JURISDICTION

The Ninth Circuit entered its opinion on December 12, 2023. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED³

AMENDMENT XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

1. Pet. App. 1a-3a.

2. Pet. App. 4a-14a.

3. Oregon Statutes cited in this petition are in Appendix C, Pet. App. 15a *et seq.*

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

Fair elections are the cornerstone of any government by the consent of a free people.

In any jurisdiction where one group of citizens (the “party”) controls the executive, legislative, *and* judicial branches of government, the fundamental freedom of consent can be lost. This is particularly true if a jurisdiction has built into the election system multiple mechanisms allowing a handful of the party to control election results while simultaneously obstructing its opposition from discovering election corruption. In such a scenario, those who will govern in accordance with the desires of the controlling party can be thus “elected” despite a lack of majority consent. And those who are disenfranchised are harmed; deprived of their freedom to choose their own government.

Imagine a jurisdiction where rules allow for the creation of fake voter registrations. Where official ballots are spread indiscriminately, allowing those sympathetic to or paid by the party to collect excess ballots and forge votes in its favor. And where no chain of custody tracks ballots from the hands of citizens to the counting machines, allowing the party to insert large numbers of invalid ballots into the flow of authentic ballots.

Ballots received at vote-counting stations are anonymized so that a voter is unable to determine whether

their vote was counted or not. No effective controls exist to prevent a corrupt election worker from replacing a stack of authentic ballots with a stack of fake ballots marked for the party candidate. No mechanism exists to determine which ballots are authentic, or to recount authentic votes.

Rather than taking place in a day, an election lasts for several weeks, allowing the party to see how the vote is progressing. Loopholes permit ballots filled out days after election day to be counted. The party in power reacts to unfavorable vote counts by adjusting the level of fake ballots it feeds into the system, causing party members to prevail while making the results plausible. The party even lets a few members of the opposition win so as to further camouflage the predetermined outcome—a new government in which the party will still retain overwhelming control.

For appearances' sake, the party permits superficial observation of the election process, but never at sufficient depth to uncover the built-in corruption. The party further obstructs and frustrates public information requests so that citizens never have enough information to get a grasp on the extent of party corruption.

The people should be free to choose their leaders, but in the jurisdiction described above, the party thwarts the will of the people to keep itself in power. They put on an election—but control the outcome. The people know how this ends—they know of the example of Venezuela.⁴

4. See, e.g., <https://www.wsj.com/articles/how-venezuela-fell-victim-to-clear-manipulation-in-election-1509615002>.

Does this scenario describe Oregon? Petitioners here cannot precisely discover the manipulations at play because the conduct of elections in Oregon is a black box and the people are systematically prevented from knowing what goes on inside. However, election characteristics and anomalies visible to Petitioners are entirely consistent with fraudulent manipulation of elections by those in power.

Given the self-perpetuating nature of party control obtained through election corruption, how do Oregonians escape the boxed canyon of this scenario, and the disenfranchisement of their vote? What are their options? Fortunately, for the people, Oregon is not Venezuela; here they have the protection of the United States Constitution and 42 U.S.C. § 1983, under which they have sought an injunction against the mail-in ballot election system of Oregon.

However, the door to the courts to seek the protection of the United States Constitution has been blocked under the “lack of standing” rubric. Many cases across the country alleging a likelihood of election fraud have been dismissed on the rationale that the harm was too speculative, or the plaintiffs could not show a personal harm.

This case, instead, relies on Justice Thomas’ profound statement: “[E]lections enable self-governance **only when** they include processes that ‘giv[e] citizens (including the losing candidates and their supporters) confidence in the fairness of the election.’” *Republican Party v. Degraffenreid*, 141 S. Ct. 732, 734 (2021) (Thomas, J. dissenting in denial of certiorari) (quoting *Democratic*

Nat'l Comm. v. Wisconsin State Legis., 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay)) (emphasis added).

An election system that does not instill confidence in the results is violative of Petitioners' constitutional rights and cannot be allowed to exist in the United States of America where we are a free people, and where governments are instituted among the people, deriving their just powers from the consent of the governed.⁵ Without confidence in the election system, the people are no longer governing themselves, which means that they are no longer free.⁶ Petitioners have an inherent right as Americans under the United States Constitution to challenge the processes by which Oregon conducts elections.

This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

I. Factual Background

Petitioners are each Oregon voters. One Petitioner, Dennis Linthicum, is an Oregon State Senator representing the constituents of Oregon Senate District 28; Marc Thielman and Ben Edtl are former candidates for public office in Oregon, and Edtl is again a candidate in the 2024 election for public office in Oregon. Janice Dysinger and Don Powers are co-chairs of the Election Integrity Committee of the Oregon Republican Party.

5. *The Declaration of Independence*, paragraph 2 (1776).

6. *See Degraffenreid*, 141 S. Ct. at 734 (Thomas, J. dissenting).

Seeking an injunction against the 100 percent vote-by-mail system of Oregon supported by insecure electronic tabulating machines and ineffective election checks, Petitioners pled extensive facts illustrating the lack of processes that would give citizens confidence in the fairness of Oregon's elections. Indeed, election processes in Oregon are widely recognized as destroying citizen confidence in elections.

A. Oregon's 100 percent vote-by-mail system is inherently insecure.

Oregon elections have been conducted entirely by mail for 24 years. The statutory scheme for elections requires vote by mail with ballots scanned by computerized vote tally systems.⁷ Oregon began local voting by mail in 1981 and instituted a 100 percent vote-by-mail system during the 2000 election.⁸

Voter fraud is nothing new. States have historically relied on a decentralized system of elections with local precincts and local volunteers and officials to conduct, process, and tally the votes of voters who appear in person, minimizing the risk of widespread fraud. Oregon threw those safeguards out the window, despite the well-known risks of fraud that are "**vastly more prevalent**" with mail-in voting than in-person voting. *Degraffenreid*, 141 S. Ct. at 735 (Thomas, J. dissenting, citing Adam Liptak, *Error and Fraud at Issue as Absentee Voting Rises*, N.Y. Times (Oct. 6, 2012)) (emphasis added). "Voting by mail is now

7. ORS § 254.465. Pet. App. 17a.

8. See <https://sos.oregon.gov/elections/Documents/statistics/vote-by-mail-timeline.pdf>. Last visited March 8, 2024.

common enough and problematic enough that election experts say there have been multiple elections in which no one can say with confidence which candidate was the deserved winner.” *Id.* at 736.

At its core, mail-in voting replaces the oversight inherent with in-person voting at polling places with something akin to an honor system. *Id.* at 735. Judge Posner of the Seventh Circuit has written that “absentee voting is to voting in person as a take-home exam is to a proctored one.” *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004). Judge Posner further noted that voting fraud is a serious problem in the U.S. elections that are facilitated by mail-in voting.

As explained by Heather Gerken, now Dean of Yale Law School, mail-in voting permits simpler and more effective alternatives to commit fraud on a large enough scale to swing an election. *Degraffenreid*, 141 S. Ct. at 735-36. According to Gerken, “You could steal some [mail-in] ballots or stuff a ballot box or bribe an election administrator or fiddle with an electronic voting machine,” which explains, “why all the evidence of stolen elections involves absentee ballots and the like.”⁹

9. See <https://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html>. Last visited March 8, 2024.

B. Extraordinary confidence-destroying facts concerning Oregon’s election process.

1. Oregon’s failure to maintain voter rolls enables illegal ballot trafficking.

Oregon is notoriously bad in maintaining the accuracy of its voter rolls. In at least nine counties, there are more people registered to vote than are eligible to vote in Oregon.¹⁰

As an example, residents of Lane County investigated their voter rolls and found many registrations tied to locations that do not exist, 105 registrations with no address on file, and 171 single-address locations with eight or more voters. They surveyed 40 of these locations, and found that only 40 percent of those registrations were valid. For example, an Amazon Parkway address had 85 registered voters—but no one lives there. A Walmart parking lot in Eugene has 12 registered voters—but no one lives there.

Judicial Watch, a watchdog organization, identified severe defects in Oregon’s maintenance of voter rolls. In 2021, 14 counties reported removing *five or fewer* voter registrations pursuant to Section 8 of the NVRA¹¹ in the previous four-year period. Over four years, Multnomah County (Oregon’s most populated county, over 800,000) removed five registrations, Lane County removed two, five

10. See <https://www.judicialwatch.org/new-jw-study-voter-registration/>. Last visited March 8, 2024.

11. Such removals are mandatory under federal law. See *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018).

counties removed only one each, and seven other counties removed no registrations at all.¹² These impossibly low numbers cannot reflect the actual loss of registered voters who die or move out of the county.

In a sample of 4,400 Washington County voter records reviewed by one citizen, 13 percent (558) were dead. Twelve dead voters cast post-mortem votes. The longest deceased person among them died in 2010. In a canvas of 248 records performed by another Washington County citizen, 85 registered voters had moved away before the 2020 election and still voted in Washington County.

Oregon lawmakers appear eager to keep expanding the rolls with more phantom voters. In 2021, Oregon prohibited removing registered voters from the active voter rolls for not voting for any period of time.¹³ The law also moved a substantial number of inactive voters to active status. So when a registered voter moves out of a county, they can remain listed as an active voter in that county indefinitely. Every election, a ballot will be mailed to his or her former address. Such ballots can be scooped up by criminal elements, marked, and inserted into the election system—an illegal vote that will get counted.

In 2022, Oregon enacted voter registration where the only identification required is the final four digits of

12. See <https://www.judicialwatch.org/wp-content/uploads/2021/11/CSEO-Or-11-16-21.pdf>. Last visited March 8, 2024.

13. ORS § 247.275. Pet. App. 16a-17a.

a social security number.¹⁴ This registration can be done online with an electronic copy of a signature. It is not a difficult task for criminals to invent four-digit numbers. These invented numbers cannot be validated; four digits do not uniquely identify anybody.

In 2021, Oregon enacted another law permitting the counting of ballots received by mail up to seven days after an election.¹⁵ The law contains a loophole which counts ballots received after election day and *without a postmark*.¹⁶

The systematic failure to clean voter rolls, combined with all-mailed ballots, online registration without identity checks, and submission of ballots after election day, demonstrates how Oregon's law and practices utterly fail to prevent unauthorized votes from being counted. Petitioners can deduce a motive—refusing to clean voter rolls maximizes the number of ballots flowing around which will find their way into the hands of criminals who intend to insert illegal ballots into the system. With bloated voter rolls and refusal to clean them up, Respondents are enabling illegal ballot trafficking.

2. Fake ballots are generated for input into the system.

Students at the University of Oregon receive two ballots; one at their University address and one at their

14. ORS § 247.019(2)(a)(A). Pet. App. 15a.

15. ORS § 254.470(6)(e)(B)(ii). Pet. App. 22a.

16. ORS § 254.470(8). Pet. App. 23a.

home address. Students have been encouraged to “recycle” their extra ballots by a known partisan. These “recycled” ballots were filled out by recruited volunteers who reported they were told how to fill them out. Recruiters must have a way to insert such invalid ballots into the system, or they would not waste their time. It is a relatively simple matter to bribe a temporary election worker to get such excess ballots introduced and counted by the machines.

3. An ineffective signature check is the only control.

The only ballot validation in Oregon consists of verification of a signature on the mail-in ballot envelope. Signature verification is an imprecise and poor way of confirming voter identity. Whether a signature matches the official record involves a subjective judgment. Signatures vary over time, and they are dissimilar from day to day.

Signatures can easily be forged. Actual signatures are readily available from initiative petitions on which citizens write their name, address, and signature. Initiative signature sheets are routinely scanned making them easily distributable by computer. A CNC machine can be easily programmed to forge signatures from scanned images. Even without resorting to machines, it does not take much for a signature to be imitated by a human.

Signature verification leads to far higher rates of ballot challenges and rejections. Clackamas County rejected 5,000 ballots in the 2022 election for signature mismatch. This is an astonishing number revealing an astounding problem. Each of those 5,000 ballots was either a fake or a legitimate ballot. Both explanations are destructive to

confidence in the integrity of the election. A large number of fake ballots will show the extent of the criminal activity targeting the election. A large number of legitimate votes being rejected is an unacceptable disenfranchisement of real voters. A lot of effort is required to cure a rejected ballot, and very few are ever cured. Rejected ballot notices are routinely sent out so late—many after the deadline for cure—that there is essentially no ability for even the most alert and dedicated voter to cure his or her ballot.

4. Public observation of elections does nothing but decrease confidence.

The act of observing elections is a sham. Observers cannot see the process, follow what is going on, bring up problems in real-time, or make any input. In 2022, observers watching the signature verification process in Multnomah County disagreed with decisions being made; all concerns raised were ignored. If no correction is taken immediately, the ballot is removed and separated from the signed envelope, which destroys any further ability to authenticate the ballot. There is no way to undo or appeal faulty decisions concerning signature matches.

On election day, Washington County rejected signatures on many ballots—signatures that to the observer looked just fine—while approving many that did not resemble the master signatures. Observers sought to challenge about 230 signatures, but the vast majority were accepted despite the challenges. No mechanism effectively challenges the signatures because once a signature is accepted, it is *fait accompli*, the ballot goes into the counter. There is no avenue for appeal and no way to undo the process.

In 2022, vote counting in Douglas County lasted for 35 days. Douglas County does not allow in-person observation. Observers could only watch through cameras; cameras only operated for portions of seven days out of 35. The images were so small that an observer could not tell whether papers being fed into the tally machines were in fact ballots. There was no access to see the signature verification process whatsoever. The election observation process in Douglas County is a sham, designed to check a box, but not to give the people confidence that their votes are being properly counted.

In Washington County, an observation room contains video screens displaying output from wide angle security cameras in the work room. These cameras are 20-30 feet from the action, preventing the observers from seeing any details. There are ten cameras but only four screens set to rotate to another camera every 45 seconds, so no task performed by the election workers can be followed by the observers. The election observation process in Washington County is a sham, designed to check a box, but not to give the people confidence that their votes are being properly counted.

5. There is no chain of custody for ballots.

Washington County election workers have admitted to observers that no chain of custody exists for any of the ballots in an election. There is no record kept of when the ballots are picked up and dropped off. According to the federal Election Assistance Commission, a lack of a chain of custody—by itself—demonstrates that an election is not transparent.

This failure to have a chain of custody showing that one's vote actually counted and can be audited is constitutionally significant because Petitioners not only have a constitutional right to vote, but also, just as powerfully, a constitutional right to have their vote counted.¹⁷ Oregon is incapable of showing Petitioners that their votes were actually counted.

6. Computerized systems present an inherent and undeniable security risk.

The use of computers to tally votes has been criticized for two decades. Other countries have banned the use of computers in their election processes due to risks to election integrity.

No computerized voting system in the United States is manufactured entirely in the U.S. Most are manufactured entirely outside the U.S. with foreign components. The laptops used by our voting systems are made in Communist China. They are made under supervision of officers from Chinese Communist state organizations like the People's Liberation Army. There are entire Chinese Communist state organizations under the Ministry of State Security in China with thousands of people dedicated to the compromise of Western technology and computers. One cannot monitor the insecurity or vulnerability out of these components, or mitigate the risk, because the compromises can be embedded in ways that cannot be overcome or detected.

Oregon's election computer systems are not rigorously tested. The certification entities, such as Pro V&V, do not

17. *United States v. Mosely*, 238 U.S. 383, 386 (1915).

allow testing to military standards. In addition, what testing has been done has found that the machines were replete with vulnerabilities. Every single machine tested can be hacked into within minutes. These vulnerabilities have never been mitigated—just ignored. The entities used by the Election Assistance Commission to test election equipment have limited technical capability and operate under strong incentives to provide favorable test reports for equipment lest they lose business from the EAC. Systems certified by the EAC can be readily hacked. The EAC certification process is a sham; not a single one of its testing labs were legitimately accredited by the EAC to perform testing at the time of the 2020 Election, as required by law.

Wi-Fi modems, which invite hacking, should never be installed on any voting tabulator, but every tabulator has them.¹⁸

The utter lack of security with regard to vote counting has been documented. For example, in the 2022 primary election, Mei Wong was running for the Metro Council District 2 seat. During the election, Wong took multiple screen shots documenting the progress of her race as reported on Respondent's Secretary of State election website. An unknown array of computers were involved with unknown human intervention. The results reported by the Oregon Secretary of State, witnessed and documented by Wong, defy explanation: between 4:36 a.m.

18. See, e.g., Lawrence Norden and Christopher Famighetti, *America's Voting Machines at Risk*, Brennan Center for Justice, p. 12 (Sep. 15, 2014); <https://www.brennancenter.org/our-work/research-reports/americas-voting-machines-risk>. Last visited March 8, 2024.

and 4:44 a.m. on Sunday, May 29, her vote total decreased by 6,371; between 8:32 p.m. and 8:36 p.m. on Sunday, May 29, her vote total decreased by 3,855; between 5:44 a.m. and 5:45 a.m. on Saturday, June 4, her vote total decreased by 6,376; between 4:57 a.m. and 4:58 a.m. on Friday, June 10, her vote total decreased by 6,390.

It is axiomatic that as tabulated results come into the Secretary of State's office, vote totals should increase as more counties report results. No explanation by any governmental entity was ever given as to why Wong's vote totals suddenly decreased on at least four separate occasions. Adding to the suspicion of nefarious action is that three decreases occurred in the wee hours of the morning and three occurred over the weekend, when few would be looking. Rather than trying to explain or investigate what happened, the government—at all levels—gave Wong the runaround.

7. Respondents thwart attempts to ascertain the integrity of the election process.

Public record requests are virtually the only tool available to the public to investigate election integrity. A couple of years ago, Janice Dysinger was able to obtain the ballot images and the cast vote record from Multnomah County for a charge of \$159.62. She obtained the same from Lincoln, Clatsop, and Polk Counties for \$60, \$64, and \$120 respectively.

Apparently word got out that ballot images, along with the cast vote record, yield information important to investigating election integrity. Recently, county election clerks have been quoting astronomical charges to obtain

this public information. A quote from Benton County was \$6,798.75. A quote from Harney County was \$7,939.78. A quote from Linn County was \$77,376.05. A quote from Deschutes County was \$93,703.52. One county election clerk admitted that the Secretary of State's office told her to hold off on responding to any public records requests.

The cost of obtaining ballot images jumped two orders of magnitude, from hundreds of dollars up to a range of \$50,000 to \$100,000. That is a very convenient way for Oregon to obstruct public records requests. Petitioners know that when government officials behave like this, they have something to hide.

8. The insidious practice of ballot harvesting is legal in Oregon.

Ballot harvesting is legal in Oregon and is a source of widespread abuse. Interest groups, like unions, search out vulnerable citizens, such as are found in nursing homes, and get votes from them. Ballot harvesters are trained to focus on the elderly and elderly residence homes. One witness stated, "They would gather and brag about how they assisted 'blind' elderly people with filling out their ballots, one harvester stating, 'I filled it out ... Not the way they told me to, but I filled it out.'"

II. Procedural History

On October 8, 2022, Petitioners sued Oregon's Secretary of State and a number of counties asserting violation of their due process, equal protection, and voting rights, and seeking an injunction against Oregon's mail-in voting and computerized tabulation election system.

Oregon's Secretary of State filed a Rule 12(b)(1) motion to dismiss for lack of standing and a Rule 12(b)(6) motion to dismiss for failure to state a claim. The District Court granted the motion to dismiss for lack of standing and did not rule on the motion to dismiss for failure to state a claim.¹⁹ The District Court ruled that Petitioners had failed to show an injury of fact necessary for standing for two reasons: (1) Petitioners were asserting a generalized claim not particularized to the Petitioners; and (2) Petitioners claim was not concrete because their injury was too speculative.²⁰

The Ninth Circuit scheduled, then canceled oral argument. In a less than 300-word opinion, the Ninth Circuit affirmed the District of Oregon. The Ninth Circuit treated Petitioners' action as alleging a likelihood of future fraud even though Petitioners pled actual injury.²¹

REASONS FOR GRANTING THE WRIT

I. Freedom is literally at stake.

Elections are uniquely important to the vitality of our republican form of government, where all representatives are democratically elected. Indeed, without a *fair* vote, it cannot be said that the government rests upon the consent of the governed at all. The right to vote is “preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). “[V]oting is of the most fundamental significance under

19. Pet. App. 4a-14a.

20. Pet. App. 9a-11a.

21. Pet. App. 3a.

our constitutional structure.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). It is how the people govern themselves. Elections are the lifeblood of a democracy. “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014). The right to vote is a fundamental political right. *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). The right to have one’s vote counted is as strong as the right to put a ballot in the ballot box. *Mosely*, 238 U.S. at 386.

However, merely holding elections does not preserve the right to vote and have one’s vote fairly counted. Iran holds elections—China holds elections—and the once free country of Venezuela holds elections—all for show. While Iran, China, and Venezuela hold elections, their citizens do not govern themselves and are not free. The difference between fair elections and the kind of elections held in Iran, China, and Venezuela is explained by Justice Thomas: “[E]lections enable self-governance **only when** they include processes that give citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *Degraffenreid*, 141 S. Ct. at 734 (2021) (Thomas, J. dissenting) (emphasis added, cleaned up). Stated another way, when election processes do not give citizens confidence in the integrity of the election system, citizens are no longer free.

A purpose of government is to represent the people by protecting the sanctity of each vote. Indeed, this Court has pointed out that a state has a “compelling interest” in preventing voter fraud. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). But Oregon has flipped the script. It has enacted

laws and designed a system that opens the door to voter fraud and erects barriers preventing its citizens from determining whether an election was fairly held.

For instance, there is no legitimate reason to permit voter registration online where the only verifying identification required is four digits of a social security number.²² Similarly, there is no legitimate purpose to insert a loophole in the law allowing ballots to be counted after election day with no proof that they were cast by election day.²³ At the same time, Oregon thwarts public record requests by increasing the charges for obtaining public records from what used to be mere hundreds of dollars to figures close to \$100,000, and now sues citizens to prevent them from gaining access to public election records. Viewed objectively, Oregon's laws are so irregular that, on their face, they rationally cannot be understood as anything other than an effort to enable illegal votes to be counted. *See, e.g., Miller v. Johnson*, 515 U.S. 900, 914 (1995) ("a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to segregate voters on the basis of race."(cleaned up)).

These defects in Oregon's election system foil the political process to effect change in Oregon. Whether or not these confidence-destroying processes reflect actual corruption, the implications "left to fester without a robust mechanism to test and disprove it, 'drives honest citizens out of the democratic process and breeds distrust of our government.'" *Degraffenreid*, 141 S.Ct. at 737 (quoting *Purcell*, 549 U.S. at 4).

22. ORS § 247.019(2)(a)(A). Pet. App. 15a.

23. ORS § 254.470(8). Pet. App. 23a.

The courthouse door has been blocked to plaintiffs asserting the likelihood of fraud. Allegations of imminent future fraud have been deemed speculative and not to confer standing. *See, e.g., Lake v. Fontes*, 83 F.4th 1199 (2023). The courts seem oblivious to the fact that under the circumstances of black box proprietary machines, election processes zealously hidden from public view by the Secretary of State, and pleading standards requiring particularity, actual fraud is easy to conceal and to keep from being tested by a legal process.

With political processes (the vote itself) and courthouse doors blocked, where can an American, whose freedom is his birthright, turn to get out of this boxed canyon? To deny the people the opportunity to challenge election processes in a court of law is to deny their access to freedom. “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.” *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Nothing could be more un-American and unconstitutional than to deny Oregonians legal remedy.

Justice Thomas has illuminated a path out of the boxed canyon. The courts must examine the election processes and determine whether they give individual citizens confidence in the fairness of elections. *Degraffenreid*, 141 S.Ct. at 734. However, the Ninth Circuit discards the new path suggested by Justice Thomas in an astonishingly shallow opinion. Certiorari should be granted in this case because the freedom of Petitioners to choose their representative government is literally at stake.

II. Loss of confidence that votes are fairly counted is an injury in fact.

Standing requires that a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The district court and the Ninth Circuit each rejected Petitioners’ claims based on an erroneous application of the “injury in fact” prong.²⁴ Respondents did not challenge that Petitioners satisfied the second (traceability) and third (redressability) prongs of standing. Petitioners satisfy the second prong of standing because Respondents are responsible for running Oregon’s defective election system causing the injury to Petitioners. Petitioners satisfy the third prong because the Court can remedy Petitioners’ injuries by issuing an injunction prohibiting Oregon from operating a mail-in vote, computer tabulated election system.

The Ninth Circuit, without any analysis, affirmed the district court on the grounds that Petitioners’ claims were “similar” to those made in *Lake*.²⁵ The Ninth Circuit’s comparison between *Lake* and this case is without merit.

24. Pet. App. 2a-3a; Pet App. 8a-13a.

25. Pet. App. 3a (“Petitioners allege only that they suffer a ‘crisis of confidence’ in Oregon’s voting systems, which is the same ‘speculative’ grievance that we found insufficient to confer standing in *Lake*.”)

In *Lake*, the plaintiffs had “conceded that their arguments were limited to potential *future* hacking, and not based on any past harm.” *Lake*, 83 F.4th at 1202. Accordingly, the *Lake* plaintiffs were seeking to satisfy the “injury in fact” element by showing that the injury was “imminent,” not “actual.” *Id.* at 1204 (“Plaintiffs, who claim no past injury, failed to establish that a future injury was either imminent or substantially likely to occur.”) The Ninth Circuit failed to acknowledge that Petitioners in this case are making a fundamentally different claim than in *Lake*, because Petitioners claim “actual” injury.

Petitioners do not speculate about what might happen in the future—Petitioners assert actual harm. Each of the processes cited in Petitioners’ complaint, such as voter registration, signature verification, observation of elections, audits, and chain of custody, is an existing process with characteristics that are known and can be more thoroughly discovered. Petitioners complain that these existing processes fail to “give citizens . . . confidence in the fairness of [an] election.” *Degraffenreid*, 141 S.Ct. at 734. The actual injury to Petitioners is the loss of freedom due to an election system that fails to give citizens confidence in the fairness of elections. Without the essential element of citizen confidence in the fairness of elections, our participatory democracy fails to function. *Purcell*, 549 U.S. at 4. Honest citizens are driven out of the democratic process and distrust in government flourishes. *Id.* “Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised,” leading to denial of the right of suffrage. *Id.*

III. The Ninth Circuit ignores this Court's precedent on standing in elections cases.

This Court has often recognized that “voters who allege facts showing disadvantage to themselves as individuals have standing to sue.” *Baker v. Carr*, 369 U.S. 186, 206 (1962) (citing *Colegrove v. Green*, 328 U.S. 549 (1946) and collecting cases at n. 28). The individual injury in *Baker* was due to the failure of Tennessee to lawfully apportion legislative districts which caused inequity of representation. *Id.* at 189-95, 207-08. Here the individual injury—the disadvantage to Petitioners as individuals—is the loss of their freedom caused by a lack of processes that give the public confidence in the fairness of Oregon elections.

This Court has likewise recognized the importance of public confidence in elections. “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4. Confidence is important because a lack of confidence “drives honest citizens out of the democratic process.” *Id.* “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 (2008).

Confidence in elections relates directly to individual freedom. When supporters of winning and losing candidates have confidence that the result of an election is fair, citizens are free because they are governing themselves. *Degraffenreid*, 141 S.Ct. at 734. At the opposite end of the spectrum, where elections are known

to be unfair (such as in Iran), the citizens are not free because they do not govern themselves despite elections. The degree of confidence in election processes is the yardstick for measuring the degree of freedom enjoyed by every citizen.

Although Petitioners are each conscientious voters, they each have a personal interest in the public's confidence in Oregon's election system because Petitioners' own personal freedom depends wholly on that public confidence. Place Petitioners in Iran, they would not be free even though they vote conscientiously. Place Petitioners in a jurisdiction where both sides in an election contest have confidence in its fairness, Petitioners are free even if their desired result did not prevail, because the citizens are governing themselves. The crisis of confidence in Oregon's election system injures each Petitioner's individual freedom. Each Petitioner has suffered an "injury in fact."

The Ninth Circuit failed to acknowledge Petitioners' evidence that Oregon's election processes are so exceptionally bad that no one can have confidence in the fairness of elections in Oregon. The Ninth Circuit failed to recognize that the "crisis of confidence" caused by Oregon's elections processes was a crisis among the public at large, not just a concern limited to Petitioners.²⁶ And the Ninth Circuit failed to recognize that the public's "crisis of confidence" directly and personally injured Petitioners through their personal loss of freedom.

26. Pet. App. 3a ("Plaintiffs allege only that *they suffer* a "crisis of confidence" in Oregon's voting systems . . .") (emphasis added).

The Ninth Circuit gave Petitioners' claims short shrift, asserting that Petitioners did "not allege that their votes were not counted, nor do they identify with sufficient particularity how any given election in Oregon was fraudulently manipulated through the vote-by-mail or computerized tabulation systems. Indeed, Plaintiffs concede that they do not know whether Oregon elections are fraudulently manipulated at all."²⁷ To be sure, widespread fraud in an election would create personal injury, but it is not the only way that personal injuries can occur. For example, dilution of the weight of a citizen's vote denies suffrage. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."²⁸

Where laws remove in-person voting and substantially raise the *risk* of fraudulent elections—as has been widely recognized is the case for mail-in voting and computer tabulated elections—personal experience and common sense inform Petitioners that the election system is beyond political remedy, and they suffer a loss of confidence that any attempted political remedy will be fair. How may they elect representatives to reform the law? The process is so tainted that any challengers of the status quo could readily be defeated by fraud.

27. Pet. App. 2a-3a.

28. Contrary to the Ninth Circuit's opinion, Plaintiffs did not disclaim a vote-dilution theory on appeal. Pet. App. 2a, n. 1. Vote dilution is the primary mechanism by which loss of confidence results in loss of freedom, because disenchanted citizens do not bother to vote.

Moreover, the Ninth Circuit's recitation of what must be shown to establish "injury in fact" is wildly unrealistic in today's environment of black box proprietary machines, election information zealously hidden from public view by the Secretary of State, short time frames for contesting an election, and the requirement of particularity in pleading fraud. The Ninth Circuit's bar to challenging election processes is so high that it likely could never be cleared, putting the public on the road to serfdom. Ironically, the Ninth Circuit's high bar becomes more and more difficult to achieve as a government gains more power, becomes more authoritarian and less accountable, and the citizens become less free. Like an airplane in a death spiral, recovery gets less likely as it gets closer to the ground. The Ninth Circuit's recitation is simply in conflict with this Court's precedent requiring an articulation of the Petitioners' "disadvantage to themselves as individuals." *Baker*, 369 U.S. at 206. In this case, Petitioners have articulated how they have been personally disadvantaged—they have lost freedom due to the nature of Oregon's election system.

The district court also concluded that Petitioners' claim was a "generalized grievance" shared by the public at large that did not confer standing.²⁹ Although the Ninth Circuit did not address this conclusion, it is also incorrect. As this Court has said: "Often the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found 'injury in fact.'" *FEC v. Akins*, 524 U.S. 11, 24 (1998). It is indeed true that Petitioners' loss of freedom is widely shared by all Oregonians. However, Petitioners' loss of

29. Pet. App. 9a-11a.

freedom is a concrete injury because it actually exists. *Spokeo*, 578 U.S. at 340. Plaintiffs injury is “real and not abstract.” Although loss of freedom is an intangible injury, “intangible injuries can nevertheless be concrete.” *Id.*

“The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013). This Court has said that its standing inquiry is especially rigorous when the action of other branches of the federal government are challenged. *Id.* However, that is not the case here. We are dealing with a State, Oregon, that has so lost its way that the freedom of its citizens, their birthright as Americans, is in a death spiral.

CONCLUSION

For the foregoing reasons, Petitioners respectfully urge the Court to grant their Petition.

Respectfully submitted,

STEPHEN J. JONCUS

Counsel of Record

JONCUS LAW P.C.

13203 SE 172nd Avenue,

Suite 166 #344

Happy Valley, OR 97086

(971) 236-1200

steve@joncus.net

Counsel for Petitioners

APPENDIX

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 12, 2023	1a
APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON, FILED JUNE 29, 2023	4a
APPENDIX C — RELEVANT STATUTORY PROVISIONS	15a

RETRIEVED FROM DEMOCRACYDOCKET.COM

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT, FILED DECEMBER 12, 2023**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-35452

MARC THIELMAN; *et al.*,

Plaintiffs-Appellants,

v.

LAVONNE GRIFFIN-VALADE, IN HER
OFFICIAL CAPACITY AS OREGON
SECRETARY OF STATE; *et al.*,

Defendants-Appellees.

Before: BERZON, NGUYEN, and MILLER, Circuit
Judges.

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Stacie F. Beckerman, Magistrate Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix A

December 6, 2023**, Submitted,
Portland, Oregon
December 12, 2023, Filed

Plaintiffs filed this action on behalf of themselves and all others similarly situated against the Oregon Secretary of State and twelve Oregon counties, challenging the constitutionality of Oregon’s computerized vote tabulation and vote-by-mail systems. The district court granted Defendants’ motion to dismiss for lack of subject-matter jurisdiction, finding that Plaintiffs failed to adequately plead a cognizable injury-in-fact. We review de novo dismissals for lack of subject-matter jurisdiction. *Sec. & Exch. Comm’n v. World Cop. Mkt., Inc.*, 864 F.3d 996, 1003 (9th Cir. 2017). We affirm.

This Court recently considered and rejected claims similar to those Plaintiffs assert here. *See Lake v. Fontes*, 83 F.4th 1199 (9th Cir. 2023). Plaintiffs allege that they are injured by “a lack of confidence in the integrity of the election system.”¹ But that alleged injury represents nothing more than the “kind of speculation that stretches the concept of imminence beyond its purpose.” *Lake*, 83 F.4th at 1204 (quotation marks omitted). Plaintiffs do not allege that their votes were not counted, nor do they identify with sufficient particularity how any

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1. To the extent that Plaintiffs’ complaint also asserted a vote-dilution theory of injury, they have expressly disclaimed that theory on appeal.

Appendix A

given election in Oregon was fraudulently manipulated through the vote-by-mail or computerized tabulation systems. Indeed, Plaintiffs concede that they do not know whether Oregon elections are fraudulently manipulated at all. Plaintiffs allege only that they suffer a “crisis of confidence” in Oregon’s voting systems, which is the same “speculative” grievance that we found insufficient to confer standing in *Lake*. *Id.* at 1201 (quotation marks omitted). Plaintiffs’ “conjectural allegations of potential injuries are insufficient to plead a plausible real and immediate threat of election manipulation,” *id.* at 1204 (quotation marks omitted), as the district court correctly concluded in dismissing their claims.

AFFIRMED.

RETRIEVED FROM DEMOCRACYDOCKET.COM

**APPENDIX B — OPINION OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF OREGON, FILED JUNE 29, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Case No. 3:22-cv-01516-SB

MARC THIELMAN *et al.*,

Plaintiffs,

v.

SHEMIA FAGAN *et al.*,

Defendants.

June 29, 2023, Decided;
June 29, 2023, Filed

OPINION AND ORDER

BECKERMAN, U.S. Magistrate Judge.

Plaintiffs Marc Thielman, Ben Edtl, Janice Dysinger, Don Powers, Sandra Nelson, Chuck Wiese, Loretta Johnson, Terry Noonkester, Diane Rich, Pam Lewis, and Senator Dennis Linthicum (together, “Plaintiffs”) filed this action on behalf of themselves and all others similarly situated against Shemia Fagan (“Fagan”), in her official capacity as the former Oregon Secretary of State, and twelve Oregon counties (the “County Defendants”), challenging the constitutionality of Oregon’s computerized

Appendix B

vote tabulation and vote-by-mail systems. (*See* First Am. Compl. (“FAC”), ECF No. 71.)

Now before the Court is the Secretary’s motion, pursuant to Federal Rules of Civil Procedure (“Rule”) 12(b)(1) and 12(b)(6), to dismiss Plaintiffs’ amended complaint for lack of subject matter jurisdiction and for failure to state a claim. (Defs.’ Mot. Dismiss (“Defs.’ Mot.”), ECF No. 73.) The County Defendants joined the Secretary’s motion to dismiss. (ECF No. 75.)

The Court heard oral argument on Defendants’ motion on June 26, 2023, and all parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636. For the reasons explained below, the Court grants Defendants’ motion to dismiss for lack of subject matter jurisdiction.

DISCUSSION**I. PRELIMINARY PROCEDURAL MATTER**

Fagan filed her reply on April 14, 2023 (ECF No. 79), and at that time, she remained Oregon’s Secretary of State. However, Fagan resigned from her position on May 8, 2023,¹ and former Oregon Deputy Secretary of State Cheryl Myers assumed the title of Acting Secretary of State.²

1. *See* SECRETARY OF STATE SHEMIA FAGAN ANNOUNCES RESIGNATION, EFFECTIVE MONDAY MAY 8 (May 2, 2023), <https://perma.cc/Y67S-ZGN2>.

2. *See* SECRETARY FAGAN RESIGNS; THE SECRETARY OF STATE’S OFFICE WILL NOT EXPERIENCE ANY DISRUPTION IN OPERATIONS DURING THE TRANSITION (May 8, 2023), <https://perma.cc/QFG4-5CAF>.

Appendix B

Rule 25(d) provides that “[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending.” FED. R. CIV. P. 25(d). Instead, “[t]he officer’s successor is automatically substituted as a party.” *Id.* Consequently, this action continues against Cheryl Myers in her official capacity as Oregon’s Acting Secretary of State (hereinafter, the “Secretary,” together with the County Defendants, “Defendants”).

II. PLAINTIFFS’ CLAIMS

Plaintiffs allege that Oregon’s computerized vote tabulation and mail-in voting systems violate their constitutional rights, including violations of the Due Process Clause, the Equal Protection Clause, and their fundamental right to vote. (*See* FAC ¶¶ 198-218.) Plaintiffs allege that “organized criminals” are manipulating Oregon’s elections, and they base their claims on a documentary about voting irregularities in other states and reports of voting irregularities in Oregon. (*See, e.g., id.* ¶¶ 72-86, 100-130, 137-38, 160-62.) Plaintiffs seek entry of a judgment declaring that Oregon’s voting systems are unconstitutional and enjoining their use. (*See* FAC at 54.)

III. SUBJECT MATTER JURISDICTION

Defendants argue that Plaintiffs lack standing to bring their claims and therefore the Court should dismiss this case under Rule 12(b)(1) for lack of subject matter jurisdiction. (*See* Defs.’ Mot. at 9-17.) For the following reasons, the Court agrees that Plaintiffs have

Appendix B

failed adequately to plead a cognizable injury-in-fact and therefore grants Defendants' Rule 12(b)(1) motion to dismiss.

A. Article III's Standing Requirements

“The question of whether a party has standing to sue under Article III is a threshold issue that must be addressed before turning to the merits of a case.” *Shulman v. Kaplan*, 58 F.4th 404, 407 (9th Cir. 2023) (citing *Horne v. Flores*, 557 U.S. 433, 445, 129 S. Ct. 2579, 174 L. Ed. 2d 406 (2009)); see also *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011) (“[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).”). As the parties “‘invoking federal jurisdiction,’ [Plaintiffs] have the burden of establishing standing pursuant to Article III.” *Shulman*, 58 F.4th at 408 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). Thus, Plaintiffs “‘must show (1) that they ‘suffered an injury in fact that is concrete, particularized, and actual or imminent[;]’ (2) ‘that the injury was likely caused by the defendants;’ and (3) ‘that the injury would likely be redressed by judicial relief.’” *Id.* (quoting *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 210 L. Ed. 2d 568 (2021)).

“A court must accept all material allegations of the complaint as true and must construe the complaint in favor of the nonmoving party when deciding standing at the pleading stage and for purposes of ruling on a motion to dismiss for lack of standing.” *Grey v. Jacobsen*, No. CV-

Appendix B

22-82-M-BMM, 2022 U.S. Dist. LEXIS 189266, 2022 WL 9991648, at *2 (D. Mont. Oct. 17, 2022) (citing *Mecinas v. Hobbs*, 30 F.4th 890, 895-96 (9th Cir. 2022)).

B. Analysis

Defendants argue that Plaintiffs have failed to plead a cognizable injury-in-fact to establish standing because their claims are based on generalized grievances regarding Oregon's voting systems that are unconnected to any particularized or concrete injury to Plaintiffs. (Defs.' Mot. at 11-18.)

Plaintiffs acknowledged at oral argument that their grievances are generalized, but stand by their argument that the alleged injury conferring standing here is the "lack of confidence in the integrity of Oregon's election system[.]" (Pls.' Opp'n Defs.' Mot. Dismiss ("Pls.' Opp'n") at 5, 28, ECF No. 78; *see also id.* at 27, "Plaintiffs' injuries stem from their distrust of Oregon's election system[;]" *id.* at 28, Plaintiffs "are focused on a lack of confidence that is justly felt due to the myriad of facts ple[d and a] lack of confidence in the integrity of elections in Oregon is sufficient for [their] claim[;]" *id.* at 29, "Oregon has . . . destroy[ed] Plaintiffs' confidence in the integrity of elections"). Defendants argue in reply that "[a] lack of confidence in Oregon's election system . . . cannot establish standing" because such an injury is not "particularized" to Plaintiffs and does not constitute concrete harm. (Defs.' Reply at 1, 5, arguing that Plaintiffs' "grievances are shared by the collective 'people,' rather than a specific subset of the general public sufficient to 'warrant exercise

Appendix B

of jurisdiction[.]” and citing *Warth v. Seldin*, 422 U.S. 490, 499, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). Defendants are correct.

It is well settled that a voter seeking relief in federal court for alleged violations of constitutional rights must have standing to do so, including “a personal stake in the outcome, distinct from a generally available grievance about government.” *Wash. Election Integrity Coal. United v. Hall*, 634 F. Supp. 3d 977, 2022 U.S. Dist. LEXIS 179255, 2022 WL 4598506, at *2 (W.D. Wash. Sept. 30, 2022) (citing *Gill v. Whitford*, U.S. , 138 S. Ct. 1916, 1923, 201 L. Ed. 2d 313 (2018)). “The Supreme Court has ‘consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” *Id.* (quoting *Lance v. Coffman*, 549 U.S. 437, 439, 127 S. Ct. 1194, 167 L. Ed. 2d 29 (2007) and *Lujan*, 504 U.S. at 573-74). Pursuant to this authority, Plaintiffs lack standing here because the injury they allege is neither particularized nor concrete.

First, Plaintiffs’ alleged injury—their lack of confidence in Oregon’s election system—is not particularized to the plaintiffs in this litigation. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (“For an injury to be ‘particularized,’ it ‘must affect the plaintiff in a personal and individual way.’” (quoting *Lujan*, 504 U.S. at 560 n.1)). Rather, Plaintiffs allege that their lack of confidence in Oregon’s election system is shared “by all of Oregon’s citizens” and is “a statewide issue.” (*See*

Appendix B

Pls.' Opp'n at 28.) As such, Plaintiffs have not alleged a particularized injury sufficient to establish standing.³ *See Warth*, 422 U.S. at 499 (“[T]he Court has held that when the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.”); *Drake v. Obama*, 664 F.3d 774, 782 (9th Cir. 2011) (affirming the district court’s dismissal of claims for lack of standing and finding that “as a voter, [the plaintiff] has no greater stake in this lawsuit than any other United States citizen” and that his alleged injury was merely a “‘generalized interest of all citizens in constitutional governance’ which is insufficient to satisfy the requirements of standing”) (citation omitted); *Grey*, 2022 U.S. Dist. LEXIS 189266, 2022 WL 9991648, at *3-4 (“[T]he case before the Court proves analogous to similar lawsuits that courts dismissed for lack of standing when plaintiffs’ generalized grievances failed to allege an injury in fact. . . . [The plaintiff’s] generalized grievances about [Montana’s] election system software allegedly allowing for ‘ballot tampering’ prove insufficient to grant standing required under Article III of the Constitution.”); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 706-12 (D. Ariz. 2020)

3. Plaintiffs’ counsel asserted at oral argument, without citing any relevant authority, that the Court should create an exception to Article III standing because their claims are novel. Plaintiffs also cite dicta from Supreme Court cases on the importance of confidence in elections, but the cases on which Plaintiffs rely did not address the issue of Article III standing. (See Pls.’ Opp’n at 5, 15, 25-26, 28, citing *Purcell v. Gonzalez*, 549 U.S. 1, 127 S. Ct. 5, 166 L. Ed. 2d 1 (2006) and *Republican Party of Penn. v. Degraffenreid*, 141 S. Ct. 732, 209 L. Ed. 2d 164 (2021)).

Appendix B

(dismissing claims that “the election process and results were ‘so riddled with fraud, illegality and statistical impossibility . . . that Arizona voters, courts and legislators cannot rely on or certify’ its results” for lack of standing because, *inter alia*, “the[] allegations are nothing more than generalized grievances that any one of the 3.4 million Arizonans who voted could make if they were so allowed”); *see also O’Rourke v. Dominion Voting Sys. Inc.*, No. 21-1161, 2022 U.S. App. LEXIS 14625, 2022 WL 1699425, at *2 (10th Cir. May 27, 2022) (“[N]o matter how strongly [the p]laintiffs believe that [the d]efendants violated voters’ rights in the 2020 election, they lack standing to pursue this litigation unless they identify an injury to themselves that is distinct or different from the alleged injury to other registered voters.”); *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020) (affirming the district court’s dismissal of claim for lack of standing where the plaintiff challenged the results of the general election because his alleged injury was not particularized, and finding that the plaintiff “cannot explain how his interest in compliance with state election laws is different from that of any other person”); *Stein v. Cortés*, 223 F. Supp. 3d 423, 432 (E.D. Pa. 2016) (dismissing claims that the defendants infringed on the plaintiffs’ “fundamental right to vote” and finding that it “appears that [the p]laintiffs seek to protect the rights of all Pennsylvania voters [but t]here is no authority to support such an invocation of standing” (citing *Warth*, 422 U.S. at 499-500)); *Samuel v. Virgin Islands Joint Bd. of Elections*, No. 2012-0094, 2013 U.S. Dist. LEXIS 31538, 2013 WL 842946, at *4 (D.V.I. Mar. 7, 2013) (holding that the plaintiffs lacked standing and finding that “[the

Appendix B

plaintiffs' allegations do not distinguish their concerns—about the use of certain voting machines in the election or the election results in general—from concerns of other voters or even other candidates [and in fact, they make a point that their injuries are completely aligned with [all] local voters”).

Second, courts have universally concluded that an alleged injury related to a lack of confidence in a voting system is “too speculative to establish an injury in fact, and therefore standing.” *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1028-29 (D. Ariz. 2022) (finding that the plaintiffs lacked standing because, *inter alia*, their alleged injury of potential voter fraud was too speculative because “a long chain of hypothetical contingencies must take place for any harm to occur” and concluding “that speculative allegations that voting machines may be hackable are insufficient to establish an injury in fact under Article III”), *appeal filed* (9th Cir. Sept. 16, 2022); *see also Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 376 (W.D. Pa. 2020) (dismissing claims related to the state’s mail-in voting system as “too speculative to be concrete” where the plaintiffs claimed a “fear that absent implementation of the security measures that they seek (guards by drop boxes, signature comparison of mail-in ballots, and poll watchers), there [was] a risk of voter fraud by other voters”); *Stein*, 223 F. Supp. 3d at 432 (concluding that “[the plaintiffs’ allegation that voting machines may be ‘hackable,’ and the seemingly rhetorical question they pose respecting the accuracy of the vote count, simply do not constitute injury-in-fact”); *Crist v. Comm’n on Presidential Debates*, 262 F.3d 193, 195 (2d Cir. 2001)

Appendix B

(finding that the plaintiffs' alleged injury that "[t]hey were unable to know that their votes were accurately counted" was "not the kind of 'informational injury' that has previously been found to establish standing and concluding that "a voter fails to present an injury-in-fact when the alleged harm is abstract and widely shared"). So too here.

The Court finds that Plaintiffs' lack of confidence in Oregon's voting systems is a generalized grievance not particularized to the plaintiffs in this litigation and too speculative to qualify as a concrete injury. Accordingly, Plaintiffs have failed to plead an injury-in-fact sufficient to establish standing and the Court dismisses Plaintiffs' claims for lack of subject matter jurisdiction.⁴ The Court dismisses Plaintiffs' claims without leave to amend because the nature of Plaintiffs' claims is inconsistent with Article III standing and any further amendments to Plaintiffs' claims would be futile. *See Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1033, 1087-88 (9th Cir. 2002) (affirming the district court's dismissal of the plaintiffs' claim without leave to amend where the plaintiffs lacked standing to sue and the court's analysis of "[t]he basic underlying facts [as] alleged by plaintiffs" demonstrated that "the plaintiffs cannot cure the basic flaw in their pleading" and finding that "[b]ecause any amendment would be futile, there is no need to prolong the litigation by permitting further

4. Defendants alternatively move to dismiss Plaintiffs' claims under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (*See* Defs.' Mot. at 21-30.) Because the Court lacks subject matter jurisdiction, the Court does not reach the merits of Defendants' Rule 12(b)(6) arguments.

Appendix B

amendment” (citing *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1038 (9th Cir. 2002))).

CONCLUSION

For these reasons, the Court GRANTS the Secretary’s motion to dismiss Plaintiffs’ claims for lack of subject matter jurisdiction and DISMISSES Plaintiffs’ claims without leave to amend (ECF No. 73), GRANTS the County Defendants’ corrected joinder in the Secretary’s motion to dismiss (ECF No. 75), and DENIES AS MOOT the County Defendants’ original joinder in the Secretary’s motion to dismiss (ECF No. 74).

IT IS SO ORDERED.

DATED this 29th day of June, 2023.

/s/ Stacie F. Beckerman
HON. STACIE F. BECKERMAN
United States Magistrate Judge

**APPENDIX C — RELEVANT STATUTORY
PROVISIONS**

OREGON ELECTION STATUTES

247.019 Electronic voter registration; rules.

(1) The Secretary of State by rule shall adopt an electronic voter registration system to be used by qualified persons who have a valid:

- (a) Oregon driver license, as defined in ORS 801.245;
- (b) Oregon driver permit, as defined in ORS 801.250;
- (c) State identification card, issued under ORS 807.400;
or
- (d) Social Security number.

(2)

- (a) The electronic voter registration system shall:
 - (A) Require a person registering to vote under subsection (1)(d) of this section to enter only the final four digits of the person's valid Social Security number;
 - (B) Allow a person to electronically submit an image of the person's signature; and

Appendix C

(C) Allow a qualified person to complete and deliver a registration card electronically.

(b) A registration card delivered under this section is considered delivered to the Secretary of State for purposes of this chapter.

(3) A person who completes a registration card electronically under this section consents to the use of the person's driver license, driver permit or state identification card signature, or an electronically submitted image of the person's signature, for voter registration purposes.

(4) If available, the Department of Transportation shall provide to the Secretary of State a digital copy of the driver license, driver permit or state identification card signature of each person who completes a registration card under this section.

(5) The electronic voter registration system may also include an application programming interface to allow third-party organizations to securely submit registration cards electronically on behalf of individuals. In order to submit registration cards under this subsection, a third-party organization must be approved as a voter registration organization under a process designed by the Secretary of State by rule.

247.275 Limits on considering registration of elector inactive; rules.

(1) Notwithstanding any other provision of ORS chapters 246 to 260, the registration of an elector may not be

Appendix C

considered inactive due to an elector not voting or updating the elector's registration for any period of time.

(2) The registration of an elector shall be considered active if the only reason for the registration of an elector being considered inactive is that the elector neither voted nor updated the elector's registration for any period of time.

(3) The Secretary of State may adopt rules necessary to implement this section.

254.465 Elections to be conducted by mail; rules.

(1) County clerks shall conduct all elections in this state by mail.

(2) The Secretary of State shall adopt rules to:

(a) Provide for uniformity in the conduct of state elections by mail; and

(b) Govern the procedures for conducting elections by mail.

254.470 Procedures for conducting election by mail; rules.

(1) The Secretary of State by rule shall establish requirements and criteria for the designation of places of deposit for the ballots cast in an election. The rules shall also specify the dates and times the places of deposit must be open and the security requirements for the places of

Appendix C

deposit. At a minimum, the places designated under this section shall be open on the date of the election for a period of eight or more hours, but must be open until at least 8 p.m. At each place of deposit designated under this section, the county clerk shall prominently display a sign stating that the location is an official ballot drop site.

(2)

(a) Except as provided in paragraphs (b) to (e) of this subsection, the county clerk shall mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope not sooner than the 20th day before the date of an election and not later than the 14th day before the date of the election, to each active elector of the electoral district as of the 21st day before the date of the election.

(b) If the county clerk determines that an active elector of the electoral district as of the 21st day before the date of the election does not receive daily mail service from the United States Postal Service, the county clerk shall mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope to the elector not sooner than the 20th day before the date of an election and not later than the 18th day before the date of the election.

(c) In the case of ballots to be mailed to addresses outside this state to electors who are not military or overseas electors, the county clerk may mail the ballots not sooner than the 29th day before the date of the election.

Appendix C

(d) If an active elector of the electoral district requests an absentee ballot because the elector will be absent from the electoral district during the period of time described in paragraph (a) of this subsection, the county clerk may, if the elector's ballot is available:

(A) Allow the elector to receive the elector's ballot in person at the office of the county clerk not sooner than the 43rd day before the date of the election; or

(B) Mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope to the elector not sooner than the 43rd day before the date of the election.

(e) The county clerk is not required to mail a secrecy envelope under this subsection if the Secretary of State has approved a different procedure under ORS 254.458 that provides substantially the same degree of secrecy.

(3) For an election held on the date of a primary election:

(a) The county clerk shall mail the official ballot of a major political party to each elector who is registered as being affiliated with the major political party as of the 21st day before the date of the election.

(b) The county clerk shall mail the official ballot of a major political party to an elector not affiliated with any political party if the elector has applied for the ballot as provided in this subsection and that party has provided under ORS 254.365 for a primary election

Appendix C

that admits electors not affiliated with any political party.

(c) An elector not affiliated with any political party who wishes to vote in the primary election of a major political party shall apply to the county clerk in writing. The application must be completed, signed and submitted by the elector electronically, in person or by mail, in a manner determined by the secretary by rule and must indicate which major political party ballot the elector wishes to receive. Except for electors described in subsection (4) of this section, and subject to ORS 247.203, the application must be received by the county clerk not later than 5 p.m. of the 21st day before the date of the election.

(d) If the primary election ballot includes city, county or nonpartisan offices or measures, the county clerk shall mail to each elector who is not eligible to vote for party candidates a ballot limited to those offices and measures for which the elector is eligible to vote.

(4)

(a) For each elector who updates a voter registration after the deadline in ORS 247.025, the county clerk shall make the official ballot, the return identification envelope and the secrecy envelope available either by mail or at the county clerk's office or at another place designated by the county clerk. An elector to whom this subsection applies must request a ballot from the county clerk.

Appendix C

(b) The county clerk is not required to make available a secrecy envelope under this subsection if the Secretary of State has approved a different procedure under ORS 254.458 that provides substantially the same degree of secrecy.

(5) The ballot shall contain the following warning: Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting is subject to a fine.

(6)

(a) Upon receipt of any ballot described in this section, the elector shall mark the ballot, sign the return identification envelope supplied with the ballot and comply with the instructions provided with the ballot.

(b) The elector may return the marked ballot to the county clerk by United States mail or by depositing the ballot at the office of the county clerk, at any place of deposit designated by the county clerk or at any location described in ORS 254.472 or 254.474.

(c) The ballot must be returned in the return identification envelope.

(d) Subject to paragraph (e) of this subsection, if a person returns a ballot for an elector, the person shall deposit the ballot in a manner described in paragraph (b) of this subsection not later than two days after receiving the ballot.

Appendix C

(e) If the elector deposits the ballot at the office of the county clerk, at any place of deposit designated by the county clerk or at any location described in ORS 254.472 or 254.474, the ballot must be received at the office of the county clerk, at the designated place of deposit or at any location described in ORS 254.472 or 254.474 not later than the end of the period determined under subsection (1) of this section on the date of the election. If the elector returns the ballot by mail:

(A) The ballot must be received at the office of the county clerk not later than the end of the period determined under subsection (1) of this section on the date of the election; or

(B) The ballot must:

(i) Have a postal indicator showing that the ballot was mailed not later than the date of the election; and

(ii) Be received at the office of the county clerk not later than seven calendar days after the date of the election.

(f) If a county clerk receives a marked ballot for an elector who does not reside in the clerk's county, the ballot shall be forwarded to the county clerk of the county in which the elector resides not later than the eighth day after the election.

Appendix C

(7) The following shall appear on the return identification envelope:

(a) Space for the elector to sign the envelope.

(b) A notice designed by rule by the Secretary of State, in consultation with the county clerks, explaining that by signing the ballot the elector is attesting under penalty of perjury that the ballot was mailed no later than the date of the election.

(c) A summary of the applicable penalties for knowingly making a false statement, oath or affidavit under the election laws.

(8) If the elector returns the ballot by mail, and a postal indicator is not present or legible, the ballot shall be considered to be mailed on the date of the election and may be counted if the ballot is received no later than seven calendar days after the election.

(9) An elector may obtain a replacement ballot if the ballot is destroyed, spoiled, lost or not received by the elector. Replacement ballots shall be issued and processed as described in this section and ORS 254.480. The county clerk shall keep a record of each replacement ballot provided under this subsection. Notwithstanding any deadline for mailing ballots in subsection (2) of this section, a replacement ballot may be mailed, made available in the office of the county clerk or made available at one central location in the electoral district in which the election is conducted. The county clerk shall designate the central

Appendix C

location. A replacement ballot need not be mailed after the fifth day before the date of the election.

(10) A ballot shall be counted only if:

(a) It is returned in the return identification envelope;

(b) The envelope is signed by the elector to whom the ballot is issued, unless a certified statement is submitted under ORS 254.431; and

(c) The signature is verified as provided in subsection (11) of this section.

(11) The county clerk shall verify the signature of each elector on the return identification envelope with the signature on the elector's registration record, according to the procedure provided by rules adopted by the Secretary of State. Rules adopted by the secretary under this subsection must limit personnel authorized to verify signatures to the personnel authorized to count ballots under ORS 254.476. If the county clerk determines that an elector to whom a replacement ballot has been issued has voted more than once, the county clerk shall count only one ballot cast by that elector.

(12) At 8 p.m. on election day, electors who are at the county clerk's office, a place of deposit designated under subsection (1) of this section or any location described in ORS 254.472 or 254.474 and who are in line waiting to vote or deposit a voted ballot shall be considered to have begun the act of voting.

Appendix C

(13)

(a)

(A) Except as provided in subparagraph (B) of this paragraph, the name of the Secretary of State may not appear in the secretary's official capacity on the return identification envelope or on any instructions or materials included with the ballot if the secretary is a candidate in the election for which the ballot is printed.

(B) This paragraph does not prohibit the name of the Secretary of State from appearing in the secretary's official capacity in the voters' pamphlet.

(b) The name of the county clerk or other filing officer may not appear in the official capacity of the county clerk or filing officer on the return identification envelope or on any instructions or materials included with the ballot if the county clerk or filing officer is a candidate in the election for which the ballot is printed.

(c) As used in this subsection, "filing officer" has the meaning given that term in ORS 254.165.

(14) As used in this section, "postal indicator" means a postmark or other indicator on a mailed ballot, identified by the Secretary of State by rule, that demonstrates the date or time at which a ballot was mailed.