

IN THE SUPREME COURT FOR THE STATE OF OREGON

Donice Noelle Smith, in propria persona,

Petitioner,

v.

CHRISTINE KOTEK, in her official

capacity as Oregon Governor,

Respondent,

S _____

**PROCEEDING IN QUO WARRANTO:
MEMORANDUM OF LAW**

MEMORANDUM OF LAW

Donice Noelle Smith
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Petitioner

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Respondent

04/17/2025

TABLE OF CONTENTS

	Page
MEMORANDUM-----	1
A. Introduction-----	1
B. Statement of the case. -----	2
First Question Presented -----	3
First Proposed Rule of Law -----	3
CONCLUSION -----	3

MEMORANDUM OF LAW

A. Introduction

This is an election matter of important public interest requiring an emergency construction of Oregon Constitution Article II § 22 in light of this court's decision in *Multnomah County et al v. Mehrwein et al.*, 366 Or. 295 (2020)!

B. Statement of the Case

In 1995, Oregon Constitution Article II § 22 was declared inoperable by the Ninth Circuit District Court; please see *Vannatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995) (facially challenged under the 1st Amendment). ER-72 to ER-86

In 1997, Oregon Constitution Article II § 22 was declared inoperable by the Oregon Supreme Court; please see *Vannatta v. Keisling*, 324 Or. 514 (1997) (facially challenged under Oregon Constitution Article I § 8). ER-50 to ER-71. This court rejected adopting *Vannatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995) citing a pending appeal; see *Id.* 324 Or. at 525-526. ER-58.

In 1998, the Ninth Circuit Court of Appeals affirmed *VanNatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995) in *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998). ER *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998) is of first impression in this court. ER-46 to ER-47. Furthermore, *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998) is self-evident of prejudice from its majority towards Oregon. ER-87 ("It could be argued that the initiative process itself distorts the republican form of government."); please see *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 133-36, 151 (1912) (concluding that the question of whether amendment to Oregon constitution adding initiative and referendum procedures was nonjusticiable political question; concluding that "[a]s the issues presented, in their very essence, are, and have long since by this court been, definitely determined to be political and governmental, and embraced

within the scope of the powers conferred upon Congress, and not, therefore, within the reach of judicial power").

In 2003, the ninth circuit overruled *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998) by implication in *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003) (holding that limits on campaign contributions furthered important state interests). ER-48.

In 2020, the Oregon Supreme Court concluded that “VANNATTA I erred in holding that those laws are facially invalid on that basis”; please see *Couey v. Clarno*, 305 Or App 29, 38-39, 469 P.3d 790 (2020) (relating back to the forward operation of *Multnomah County et al v. Mehrwein et al.*, 366 Or. 295 (2020)). ER-03 to ER-22.

On August 23, 2021, Hon. Eric J. Bloch on remand from the Oregon Supreme Court in *MEHRWEIN*, established forward operation for Oregon’s analysis under the 1st Amendment regarding challenges to campaign contribution laws without facial challenges consistent with the *MEHRWEIN*’s forward operation. ER-30 to ER-45.

Of Note, Hon. Eric J Bloch served as Oregon’s Assistant Attorney General arguing the state’s position in *Vannatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995). ER-72. On remand in *MEHRWEIN*, Hon. Eric J Bloch did not relate back to the federal VANNATTA cases for forward operation. Hon. Eric J Bloch’s decision was consistent with *MEHRWEIN*, abandoning facial challenges under the 1st Amendment for campaign contribution laws.

According to ORESTAR data (11/16/2021 to 11/08/2022), Christine Kotek was elected with a total of \$24,229,603.76 cash contributions; see APP01. Oregon Individuals only contributed \$3,562,518.13; see APP02. At the time of election, Christine Kotek’s total contributions from unlawful donors grossly exceeded the 10 percent limit imposed by Oregon Constitution Article II § 22 Section (1) suffering forfeiture of the Office under Oregon Constitution

Article II § 22 Section (2). Christine Drazen and Betsy Johnson suffer unelected forfeitures under Oregon Constitution Article II § 22 Section (2) for similar violations.

First Question Presented

Did this court's decision in *Multnomah County et al v. Mehrwein et al.*, 366 Or. 295 (2020) render Oregon Constitution Article II § 22 operable under state law?

First Proposed Rule of Law

Yes. Oregon Constitution Article II § 22 is a campaign contribution law; see ER-92 to ER-96 (Judge BRUNETTI, dissenting). *Couey v. Clarno*, 305 Or App 29, 38-39, 469 P.3d 790 (2020) (relating back to the forward operation of *Multnomah County et al v. Mehrwein et al.*, 366 Or. 295 (2020)) identifies the end period for adherence to *Vannatta v. Keisling*, 324 Or. 514 (1997) regarding its reasoning and result as applied to Oregon Constitution Article II § 22; see *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932) (A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward.). Furthermore, this court abandoned facial challenges to campaign contribution laws while having never considered the federal line of VANNATTA cases; see *Johnson v. Williams*, 568 U.S. 289, 305 (2013) (holding that decisions of lower federal courts do not bind state courts and "disagreeing with the lower federal courts is not the same as ignoring federal law").

CONCLUSION

This court should oust Christine Kotek of the Office of Governor and insert Petitioner.

Dated: April 17, 2025,

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that I filed the foregoing MEMORANDUM OF LAW with the Appellate Court Administrator on April 17, 2025, through the mail.

I further certify that on the same date, I served a copy of this MEMORANDUM OF LAW on the following persons identified below via email, office delivery, or certified mail.

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Dated: April 17, 2025,

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