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

ERIC RICHARDSON & TERA HURST,
Oregon electors,

Plaintiffs,

v.

BEVERLY CLARNO, Oregon Secretary of
State,

Defendant.

Case No. 20CV01920

COMPLAINT

PETITION FOR JUDICIAL REVIEW
OF SECRETARY OF STATE ACTION,
ORS 246.910 and ORS 183.484

PETITION FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF, ORS 28.010

EXPEDITED REVIEW REQUESTED
Elections Dispute: ORS 246.910(4)
Fee Authority: ORS 21.135(1), (2)(e)
(Not subject to mandatory arbitration)

Plaintiff alleges:

OVERVIEW OF CASE

1.

This case challenges the decision by Defendant, Secretary of State Bev Clarno, that two "Clean Energy" initiatives submitted for the 2020 election, IP'S 48 and IP 49 (2020), violate the "single subject" rule found in Article IV, section 1(2)(d) of the Oregon Constitution.

2.

The Secretary of State's decision to reject IP's 48 and 49 prevents the initiatives from proceeding. More specifically, the ballot title drafting process set out in ORS

1 250.085 cannot be completed, the initiatives cannot be circulated for signature pursuant
2 to ORS 250.045, or appear on the November 2020 ballot.

3 3.

4 Plaintiffs file this complaint and declaratory judgment action to set aside the
5 Secretary of State's erroneous decisions. Under well-established law, these initiatives
6 do not violate the "single-subject" provisions of Article IV, section 1(2)(d) of the Oregon
7 Constitution. As relief, they ask that (1) the court declare that IP's 48 and 49 comply
8 with the "single subject" rule and other procedural constitutional requirements; and (2)
9 require the Secretary of State to immediately issue a certified ballot title and otherwise
10 continue processing the initiative petitions for the 2020 election cycle.

11 **PARTIES**

12 4.

13 Plaintiff Eric Richardson is the Director of the NAACP of Eugene / Springfield
14 and one of the Chief Petitioners for IP's 48 and 49. Richardson lives in Lane County,
15 Oregon.

16 5.

17 Plaintiff, Tera Hurst, is an Oregon elector and Executive Director of Renew
18 Oregon, a clean energy advocacy coalition in Oregon that promotes the transition to a
19 clean energy economy in a manner that creates good-paying jobs and healthy
20 communities. Hurst lives in Multnomah County.

21 6.

22 Defendant Beverly Clarno is Oregon's Secretary of State.

23 **JURISDICTION, STANDING AND VENUE**

24 7.

25 This court has jurisdiction over this dispute pursuant to ORS 246.910. The
26 Secretary of State's decision, made pursuant to OAR 165-014-0028, is an election law act
27 which is expressly appealable under ORS 246.910.

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8.

This court has jurisdiction to declare whether IP's 48 and 49 violate the "single subject rule" set out in Article IV, section 1(2)(d) of the Oregon Constitution pursuant to ORS 28.010 *et seq.*

9.

Plaintiffs are persons "adversely affected" by the actions of the Secretary of State. Accordingly, they have standing to challenge that decision pursuant to ORS 246.910, ORS 183.484. OAR 165-014-0028(1).

10.

Plaintiffs have legally recognized interest in the outcome of this dispute, greater than the "abstract interest" of an Oregon elector. Accordingly, they have standing to bring this action under ORS 28.010 and ORS 28.130. More specifically:

- (a) Richardson is the Chief Petitioner for IP's 48 and 49.
- (b) Hurst and Renew Oregon, the organization she leads, are leading the overall initiative effort. In addition, Hurst and Renew Oregon pursue legislation reflecting the same policy objectives of promoting clean energy policies that create quality jobs. Any decision regarding the scope of the single-subject rule would have a direct impact on Hurst and Renew Oregon's ability to achieve those policy goals and on organizational resources.

11.

Venue is proper in Marion County because it is the county where Defendant Secretary of State maintains her office and where the decisions were made. *See* ORS 246.910(1) and OAR 165-014-0028(6).

12.

This action is timely filed pursuant to ORS 246.910(2) because it is brought within 60 days of the Secretary of State's decisions.

///

1 THE INITIATIVE PROCESS

2 13.

3 Article IV, section 1(2)(a) of the Oregon Constitution provides the people with
4 the initiative lawmaking authority, which is the power to propose statutes and
5 amendments to the Constitution that will go into effect if approved by the voters at a
6 statewide election.

7 14.

8 The Oregon Constitution sets a series of requirements and conditions on the
9 exercise of the initiative power. As relevant here, Article IV, section 1(2) provides:

10 An initiative petition shall include the full text of the
11 proposed law or amendment to the Constitution. A
12 proposed law or amendment to the Constitution shall
13 embrace one subject only and matters properly connected
14 therewith.

15 15.

16 The Oregon legislature has enacted a series of statutes addressing the
17 administration of the initiative process and associated administrative rules have been
18 adopted. *See generally* ORS 250.005 – 250.149; OAR 165-014-0005 – 0285. The process
19 consists of:

- 20 a. "Chief Petitioners" propose a "prospective petition" with the Secretary of
21 State. ORS 250.045(2).
- 22 b. Once Chief Petitions submit 1000 signatures on their prospective petition,
23 the Secretary forward the petition to the Attorney General to begin the
24 ballot title drafting process. ORS 250.065.
- 25 c. The ballot title contains three parts: (1) a 15-word caption; (2) 25-word
26 "yes" and "no" result statements; and (3) a 125 word summary. ORS
27 250.035.
- d. the Attorney General prepares a draft petition on which interested parties
may submit comments.

- 1
- 2 e. The Attorney General considers comments and, within ten business days,
issues a certified ballot title. ORS 250.067(2)(a).
- 3
- 4 f. Any elector who filed comments may seek review to the Oregon Supreme
Court. ORS 250.085. The court's review is for "substantial compliance"
5 and should be done in an expeditious manner to ensure the orderly and
6 timely circulation of the initiative petitions.
- 7 g. Only after they receive a final certified ballot title can Chief Petitioners
8 begin collecting signatures on the initiative petition. ORS 250.052(3)(b) &
(4).
- 9
- 10 h. Chief Petitioners must submit the petition with enough signatures to
11 qualify for the ballot no less than four months before the November
election – in 2020, that is by July 2, 2020. To qualify, statutory initiatives
12 must be signed by at least six percent of the total number of votes cast for
all candidates for Governor in the prior election – 112,020 for the 2020
13 election. Article IV, section 1(2)(b). *See also, State Initiative and Referendum*
14 *Manual* (rev. July 1, 2018), p. 7.

15 16.

16 During the ballot title process, the Secretary of State reviews the prospective
17 petition for compliance with the procedural requirements of Article IV, section 1,
18 including whether the proposed measure "embraces one subject and matters properly
19 connected therewith." OAR 165-014-0028. If the Secretary determines that a proposed
20 measure does not satisfy the procedural constitutional requirements, she may not
21 approve the cover and signature sheet that contains the certified ballot title and that
22 enables the Chief Petitioners to collect signatures in support of the proposed measure.
23 *Id.* at (5). Any elector who is dissatisfied with the Secretary's determination regarding
24 procedural constitutional compliance may seek judicial review before the Marion
25 County Circuit Court pursuant to ORS 246.910. *See also* OAR 165-014-0028(6).

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22.

At the time the Secretary of State made this decision, the Secretary knew that both Legislative Counsel and the Attorney General strongly disagreed with the Secretary of State's approach and application of the single-subject rule.

23.

The Secretary has provided no legal reasoning or explanation for departing from settled law and practice.

FIRST CLAIM FOR RELIEF
Initiative Petition 48

24.

Plaintiffs reallege and incorporate paragraphs 1 through 23 as if alleged herein.

25.

IP 48 complies with the procedural requirements of the Oregon Constitution, including the "single-subject rule" of Article IV, section 1(2)(d). Secretary of State Clarno erred as a matter of law in finding otherwise.

26.

Pursuant to ORS 246.910, ORS 183.484(5) and ORS 28.010, Plaintiffs are entitled to the following relief:

- (1) A declaration that IP 48 complies with the procedural requirements of Article IV, section 1(2)(d), including the "single-subject" rule;
- (2) An order setting aside the decision of the Secretary of State to reject IP 48 on the ground that is violated Article IV, section 1(2)(d); and
- (3) An order compelling the Secretary of State to immediately reinstate IP 48 and resume processing IP 48 for the November 2020 election cycle.

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1 **SECOND CLAIM FOR RELIEF**

2 **Initiative Petition 49**

3 27.

4 Plaintiff realleges and incorporates paragraphs 1 through 26 as if alleged herein.

5 28.

6 IP 49 complies with the procedural requirements of the Oregon Constitution,
7 including the "single-subject rule" of Article IV, section 1(2)(d). Secretary of State
8 Clarno erred as a matter of law in finding otherwise.

9 29.

10 Pursuant to ORS 246.910, ORS 183.484(5) and ORS 28.010, Plaintiffs are entitled
11 to the following relief:

12 (1) A declaration that IP 49 complies with the procedural requirements of
13 Article IV, section 1(2)(d), including the "single-subject" rule;

14 (2) An order setting aside the decision of the Secretary of State to reject IP 49
15 on the ground that is violated Article IV, section 1(2)(d); and

16 (3) An order compelling the Secretary of State to immediately reinstate IP 49
17 and resume processing IP 49 for the November 2020 election cycle.

18 **THIRD CLAIM FOR RELIEF**

19 **Costs and Attorney Fees**

20 30.

21 Plaintiffs reallege and incorporate paragraphs 1 through 29 as if alleged herein.

22 31.

23 Plaintiffs are entitled to an award of attorney fees and costs pursuant to the
24 court's inherent equitable power where plaintiffs have prevailed in a claim to protect
25 the people's right to enact laws through the initiative process. In doing so, they are
26 vindicating important constitutional and statutory rights that benefit the public and not

27 ///

1 just their own. *Deras v. Myers*, 272 Or 47, 65-66 (1975); *Kerr v. Bradbury*, 193 Or App 304
2 (2004) and *De Young v. Brown*, 300 Or App 530 (2019).

3 **PRAYER**

4 32.

5 WHEREFORE, Plaintiffs pray that judgment be entered against Defendant
6 Secretary of State Clarno as follows:

7 (a) Declaring that IP's 48 and 49 comply with the procedural requirement of the
8 Oregon Constitution, including the "single-subject" provision of Article IV,
9 section 1(2)(d);

10 (b) Finding that the Secretary of State acted without reasonable basis in law
11 when she rejected IP's 48 and 49;

12 (c) Setting aside the Secretary of State's decision to reject IP's 48 and 49;

13 (d) Granting injunctive relief to require the Secretary of State to immediately
14 reinstate IP's 48 and 49 and allow them to be processed and circulate for the
15 November 2020 election;

16 (e) Awarding Plaintiffs their reasonable attorney's fees and costs;

17 (f) Awarding Plaintiffs their costs and disbursements incurred herein; and

18 (g) Granting such other relief as the court deems just and equitable.

19 DATED this 7th day of January, 2020.

20 **BENNETT HARTMAN, LLP**

21
22 s/Margaret Olney
23 Margaret S. Olney, OSB 881359
24 margaret@bennetthartman.com
25 Of Attorneys for Plaintiffs
26
27

Be it enacted by the People of the State of Oregon:

SECTION 1. (1) It is the policy and requirement of the state of Oregon that eligible renewable energy sources and carbon-free resources supply 100 percent of sales of electricity to retail electricity consumers, including but not limited to, those serviced or supplied by an electric company, consumer-owned utility, or electricity service supplier, by January 1, 2045.

(2) By January 1, 2045, and each year thereafter, each electric company, consumer-owned utility and electricity service supplier must demonstrate its compliance with the policy and requirement set forth in subsection (1) of this section.

(3) The Public Utility Commission, in coordination with the Department of Energy, shall adopt by rule a standard or standards for what constitutes "carbon-free resources" that comply with the policy and requirement of subsection (1) of this section.

(4) ORS 469A.100 is inapplicable to the policy and requirement set forth in subsection (1) of this section.

SECTION 2. (1) Unless otherwise prohibited by law, the Oregon Constitution, or the Constitution of the United States, if a construction project is valued at \$50,000 or more and is used to comply with section 1, the electric utility or primary contractor participating in the project:

(a) Shall pay the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where the labor is performed;

(b) Shall offer health care and retirement benefits to the employees performing the labor on the project;

(c) Shall participate in an apprenticeship program registered with the State Apprenticeship and Training Council; and

(d) Must demonstrate a history of compliance with federal and state laws, including but not limited to, wage and hour laws.

(2) The Public Utility Commission, in coordination with the Bureau of Labor and Industries, shall adopt rules to ensure compliance with the requirements of subsection (1) of this section.

SECTION 3. When complying with the requirements of section 1, to the maximum extent deemed possible, an electric utility shall seek to ensure that all consumers can benefit from the transition to renewable energy sources, carbon-free resources and beneficial electrification, particularly taking into consideration the protection and interests of consumers in areas disproportionately impacted by geographic, socioeconomic, historic disadvantage, public health criteria, and environmental criteria, including but not limited to areas with high concentrations of low-income households, high unemployment, high rent burdens, or high household energy burdens.



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Elections Division

Exhibit 1

Page 1 of 2

SECTION 4. For the purposes of section 1 through section 3:

- (a) The terms “consumer-owned utility”, “electric company”, “electric utility”, and “electricity service supplier” have the meaning given to those terms in ORS 757.600.
- (b) “Renewable energy source” has the meaning given to that term in ORS 469A.005(12).
- (c) “Retail electricity consumer” means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon.



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Elections Division

Exhibit 1

Page 2 of 2

Be it enacted by the People of the State of Oregon:

SECTION 1. (1) It is the policy and requirement of the state of Oregon that eligible renewable energy sources and carbon-free resources supply 100 percent of sales of electricity to retail electricity consumers, including but not limited to, those serviced or supplied by an electric company, consumer-owned utility, or electricity service supplier, by January 1, 2045.

(2) By January 1, 2045, and each year thereafter, each electric company, consumer-owned utility and electricity service supplier must demonstrate its compliance with the policy and requirement set forth in subsection (1) of this section.

(3) The Public Utility Commission, in coordination with the Department of Energy, shall adopt by rule a standard or standards for what constitutes "carbon-free resources" that comply with the policy and requirement of subsection (1) of this section.

(4) ORS 469A.100 is inapplicable to the policy and requirement set forth in subsection (1) of this section.

SECTION 2. (1) Electric utilities shall invest in beneficial electrification programs, projects, plans, incentives, and infrastructure measures that facilitate widespread beneficial electrification and result in reductions of greenhouse gas emissions in furtherance of meeting state greenhouse gas targets, goals, or emission limits as set forth in ORS 468A.205.

(2) The Public Utility Commission shall facilitate widespread beneficial electrification that results in reductions of greenhouse gas emissions in furtherance of meeting state greenhouse gas targets, goals, or emission limits as set forth in ORS 468A.205.

(3) The Public Utility Commission shall allow a rate or rate schedule of an electric company to reflect prudently incurred amounts for investments that facilitate widespread beneficial electrification, including but not limited to a nonbypassable distribution charge.

(4) Consumer-owned utility governing boards shall allow a rate or rate schedule of a consumer-owned utility to reflect prudently incurred amounts for investments that facilitate widespread beneficial electrification, including but not limited to a nonbypassable distribution charge.

(5) An investment in beneficial electrification is a utility service and a benefit to a utility's ratepayers.

SECTION 3. (1) Unless otherwise prohibited by law, the Oregon Constitution, or the Constitution of the United States, if a construction project is valued at \$50,000 or more and is used to comply with section 1 or section 2, the electric utility or primary contractor participating in the project:

(a) Shall pay the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where the labor is performed;

(b) Shall offer health care and retirement benefits to the employees performing the labor on the project;

(c) Shall participate in an apprenticeship program registered with the State Apprenticeship and Training Council; and

(d) Must demonstrate a history of compliance with federal and state laws, including but not limited to, wage and hour laws.



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Exhibit 2

Page 1 of 2

(2) The Public Utility Commission, in coordination with the Bureau of Labor and Industries, shall adopt rules to ensure compliance with the requirements of subsection (1) of this section.

SECTION 4. When complying with the requirements of section 1 through section 3, to the maximum extent deemed possible, an electric utility shall seek to ensure that all consumers can benefit from the transition to renewable energy sources, carbon-free resources and beneficial electrification, particularly taking into consideration the protection and interests of consumers in areas disproportionately impacted by geographic, socioeconomic, historic disadvantage, public health criteria, and environmental criteria, including but not limited to areas with high concentrations of low-income households, high unemployment, high rent burdens, or high household energy burdens.

SECTION 5. For the purposes of section 1 through section 4:

(a) “Beneficial electrification” means electrification that reduces greenhouse gas emissions over time, and provides one or more of the following:

(i) a reduction of indoor and/or outdoor air pollution;

(ii) a cost savings for consumers over time; or

(iii) improvements to the distribution or transmission management of the electrical grid, improvements to utility system efficiencies, or other improvements that foster a more robust and resilient electrical grid.

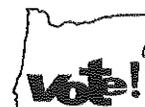
(b) “Electrification” means using electricity as the primary fuel or power source where fossil fuel or other energy sources would otherwise provide the primary fuel or power source for a vehicle, engine, appliance, equipment, technology or other end use, including but not limited to transportation, space and water heating, and industrial processes.

(c) The terms “consumer-owned utility”, “electric company”, “electric utility”, and “electricity service supplier” have the meaning given to those terms in ORS 757.600.

(d) “Greenhouse gas” has the meaning given to that term in ORS 468A.210.

(e) “Renewable energy source” has the meaning given to that term in ORS 469A.005(12).

(f) “Retail electricity consumer” means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon.



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Exhibit 2

Page 2 of 2

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE
A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

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255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

December 19, 2019

Lisa Adatto
1960 Egan Way
Lake Oswego, OR 97034

Chrissy Reitz
1420 Sunset Road
Hood River, OR 97031

Eric C Richardson
1344 Betty Lane
Eugene, OR 97404

Via Email

Dear Chief Petitioners:

The Secretary of State has reviewed the text of Initiative Petition **2020-048**, considered all procedural constitutional requirement comments filed, and received counsel from the Attorney General.

Article IV, Section 1(2)(d) of the Oregon Constitution states, "A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith." The Secretary believes that Section 2 of IP 48 is not "properly connected" to the rest of the initiative and therefore IP 48 embraces more than one subject.

After review and consistent with the Secretary's duty to uphold the Oregon Constitution's procedural requirements, the Secretary has rejected Initiative Petition **2020-048**, proposed for the November 3, 2020, General Election. The Secretary has determined it does not comply with the procedural requirements established in the Oregon Constitution for initiative petitions, particularly the single subject requirement.

If you have any questions, please contact me at 503.986.1518.

Sincerely,

Stephen N. Trout
Director of Elections

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE
A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



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Hood River, OR 97031

Eric C Richardson
1344 Betty Lane
Eugene, OR 97404

Via Email

Dear Chief Petitioners:

The Secretary of State has reviewed the text of Initiative Petition **2020-049**, considered all procedural constitutional requirement comments filed, and received counsel from the Attorney General.

Article IV, Section 1(2)(d) of the Oregon Constitution states, "A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith." The Secretary believes that Section 3 of IP 49 is not "properly connected" to the rest of the initiative and therefore IP 49 embraces more than one subject.

After review and consistent with the Secretary's duty to uphold the Oregon Constitution's procedural requirements, the Secretary has rejected Initiative Petition **2020-049**, proposed for the November 3, 2020, General Election. The Secretary has determined it does not comply with the procedural requirements established in the Oregon Constitution for initiative petitions, particularly the single subject requirement.

If you have any questions, please contact me at 503.986.1518.

Sincerely,

Stephen N. Trout
Director of Elections