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March 2, 2021

House Special Committee on Redistricting
Senate Committee on Redistricting

Dear Committees:

Although I have not been an invited witness for any of your hearings on redistricting and am therefore not allowed to upload testimony, I offer my thoughts on whether the Oregon Legislature can accomplish redistricting this year under the Oregon Constitution.

There are two paths to redistricting the Legislature under the current Oregon Constitution. Both of them allow the Legislature itself to define the legislative district maps by enacting a law so stating, prior to the deadlines for the Secretary of State to submit corrected maps to the Oregon Supreme Court. In both paths, the Court itself can change the final maps, however.

The Secretary of State Path

Under Oregon Constitution, Article IV, Section 6 (3), if the Oregon Legislature does not devise legislative district maps by August 1, 2021, then the Secretary of State draws the maps. The Secretary actually has until December 1, 2021, to produce final maps, and the Legislature can by statute dictate the details of those maps. The Secretary could adopt some maps by the August 15 deadline, even if they are rudimentary and filled with errors. The Oregon Supreme Court is then allowed to review the maps and must issue a decision by October 15 on whether the maps comply with the very simple requirements of Article IV, Section 6(1) and "all law applicable thereto," such as ORS Chapter 188. If the Secretary does not have sufficient data or time by August 15, she may adopt maps that do not comply with the ORS Chapter 188 criteria or are otherwise defective. Or the Secretary herself could ask the Oregon Supreme Court to reject her original maps, because that would give her until December 1 to send new maps to the Court. The Oregon Supreme Court then has to review those new maps by December 15 "and may further correct the reapportionment if the court considers correction to be necessary."

The Oregon Legislature could dictate the content of the maps by passing a law (in this session or in a special session) stating that the SoS's maps, whenever submitted, must comply with new directives of the Legislature, which could

include metes and bounds descriptions of the district boundaries desired by the Legislature. Note that the Oregon Supreme Court review includes determining whether the Secretary's maps comply with "all law applicable thereto." The Oregon Legislature could adopt such law in a special session before December 1, after getting the Census data.

The Legislature, then Secretary of State Path

Under Oregon Constitution, Article IV, Section 6 (2), the Legislature could adopt rudimentary maps by August 1, 2021. The Oregon Supreme Court would then review those maps for compliance with Article IV, Section 6, and all applicable law. The Court is required to accept the maps by September 1, 2021, or reject them by September 15, 2021. Upon rejection, the task of drawing the maps would transfer to the Secretary of State, who would be required to submit new maps to the Court by November 1, 2021. The new maps would have to comply with "all applicable law," including any laws passed by the Oregon Legislature. As noted above, such laws could specifically define the districts. Oregon Supreme Court review would then conclude by November 15, 2021. In this final stage of review, the Court can itself "correct the reapportionment if the court considers correction to be necessary."

The Oregon Constitution May Call for Redistricting in 2023, not 2021

Article IV, Section 6(1), of the Oregon Constitution could be read as placing the authority for drawing legislative districts into the 2023 session of the Oregon Legislature, particularly if the Census provides the data after the 2021 regular session has adjourned. Section 6(1) states:

At the odd-numbered year regular session of the Legislative Assembly next following an enumeration of the inhabitants by the United States Government, the number of Senators and Representatives shall be fixed by law and apportioned among legislative districts according to population.

What is the first "odd-numbered year regular session of the Legislative Assembly next following an enumeration of the inhabitants by the United States Government"? If the enumeration is delivered after the end of the 2021 regular session, then the Oregon Constitution apparently calls for the redistricting to be done in 2023, either by the 2023 regular session of the Legislature or by the Secretary of State.

Sincerely

/s/ Daniel Meek

Daniel W. Meek