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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

Marc Thielman; **Ben Edtl**; **Janice Dysinger**; **Don Powers**; **Sandra Nelson**; **Chuck Wiese**; **Loretta Johnson**; **Terry Noonkester**; **Steve Corderio**; **Jeanine Wenning**; **Diane Rich**; **Pam Lewis**; **Senator Dennis Linthicum**; individually and on behalf of all others similarly situated, Plaintiff, v. **Shemia Fagan,** in her official capacity as **Oregon Secretary of State**; **Baker County**; **Benton County**; **Clackamas County**; **Clatsop County**; **Columbia County**; **Coos County**; **Crook County**; **Curry County**; **Deschutes County**; **Douglas County**; **Gilliam County**; **Grant County**; **Harney County**; **Hood River County**; **Jackson County**; **Jefferson County**; **Josephine County**; **Klamath County**; **Lake County**; **Lane County**; **Lincoln County**; **Linn County**; **Malheur County**; **Marion County**; **Morrow County**; **Multnomah County**; **Polk County**; **Sherman County**; **Tillamook County**; **Umatilla County**; **Union County**; **Wallowa County**; **Wasco County**; **Washington County**; **Wheeler County**; **Yamhill County**; Defendants.	Case No.: 3:22-cv-1516-SB **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS** **Request for Oral Argument**

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I.   INTRODUCTION

Imagine a hypothetical jurisdiction ("Jurisdiction") where one party (the "Party") controls the executive, legislative, and judicial branches of government. Imagine further that the Jurisdiction has established an election system that is designed to keep the Party in power. The Party has built into the election system multiple mechanisms that allow the Party to control the reported outcome of elections.

In the Jurisdiction ballots are spread indiscriminately allowing those sympathetic to or paid by the Party to collect ballots and forge votes. Entities sympathetic to the Party gather up excess ballots and mark them to favor the Party. The only barriers to invalid ballots entering the system are ineffective and easily defeated by large numbers of invalid ballots and technology. No chain of custody exists to track the ballots from the hands of the citizen to the machines that do the counting. Exploiting these vulnerabilities, the Party embeds a stream of fake ballots manufactured by the Party into the flow of legitimate ballots to vote-counting stations.

Ballots received at the vote-counting station are anonymized so that a citizen is unable to determine whether their vote was counted or not. Effective controls do not exist to prevent a paid Party election worker from replacing a stack of actual ballots with a stack of fake ballots marked in a way that favors the Party. There is no mechanism to go back and recount authentic votes or to determine which ballots are authentic.

The election is designed by the Party to last for several weeks allowing the Party to see how the vote is progressing. It even extends for a week after the official election day with loopholes designed to permit late ballots to be submitted. The Party employs a feedback system to react to the vote count by adjusting the level of fake ballots that it feeds

into the system to cause members of the Party to prevail while still making the results look plausible. The Party even lets a few members of the opposition win their elections to further camouflage the predetermined outcome of the overall election in which the Party will retain overwhelming control.

The votes are counted by machines that run on computer software responsive to instructions by outside entities during the election. The Party has embedded in the software ways of manipulating the result and the computer software dutifully executes the commands that are given by apparatchiks employed by the Party.

For appearances sake, the Party permits superficial observation of the process, but does not allow observation at a sufficient depth that would uncover the corruption that the Party has built into the system. Similarly, the Party touts its audit system for public show, but the audit system has never been used. The Party has to deal with pesky public information requests, an idealistic way for the public to feel that it can hold the Party accountable; but the Party has numerous ways to frustrate those requests and never permits the release of enough information for the citizens to get a grasp on the extent of the corruption.

With each election cycle, the Party cements its control of the election system and improves its methods of maintaining control of power. The citizens try valiantly to vote the Party out of office, but the Party, with its lock on the election process, maintains its control over all three branches of government election after election.

Meanwhile, the quality of life in the Jurisdiction degrades from year to year. The unrest among the people increases year after year. Allegations of rigged elections abound. The Party responds with platitudes, gaslighting the people by claiming that the Jurisdiction

runs the most secure and cleanest elections anywhere. Just trust us, they say, we are protecting you.

How do the citizens escape the boxed canyon in this hypothetical? What are their options? The people should be choosing their leaders, but in the Jurisdiction, the Party thwarts the will of the people to keep itself in power. They put on an election for show, but control the outcome to keep themselves in power. The people know how this ends—they know of the example of Venezuela. Fortunately, for the people, the Jurisdiction is not in South America; the Jurisdiction is in the United States and the people have the protection of the United States Constitution. However, the law historically does not favor challenges to elections because the federal courts are reluctant to interfere with the normal democratic process.

Yet the Jurisdiction presents a new problem not faced by the federal courts before. When the Party completely controls all aspects of elections to keep the Party in power, then there is no democratic process.

Does this hypothetical describe Oregon? The answer to the question of whether Oregon's government is fraudulently manipulating elections to keep the same party in power is—we don't know. By outward appearances it could very well be the case. What Plaintiffs see are characteristics and anomalies that are entirely consistent with fraudulent manipulation of elections by those in power. The hypothetical aptly describes Oregon's election system from the outside looking in and what might be happening on the inside. Significantly, Oregon's election system prevents the people from knowing what is happening on the inside and whether the results are fair.

Therein lies the problem that this lawsuit seeks to address. The election system built by Oregon's government prevents the people from inquiring and knowing whether their elections are fair. They are completely shut out. Whether or not Oregon's government is corrupt is not the question in this lawsuit. The problem that this lawsuit addresses is the existence of an election system that would protect a corrupt government, if it were corrupt, because the election system is out of the control of the people.

Such an election system cannot be allowed to exist in the United States where governments are instituted among the people, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to those ends, it is the right of the People to abolish it.[1]

II.   ARGUMENT

A.   Our democracy depends on the existence of processes that give citizens confidence in electoral fairness.

1.   *The standard for standing.*

"Article III of the Constitution limits the jurisdiction of federal courts to Cases and Controversies. The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process."[2] Standing requires an injury in fact, a causal connection between the injury and the conduct complained of, and the injury must be redressable by the court.[3] The injury must be concrete and particularized and actual or imminent.[4]

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[1] THE DECLARATION OF INDEPENDENCE, para. 2 (U.S. 1776).
[2] *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014)
[3] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).
[4] *Driehaus*, 373 U.S. at 158.

2.   *How Plaintiffs have been injured.*

"Voting is of the most fundamental significance under our constitutional structure."[5] 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."[6] The right to vote is a fundamental political right.[7] The right to have one's vote counted is as strong as the right to put a ballot in the ballot box.[8]

However, merely holding elections is not enough. Iran holds elections—China holds elections—and the once free country of Venezuela holds elections—all for show. "Elections 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.'"[9] Stated another way, when there is a lack of confidence in the integrity of the election system, there is no self-governance.

It is this lack of confidence in the integrity of Oregon's election system that is the injury that give Plaintiffs standing.

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud ***drives honest citizens out of the democratic process*** and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. The ***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.[10]

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[5] *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

[6] *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014).

[7] *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

[8] *United States v. Mosely*, 238 U.S. 383, 386 (1915).

[9] *Republican Party v. Degraffenreid*, 141 S. Ct. 732, 734 (2021) (J. Thomas dissenting in denial of certiorari) (quoting *Democratic National Committee* v. *Wisconsin State Legislature*, 141 S.Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (emphasis added).

[10] *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (emphasis added).

Disenfranchisement is suffered by each Plaintiff. They are disenfranchised because honest citizens have been driven out of the democratic process. Plaintiffs are disenfranchised because, due to the public's lack of confidence in the fairness of elections, they no longer have self-governance. In other words, they are no longer free.

A characteristic of a trusted election system is transparency, transparency being a bedrock principle in democracies.[11] Transparency is necessary to engender trust. Without a trusted and transparent election system, the people are not in control of their destiny. In essence, Plaintiffs and all Oregonians have been shut out of the election process. Oregonians are not allowed to know or verify the trustworthiness of their elections. These harms are suffered by each Plaintiff individually. A person's right to vote is individual and personal in nature.[12] Plaintiffs allege facts showing disadvantage to themselves as individuals, consequently they have standing to sue.[13]

It is a constitutional imperative that the election process itself allows citizens to have confidence in the fairness of the election. An election process that fails to meet that standard is unconstitutional and should be struck down. Plaintiffs' lack of confidence in Oregon's election system is well-demonstrated by the very nature of vote-by-mail and the facts pleaded.

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[11] *See Doe v. Reed*, 561 U.S. 186, 199 (2010).
[12] *Gill v. Whitford*, 138 S.Ct. 1916, 1929 (2018).
[13] *See Baker v. Carr*, 369 U.S. 186, 206 (1962).

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B.   **Oregon's 100% vote-by-mail system is inherently insecure.**

Oregon began local voting by mail in 1981 and instituted a 100% vote-by-mail system during the 2000 election.[14] Vote-by-mail was sold as a convenient and cost-effective way to vote.[15] It was also touted as a way to increase the integrity of elections.[16]

That last part was a complete deception, as it is well-known that the risk of fraud for mail-in voting is "***vastly more prevalent***" than in-person voting.[17] "Voting by mail is now 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."[18]

At its core, mail-in voting replaces the oversight inherent with in-person voting at polling places with something akin to an honor system.[19] Judge Posner has written that "absentee voting is to voting in person as a take-home exam is to a proctored one."[20] Judge Posner further noted that voting fraud is a serious problem in the U.S. elections that are facilitated by mail-in voting.[21]

As explained by Heather Gerken, now Dean of Yale Law School,[22] mail-in voting permits simpler and more effective alternatives to commit fraud on a large enough scale to swing an election.[23] Gerken further explained, "You could steal some [mail-in] ballots or stuff a ballot

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[14] Oregon Secretary of State, *Oregon Vote-by-Mail*, https://sos.oregon.gov/elections/Documents/statistics/vote-by-mail-timeline.pdf (2000) (last visited March 15, 2023).

[15] *Id*.

[16] *Id*.

[17] Adam Liptak, *Error and Fraud at Issue as Absentee Voting Rises*, N. Y. TIMES (Oct. 6, 2012), https://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html (last visited March 15, 2023) (emphasis added).

[18] *Id*.

[19] *Id*.

[20] *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004).

[21] *Id*.

[22] https://law.yale.edu/about-yale-law-school/office-dean

[23] Liptak, *supra* note 17.

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."[24]

> **C.   Extraordinary confidence-destroying facts concerning Oregon's election process are pleaded**.

> 1.   *Oregon's failure to maintain voter rolls violates federal law and enables illegal ballot trafficking.*

Nationwide, organized, criminal ballot trafficking is a well-documented fact.[25] Such

illegal ballot trafficking is occurring in Oregon.[26] Based on analytics, there are two major mule

rings in Oregon, one in Portland and one in Eugene.[27] Plaintiffs understand that an organized

crime syndicate is intent on stealing the results of elections.[28]

By its nature, ballot trafficking requires a large number of phantom voters listed on the

voter rolls as if they were real, legitimate voters. The only votes that can be counted are from

people listed on voter rolls. Oregon is notoriously bad in maintaining the accuracy of its voter

rolls. There are more people registered to vote than are eligible to vote in Oregon.[29]

Residents of Lane County investigated the state of their voter rolls. There are 171

locations in Lane County with eight or more voters registered to vote at a single address. They

found registrations tied to locations that do not exist, such as vacant lots, vacant buildings, and

street corners. They found 105 registrations with no address on file. They visited 40 addresses

having 8 or more voter registrations. In their survey, they found that only 40% of registrations

were valid and a total of 307 were invalid registrations. For example, an address on Amazon

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[24] *Id*.
[25] Am. Compl. [Doc. No. 71] ¶¶ 72-73.
[26] Am. Compl. ¶ 74.
[27] Am. Compl. ¶ 77.
[28] Am. Compl. ¶ 75.
[29] Am. Compl. ¶ 84

Parkway had 85 registered voters—but no one lives there. A Walmart parking lot in Eugene has twelve registered voters—no one lives there.[30]

The problem is statewide. Judicial Watch, a watchdog organization, sent a certified letter to Defendant Shemia Fagan, on November 16, 2021, asserting violations of Section 8(a)(4) of the National Voter Registration Act of 1993 (NVRA), which mandates that states conduct a general program that makes a reasonable effort to remove the names of ineligible voters. Judicial Watch cited data reported by Oregon to the Election Assistance Commission ("EAC"). The data shows that fourteen Oregon counties reported removing five (5) or fewer voter registrations pursuant to Section 8(d)(1)(B) in that four-year period with many removing no registrants at all. Specifically, over four years, the counties removing five or fewer registrants are: Multnomah (Oregon's most populated county) with five removals, Lane County with two removals, Klamath, Columbia, Tillamook, Sherman and Wasco County (one removal), and Wallowa, Harney, Lake, Sherman, Jackson, Gilliam and Wheeler Counties (zero removals). The letter goes on to note that eleven other Oregon counties reported similarly low removals pursuant to the NVRA over the past two years: Marion County (one removal), Douglas County (five removals), Yamhill County (one removal), Josephine County (one removal), Polk County (zero removals), Coos County (three removals), Lincoln County (six removals), Union County (Five removals), Malheur and Baker Counties (zero removals).[31]

These impossibly low numbers cannot possibly reflect actual losses of registered voters due to people who die or move out of the county. Defendants are expending no effort to abide by their obligations under the National Voter Registration Act. It is clearly the policy of Oregon and each of these counties to violate the National Voter Registration Act.

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[30] Am. Compl. ¶ 85.
[31] Am. Compl. ¶¶ 95-97.

Lane County Election officials have stated publicly that they have not updated the voter rolls in over four years and had no plan to do so prior to the 2022 general election. The intent of Oregon practice is clear—allow names of voters to remain on the voters rolls indefinitely.[32]

Multnomah County has a population of 839,000 people, which means tens of thousands of registered voters will have changed residences during the prior four years without notifying the county elections office. With mail-in voting, that means Multnomah County is sending out tens of thousands of ballots that never reach their intended recipient. These ballots are delivered by mail and are unsecured. If a voter moves to another county and updates their registration, Multnomah is under no state requirement to update its voter rolls and if the EAC data is to be believed, they do not.[33]

The obvious significance of this failure to maintain voters rolls is to undermine the effect of the voter roll to prevent unauthorized persons from voting. As a result, one can deduce a motive—the purpose of refusing to clean voter rolls is to maximize the number of ballots sprinkled around the State knowing that many will find their way into the hands of criminals who will find ways to insert illegal ballots into the system. Kind of like dropping dollar bills on the sidewalk—one can expect opportunists to scoop them up and put them to use. With its bloated voter rolls and refusal to clean them up, Defendants are enabling illegal ballot trafficking.

Oregon lawmakers appear eager to keep expanding the voter rolls with even more phantom voters. In 2021, ORS § 247.275 was enacted which prohibits removing registered voters from the active voter rolls for not voting for any period of time. The law also moved a substantial number of inactive voters from the inactive list to the active list.[34] So when a

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[32] Am. Compl. ¶ 86.
[33] Am. Compl. ¶ 99.
[34] Am. Compl. ¶ 98.

registered voter moves out of a county, under Oregon law they will remain listed as an active registered voter in that county indefinitely. Every election, a ballot will be printed for them and mailed. That ballot can be scooped up by criminal elements, marked, and inserted into the election system—an illegal vote that will get counted.

Plaintiff Marc Thielman, a candidate for the Republican nomination for Oregon Governor in the Spring of 2022, made a campaign video highlighting how a friend and his wife each received two ballots after moving from Marion to Lane County (one ballot from each county) in March of 2022. Neither updated their voter registration information but they did file with the post office to forward their mail and change of address. To their surprise, they received two ballots each, one set from Marion County and one set from Lane County.[35]

On Sunday, May 8th, 2022, Mr. Thielman received a phone call from the Marion County Elections Clerk, Bill Burgess, demanding the video be taken down as it had gone viral on social media. Mr. Burgess explained that it constituted "misinformation," and posting it was "irresponsible." Mr. Thielman agreed to take down the video if Mr. Burgess could explain what part of the content was inaccurate. Mr. Burgess explained that only one of the votes would count because a second cast vote under the same name is "flagged" in the county system so they would know to only count one, namely the most recent registration. But Mr. Burgess could not explain how Lane County could identify a person who had submitted a ballot in Lane County, had also submitted a ballot in Marion County. He stated, "Well I appreciate this discussion as it will help to inform the voting process." The election clerk for Marion County conceded that there is no mechanism in place to avoid this problem.[36]

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[35] Am. Compl. ¶ 101.
[36] Am. Compl. ¶ 102.

This is elementary stuff. A person moves from one county to another; how do you ensure that such a person votes only once. After 20 years, Oregon has not figured out how to avoid duplicate ballots being mailed and cast in separate counties. Oregon's election system is not a rigorous system designed to maintain election integrity. It is a system that is designed to allow illegal votes to be cast.

Cara Tapken, a Multnomah County voter, received a ballot at her address for a person who was deceased. She reported the death to the County in 2019 as well as the Secretary of State and numerous other public officials, but as of 2023, the deceased person is still on the active voter rolls in Multnomah County.[37]

Anthony Hanson lived in Portland, Oregon for a total of only two weeks. That was several years ago. Anthony now lives in Baltimore, Maryland. Ballots with Anthony's name are still received at the address where he lived for only a brief two week period.[38] Oregon has systems designed to add names to the voter rolls on the flimsiest of grounds—but it's a one-way street—once a name is on the list, it is not removed.

In a sample of 4,400 Washington County voter records reviewed by one citizen, 13% (558) were dead; 185 of the dead were designated as active voters; 373 of the dead were designated as inactive. *Twelve of these dead voters cast post-mortem votes*. The longest deceased person among them died in 2010.[39] In a canvas of 248 records performed by another Washington County citizen, *85 registered voters had moved away* from Washington County before the 2020 election *and still voted* in Washington County.[40]

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[37] Am. Compl. ¶¶ 104-105.
[38] Am. Compl. ¶ 106.
[39] Am. Compl. ¶ 160.
[40] Am. Compl. ¶ 161.

2.   *Stacks of fake ballots are being generated for input into the system.*

Students at the University of Oregon receive two ballots. One at the University and the other at their home address (many of whose homes are out of state). Karen Kaplan was a manager of the University of Oregon Recycling Department. She was known for her partisan nature and often displayed her American Communist Party Membership card to her student employees, friends, and co-workers on campus. Under her directive, beginning in 1998, she had separate recycling receptacles—one specifically for ballots—placed in student mail areas and other high traffic places on campus. Students were encouraged to "recycle" their ballots.[41]

University recycling employees would go around daily prior to election day to collect the ballots. The piles of discarded ballots were then driven off campus and delivered to an SEIU office located (at the time) at the Ulano Credit Union Building in Eugene Oregon. The union then sent out emails soliciting help with filling out ballots, and those that did, report that they were told how to fill out the ballot.[42] No part of this story describes legitimate activity. The union was collecting ballots—there is nothing legitimate that the union could use them for. The union was filling out ballots—that is blatantly illegal. Obviously, the union had a way to get the ballots into the system to be counted, or they would not have wasted their time. And this was not a minor operation. The University of Oregon has 30,000 students with 30,000 excess ballots. That this is allowed to happen speaks volumes.

Bad actors, such as Antifa, exploit the insecure nature of mail in ballots by posting "how to vote more than once" instructions on social media. The instructions included suggestions on how to harvest ballots from your neighbors and fill them out "in order to save democracy from

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[41] Am. Compl. ¶ 108.
[42] Am. Compl. ¶ 109.

Christine Drazan."[43] No Oregon authority is taking any action to stop these abuses. The motive is obvious, these illegal activities benefit those in power.

Chris Dudley was a popular Republican gubernatorial candidate who was leading his Democratic opponent by 1% at midnight on Election Day in 2010. The next morning it was reported that approximately 44,000 ballots were "discovered" in Multnomah County and would need to be counted. At the end of the "counting" Dudley lost the race by approximately 1% or about 22,000 votes.[44] In approximate numbers, that means that nearly all of the 44,000 ballots "discovered" in Multnomah County were marked for Chris Dudley's opponent.

3.   *Oregon creates laws that enable illegal voting.*

In 2021, the Oregon legislature passed House Bill 3291, which was signed into law. House Bill 3291 permits the counting of ballots received by mail up to seven days after an election. Oregon promoted the idea that such ballots were still required to be post marked by election day. But the Post Office does not put postmarks on ballot mail. The law was constructed with a loophole which allows ballots without a postmark received after election day to be counted. This law makes it even easier for criminals to cheat. After seeing the results of the election as of election day, criminals now have seven more days to mail in more phantom votes to affect the results of an election.[45]

In 2022, House Bill 4133 was passed and signed into law, amending ORS 247.019 to permit the registration of a voter whose only identification was the last four digits of a Social Security number. Further, the registration could be done online with an electronic copy of the person's signature. It is not a difficult task for a criminal to invent four-digit numbers. Such

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[43] Am. Compl. ¶ 100.
[44] Am. Compl. ¶ 113.
[45] Am. Compl. ¶ 93.

invented numbers could not be checked because 4 digits does not uniquely identify anybody. This law clearly will result in many registrations of phantom voters who would otherwise not be qualified. A single individual—an illegal alien even—could, for example, register many times under many different four-digit numbers that they have invented.

House Bill 3291 and House Bill 4133 are recent examples of how Oregon's politicians are working assiduously to make Oregon's election system less secure and to enable cheating.[46] The motive can be readily deduced, House Bills 3291 and 4133 benefit those already in power.

4.   *An ineffective signature check is the only control.*

Signature verification is a very imprecise and poor way of confirming someone's identity. Determining whether a signature matches the official record is a subjective judgment. Signatures vary over time, and they are dissimilar from day to day.[47]

Signatures can 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.[48]

Signature verification leads to far higher rates of ballot challenges and rejections.[49] Clackamas County rejected 5,000 ballots for signature mismatch.[50] That figure, 5,000 rejected ballots, is an astounding number revealing an astounding problem. Each of those 5,000 ballots was either a fake or a legitimate ballot. Both explanations are really bad and very destructive to

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[46] Am. Compl. ¶¶ 93-94.
[47] Am. Compl. ¶ 121.
[48] Am. Compl. ¶ 122.
[49] *Degraffenreid*, 141 S. Ct. at 736.
[50] Am. Compl. ¶ 130.

confidence in the integrity of the election. A large number of fake ballots would only show the

extent of the criminal activity that is targeting the election. If thousands of fake ballots were

caught in Clackamas County, it stands to reason that many times more ballots made it past the

checkers. Just like drug trafficking over the border, only a fraction of the illegal contraband is

caught. 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 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.[51]

Authorities have apparently recognized the optics problem when there is a high signature

match rejection rate. An Oregon video training seminar explains: "You're looking for reasons to

keep the signature in, to validate the signature, rather than looking for reasons to throw the

signature out. . . . We're looking for any reason to keep the signature."[52] Of course, this

instruction just makes it easier for forged signatures to get through.

     5.   *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.[53] Observers watching the signature

verification process in Multnomah County disagreed with decisions being made on signature

verification. All concerns that were raised were ignored.[54] And of course, if nothing is done

immediately, there is no going back when the ballot is removed from the envelope, destroying

the connection between the ballot and the envelope. There is no way to undo or appeal a faulty

decision approving a signature match.

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[51] Am. Compl. ¶ 125, 126, 129.
[52] Am. Compl. ¶ 123.
[53] Am. Compl. ¶ 153.
[54] *Id.*

On election day, Washington County rejected the signature on many ballots—signatures that to the observer looked just fine—while approving others that did not resemble the master signature. The observers on that day sought to challenge about 230 signatures, but the vast majority were accepted by the workers despite the challenge. There is no mechanism for effectively challenging the signatures because once it is accepted, it is *fait accompli*, the ballot goes into the counter. There is no avenue for appeal and there no way to undo the process.[55]

Vote counting in Douglas County lasted for 35 days. Douglas County does not allow in-person observation. Observers must watch the action through cameras. The cameras were only on for portions of 7 days out of the 35 days. The images were so small that an observer could not identify with any certainty whether the papers being fed into the tally machines were in fact ballots. In the envelope opening area, there was no access to see any of the signature verification process. The election observation process in Douglas County is a sham, designed to check a box, but not designed to give the people confidence that their votes are being properly counted.[56]

In Washington County, the observation room is equipped with video screens displaying the output of cameras in the work room. The cameras are 20-30 feet from the action, preventing the observers from seeing any detail of the work. The cameras are wide angle security cameras, not suitable for observation of any detail. There are 10 cameras and only 4 screens set up to rotate every 45 seconds, so that no task being 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 designed to give the people confidence that their votes are being properly counted.[57]

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[55] Am. Compl. ¶ 158.
[56] Am. Compl. ¶ 154.
[57] Am. Compl. ¶ 155.

6.   *The purported audit process is a sham.*

Oregon's Director of Elections, in a Directive issued September 22, 2021, relied on "risk limiting audits" as one of the pillars of Oregon's purported "transparent" and "robust" security measures. Rules and procedures for "risk limiting audits" are promulgated in ORS 254.532. However, Luke Belont, the Deputy Elections Director admitted to an observer in Washington County that no county in Oregon has the infrastructure to do a risk limiting audit. No county in Oregon actually performs the risk limiting audits that Oregon touts.[58]

7.   *There is no chain of custody for ballots.*

Plaintiff Marc Thielman queried Lane County Elections Supervisor Drew Pryor about whether the County could produce Thielman's ballot. Pryor explained that once the ballot was out of the envelope, there was no way to identify that it belonged to Thielman. Nor is there any way to determine that ballots were not switched. Indeed, Pryor confirmed that the County can print blank ballots but there is no control that would prevent a bad actor from printing ballots.[59] Thielman went on to submit a public records request for his ballot which was rejected by the County.[60]

Election workers are allowed to take large bags capable of carrying volumes of paper ballots in and out of secure tabulation rooms.[61] Mark Cosby is a Lane County resident who surveilled the Lane County Election Office parking lot on election night, November 2022. Mr. Cosby witnessed a crowd of people leaving the building late at night carrying various bags, duffle bags, and backpacks that were heavy and bulky, consistent with carrying paper.[62] People

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[58] Am. Compl. ¶159.
[59] Am. Compl. ¶¶ 118-119.
[60] Am. Compl. ¶ 120.
[61] Am. Compl. ¶ 114, 119.
[62] Am. Compl. ¶ 114.

leaving the Election Office building late at night with large bags loaded with what appeared to be a large amount of paper, is destructive to Plaintiffs' confidence in the integrity of elections.

In Washington County, workers admitted there was not chain of custody for the ballots. There is no record of when the ballots were picked up and dropped off. According to the Election Assistance Commission, a lack of a chain of custody—by itself—demonstrates that an election is not transparent. There does not appear to be any chain of custody in any part of the system in Washington County.[63]

This failure to have a chain of custody showing that one's vote actually counted is constitutionally significant because Plaintiffs not only have a constitutional right to vote—just as powerful, is their constitutional right to have their vote counted.[64] Oregon cannot show Plaintiffs that their votes were counted in violation of their constitutional right.

8.   *Computerized systems present an inherent and undeniable security risk.*

The use of computers to tally votes have been criticized for two decades.[65] Other countries have banned the use of computers in their election processes due to risks to election integrity.[66]

There is not a computerized voting system in the United States that is manufactured entirely in the United States. Most are manufactured entirely outside of the United States 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 is no system to determine whether those systems are deliberately compromised. There are entire Chinese Communist state organizations under the

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[63] Am. Compl. ¶ 156.
[64] *Mosley*, 238 U.S. at 386.
[65] Am. Compl. ¶¶ 163-188.
[66] Am. Compl. ¶ 165.

Ministry of State Security in China with thousands of people dedicated to the compromise of Western technology and computers. These are not fly-by-night hackers as visualized in Hollywood movies. These are state actors committed to compromise Western computers. Our voting systems are comprised of components that were not protected in manufacture. There is no way to fix that. One cannot monitor that kind of insecurity or vulnerability out of these components because the compromises can be embedded in way that they cannot be overcome or detected.[67]

Our election computer systems are not rigorously tested. The certification entities, such as Pro V&V do not 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 were never mitigated—the machines were just certified. The entities used by the EAC 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.[68]

In recent years, the EAC certification process is particularly deficient because not a single one of the testing labs were legitimately accredited by the EAC to perform testing at the time of the 2020 Election as required by law.[69]

Wi-Fi modems are present in every voting tabulator which invites hacking. The only way to effectively disable wireless access to a computer is by physically removing the modem (or

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[67] Am. Compl. ¶ 131.
[68] Am. Compl. ¶ 132.
[69] Am. Compl. ¶ 133.

other connectivity component) from the electronic board, or to have never installed it. Wi-Fi modems should never be installed on any voting tabulator, but every tabulator has them.[70]

In the 2022 primary election, Mei Wong was running for the Metro District 2 seat. During the election, Wong took multiple screen shots over time, documenting the progress of her race as reported on the Oregon Secretary of State Election website. An unknown array of computers were involved with unknown human intervention. The results witnessed by Wong defy explanation: between 4:36 am and 4:44 am on May 29, her vote total decreased by 6,371; between 8:32 pm and 8:36 pm on May 29, her vote total decreased by 3,855; between 5:44 am and 5:45 am on June 4, her vote total decreased by 6,376; between 4:57 am and 4:58 am on June 10, her vote total decreased by 6,390.[71]

It is axiomatic that as tabulated results come into the Secretary of State's office, vote totals go up as more Counties report their results and more votes are added. There has been no explanation by any governmental entity as to why Wong's vote totals decreased on at least four separate occasions. Adding to the suspicion of nefarious action, is that most of these decreases occurred in the wee hours of the morning, when few would be looking. Rather than trying to explain what happened, the government—at all levels—gave Wong the runaround.[72]

9.   *Defendants act to thwart all attempts to ascertain the integrity of the election process.*

Public record requests are virtually the only tool the public can use to investigate election integrity. Once upon a time, Janice Dysinger was able to obtain the ballot images and the cast

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[70] Am. Compl. ¶ 134.
[71] Am. Compl. ¶ 137.
[72] *Id.*

vote record from Multnomah County for a charge of $159.62. She obtained the same from

Lincoln and Clatsop, and Polk Counties for $60, $64, and $120 respectively.[73]

But word got out that the ballot images, along with the cast vote record, can yield

important information to investigate the integrity of an election. Now, county election clerks are

quoting astronomical charges to obtain public information. The quote from Benton County was

$6,798.75. The quote from Harney County was $7,939.78. The quote from Linn County was

$77,376.05. The quote from Deschutes County was $93,703.52.[74] One county election clerk said

that the Secretary of State's office told her to hold off on responding to any public records

requests.[75]

The Secretary of State's office also directed county election officials to carefully screen

ballot images for cases where a voter wrote their name on the ballot. Of course, voters are not

supposed to write their name on the ballot. If an occasional voter writes their name on a ballot,

they have intentionally waived their right to secrecy. The Secretary of State elevates this

purported concern for ballot secrecy of the rare person who intentionally waived their right to

secrecy, over the concerns of the public who are entitled to access to public records. The effect

of the Secretary of State's directive is to increase the cost of obtaining ballot images two orders

of magnitude, from hundreds of dollars up to a range of $50,000 to $100,000. That is a very

convenient way to obstruct public records requests. The obvious intent of the Secretary is not to

protect the rare citizen who waived their anonymity, but to create a cost barrier for the public to

access the public's records.[76] Like so many other examples, this demonstrates that the mindset of

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[73] Am. Compl. ¶ 147.
[74] Am. Compl. ¶ 148.
[75] Am. Compl. ¶ 149
[76] *Id.*

those in power is that they get to run elections as they wish without public scrutiny. Like so many other examples, this also raises the question: what are they hiding?

Douglas County seeks to charge more than $51,000 for the ballot images from the 2020 election for a public records request made by Terry Noonkester. Noonkester has made additional public records requests in Douglas County. But Douglas County made the arbitrary decision that it would not respond to additional public records requests from Noonkester until she either cancelled or paid for her request for ballot images. Douglas County made this arbitrary decision without any authority under the law for the purpose of obstructing further discovery.[77]

Public records belong to the people, but Oregon bureaucrats are keen to resist attempts by the public to obtain these records. Plaintiffs know that when people behave like this, they likely have something to hide.[78]

Rhonda McNeal spoke with Lane County Elections Supervisor Drew Pryor and asked if she could be assured that her ballot was received and collected. She asked if she could come in and see her envelope and ballot. Pryor told her that "all ballots are immediately shredded once they are scanned for your protection. This way there is no risk that anyone can find out how you voted, as we take ballot secrecy very seriously."[79] Pryor later admitted to Thielman that ballots are not shredded.[80] Why did Pryor lie to McNeal?

Deborah Scroggin, Oregon Elections Director at the time, called Janice Dysinger, a long-time advocate for fair elections, and ordered her not to speak about elections in public anymore.

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[77] Am. Compl. ¶ 150.
[78] Am. Compl. ¶ 151.
[79] Am. Compl. ¶ 115.
[80] Am. Compl. ¶ 117.

A government official is far out-of-bounds when she believes that she has the authority to tell a citizen that she has lost her free speech rights.[81]

Tim Sippel sought an election database from Washington County in a public records request. The County told him that he could not have it. The Washington County District Attorney ordered Washington County to produce the database. Washington County and the Secretary of State sued Tim Sippel to prevent the release of the database. In the course of the litigations, the Attorney General admitted publicly that ballot tabulator machines are "vulnerable to attack." A bench trial in the Sippel case was held in September 2022 and witnessed by a crowd of Oregon citizens. Many of the Oregon citizens in attendance found the reasons offered by the Secretary of State and Washington County for withholding the ballot database to be frivolous.[82]

> 10.   *The insidious practice of ballot harvesting is legal in Oregon.*

Ballot harvesting is legal in Oregon and is 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. A witness states, "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.'" Oregon's adoption of ballot harvesting in its law is another way that Oregon encourages cheating by taking off the restrictions on how ballots can be collected and letting criminals do what they will do.[83] This is only allowed to happen because it benefits the people in power by keeping them in power.

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[81] Am. Compl. ¶ 152.
[82] Am. Compl. ¶¶ 142-146.
[83] Am. Compl. ¶ 107.

D.   **The facts pleaded by Plaintiffs show Plaintiffs have standing**.

1.   *Plaintiffs have suffered concrete, particularized and actual injury*.

The above facts demonstrate why Plaintiffs lack confidence in Oregon's election system.

Oregon's vote-by-mail, count by computer, election system is designed and operated in a way

that shuts out the public and generates suspicion and distrust in our government.[84]

While lack of confidence may be intangible and not objectively measurable, that is not a

barrier to court action. In perhaps the most significant civil rights case of the 20th Century, the

United States Supreme Court eschewed objective criteria and relied solely on intangible

psychological factors to rule that segregation of white and black children in schools was

unconstitutional.[85] In *Brown*, even though the tangible factors (such physical facilities) may be

equal, "to separate [blacks] from others of similar age and qualifications solely because of their

race ***generates a feeling*** of inferiority as to their status in the community that may affect their

hearts and minds in a way unlikely ever to be undone."[86]

If a "feeling" was concrete enough for the United States Supreme Court to overturn

generations of precedent in a landmark civil rights case, it is enough for this case. Moreover, the

damage to Plaintiffs is not merely from a feeling. The damage to Plaintiffs' is literally the loss of

their freedom. Self-governance exists ***only when*** the people have confidence in the fairness of

elections.[87] Without self-governance, Plaintiffs have literally lost their freedom. Plaintiffs have

suffered concrete, particularized and actual injury.

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[84] *See Purcell*, 549 U.S. at 4.
[85] *Brown v. Board of Educ*., 347 U.S. 483, 493-94 (1954).
[86] *Id*. at 494 (emphasis added).
[87] *E.g.*, *Purcell*, 549 U.S. at 4.

2.   *Plaintiffs' injuries caused by Defendants and are redressable by the Court.*

The pleadings outlined above show that it is Defendants who have caused the injury

to Plaintiffs. The Court has the power to correct this problem by declaring that Oregon's

vote-by-mail system and computerized tallying of the vote are unconstitutional and

enjoining the State from using this system in future elections.

Plaintiffs have shown that they have standing to bring this lawsuit.

E.   Fagan's standing arguments are inapplicable.[88]

1.   *Plaintiffs' claimed injuries are not speculative.*

Fagan's motion to dismiss on the grounds of standing relies on her interpretation that

Plaintiffs are asserting their claims on the basis of actual election fraud. That is not the case.

Plaintiffs' claims are based on their lack of confidence in the integrity of Oregon's election

system. The facts that lead to Plaintiffs' lack of confidence are far from speculative as described

in the section above. The fact that each Plaintiff is individually injured has been pleaded.[89] No

less an authority than the Supreme Court has concluded that lack of confidence in the integrity of

the election process drives honest citizens out of the democratic process.[90] That damages

Plaintiffs. At best, their vote is debased or diluted. At worst, they are no longer free because they

have lost the right of self-governance.[91]

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[88] Secretary of State Shemia Fagan ("Fagen") submitted the substantive motion to dismiss (Doc. No. 73) while the counties who have appeared in this case filed a motion adopting Fagan's motion (Doc. No. 75). For simplicity, this brief will refer to Fagan's motion when referring to the grounds that all Defendants assert.

[89] E.g., Am. Compl. ¶ 4 ("behavior of Defendants negatively impacts voter confidence in our elections and facilitates voter disenfranchisement.")

[90] *See Purcell*, 549 U.S. at 4 ("Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. The 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."

[91] *See Degraffenreid*, 141 S. Ct. at 734.

2.   *Plaintiffs are not alleging fraud.*

Fagan repeats in many contexts that Plaintiffs have no evidence of fraud or very minor and negligible instances of anomalies. Plaintiffs do not rely on allegations of fraud. In addition, that argument assumes that Defendants have permitted Plaintiffs to adequately interrogate Oregon's election system for fraud. Defendants actively thwart all efforts to shed sunlight on their process. The lack of transparency, chain of custody, and access to Oregon's election systems make it impossible for the public to gather enough information to prove or disprove fraud—which further proves Plaintiffs point.

One example occurred in this case. Plaintiffs sought forensic images of the election tallying machines during the 2022 general election. The hue and cry from Defendants was thunderous, aptly demonstrating that what would be routine computer discovery in many cases, would apparently turns things upside down for Defendants. It also demonstrated how fragile the election systems are if they cannot be subject to discovery without jeopardizing the election. It further demonstrated that Plaintiffs have no way of querying Oregon's election system to ascertain its integrity. That incident is symptomatic of the issue and supports Plaintiffs' point in this lawsuit. Defendants say, just trust us, but that carries absolutely no weight, and actually contributes to the distrust.

3.   *Plaintiffs' injuries do not rely on a chain of events.*

Plaintiffs' injuries stem from their distrust of Oregon's election system—no sequence of events required. A distrust that has been justly earned by Oregon and its counties through the way that they conduct elections, the number of election anomalies, their refusal to be transparent, their violation of federal law in maintaining voter rolls, to name a few. The actions taken by Oregon and its counties speak loudly. They are professionals at gaslighting. They fail to address

real problems, and the actions they take, like passing laws to prevent voters from being removed

from voter rolls, exacerbate these real problems.

   4. *Plaintiffs' injuries are applicable statewide.*

  Plaintiffs' loss of self-governance is a state-wide issue. Defendants have taken away the

control of the people to select Oregon's political leaders. Self-governing means that the people

choose and the method of choosing is within the control of the people and is transparent to the

people. Defendants have taken that away from all of Oregon's citizens. It does not depend on

where each Plaintiff lives. Every county follows the same state law requiring vote-by-mail with

computerized tallying of the ballots. Every citizen in every county is having their rights deprived

in the same way. Moreover, an honest citizen driven out of the democratic process in any county

damages Plaintiffs in the same way no matter what county they are from, at least with respect to

state-wide elections.

  F. **Plaintiffs have stated a claim under Rule 12(b)(6)**.

  Plaintiffs' Amended Complaint is chock full of factual allegations that show why there is

a lack of confidence in Oregon's election system. Fagan focuses on malfeasance and fraud.

Plaintiffs' claims are not based on malfeasance and fraud. They are focused on a lack of

confidence that is justly felt due to the myriad of facts pleaded. A lack of confidence in the

integrity of elections is sufficient for Plaintiffs' claim because it means that Oregonians have lost

their right to self-governance.[92]

  Interestingly, Fagan asserts that the *Anderson-Burdick* test is to be applied to both

Plaintiffs equal protection and due process claims.[93] The *Anderson-Burdick* framework is

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 [92] *See e.g.*, *Degraffenreid*, 141 S. Ct. at 734 (2021) ("Elections 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.") (cleaned up) (emphasis added).
 [93] Mot. pp. 28-30.

applicable to individual, discrete, voting rules such as deadlines for correcting a ballot with missing signatures.[94] The *Anderson-Burdick* framework balances the burden on the voter's constitutional interests with the interests of the State justifying the rule.

Here, there is no possible justification for the State to have taken away Plaintiffs' right to self-governance. Oregon has done that by destroying Plaintiffs' confidence in the integrity of elections in all of the ways summarized in this brief and the Amended Complaint. Destruction of the public's confidence in the integrity of elections means the destruction of self-governance. The people no longer control elections on Oregon, and they no longer govern themselves. Elections in Oregon are now controlled by bureaucrats with computers controlled by those in power who refuse to let the people see what is going on. We mail in our ballot and the authorities just say, "trust us." That is not self-government, that is servitude.

III.   CONCLUSION

For the reasons stated herein, Defendants' motions to dismiss should be denied.

Respectfully submitted,

Dated: March 17, 2023   By: s/ *Stephen J. Joncus*

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[94] *Arizona Dem. Party v. Hobbs*, 18 F.4th 1179, 1187 (9th Cir. 2021).