

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,

S071902

**PROCEEDING IN QUO WARRANTO:
AMENDED PETITION TO OUST
CHRISTINE KOTEK**

EMERGENCY MOTION ORAP 7.35

AMENDED PETITION FOR

PROCEEDING IN QUO WARRANTO TO OUST CHRISTINE KOTEK

Donice Noelle Smith
4601 Carnes Rd. Ste 8
#112
Roseburg, Oregon 97471-4600
donice4oregon@proton.me
541-530-4718
Petitioner

Christine Kotek, in her official capacity as
Oregon Governor
900 Court Street, Suite 254
Salem, OR 97301-4047
503-378-3111
Governor.Kotek@oregon.gov
Respondent

05/5/2025

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PETITION

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 Facts

Christine Kotek filed for the Governor's race on 11/16/2021. ER-01. The following individuals received their corresponding votes during the November 8, 2022, General Election for Oregon Governor:

Christine Kotek received 917,074 votes.

Christine Drazen received 850,347 votes.

Betsy Johnson received 168,431 votes.

Donice Noelle Smith received 8,047 votes.

Leon Noble received 6,867 votes. ER-02.

According to ORESTAR data (11/16/2021 to 11/08/2022), Christine Kotek was elected with a total of \$24,229,603.76 cash contributions¹. Oregon Individuals only contributed \$3,562,518.13². 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.

¹ See OreStar Export for Total Cash Contributions:
<https://www.dropbox.com/scl/fi/zrcgxi82nqus3z82selx/TotalCashContribution.xls?rlkey=wzpf5fxr7716b3f6bf7gb1pe5&st=onpwj9v9&dl=0>

² See OreStar Export for Oregon Individuals:
<https://www.dropbox.com/scl/fi/x5nqhft446n5wxw7714/OregonIndividuals.xls?rlkey=q1x7hiu5usnbpfhysvajg82ms&st=pdjvpa jw&dl=0>

C. Timeliness of Petition

The petition is timely. Christine Kotek has not performed her duty, *sua sponte*, to forfeit the office to Petitioner. Please see *Hagglund ex rel. Security Savings & Trust Co. v. School Dist. No. 9 of Tillamook County*, 148 Or. 273, 287, 36 P.2d 179 (1934) (applying laches).

D. Bypassing the Circuit Court

Oregon Constitution Article VII (amended) § 2 provides the Oregon Supreme Court original jurisdiction in quo warranto proceedings. This Court has exercised its original jurisdiction to decide time-sensitive issues of major public importance. See, e.g., *McAlmond v. Myers*, 262 Or 521, 526-27, 500 P.2d 457 (1972); *State ex rel Kelly v. Plummer*, 97 Or 518, 525, 189 P 405 (1920). This case satisfies both criteria. First, Petitioner and the entire voting public is and will endure continuous injury caused by Christine Kotek's failure to perform the *sua sponte* duty imposed by Oregon Constitution Article II § 22 Section (2). Second, the question of law presented raises an important election question of first impression for the Oregon Supreme Court as the "final arbiter of the Oregon Constitution" *State v. Hancock*, 317 Or 5, 26 (1993) (Unis, J., dissenting); please see *State v. Johnson*, 329 Or. App. 57, 63, 540 P.3d 73 (2023) ("To conclusively resolve this legal issue of first impression, we would have to engage in an in-depth analysis of statutory text, context, and legislative history...").

E. Inadequacies of Other Remedies

Petitioner initiates this proceeding for this court's original jurisdiction without the assistance of a district attorney; please see *Mabon v. Wilson*, 198 Or App 340, 108 P.3d 598 (2005) (This court has often accepted original jurisdiction for quo warranto proceedings without the assistance of a district attorney; history discussed.); see also *STATE EX REL. PODDAR v.*

Lee, 196 Or. App. 34, 100 P.3d 747 (2004) ("we assume without deciding that a private party may bring such an action as a relator without the involvement of a district attorney.").

On March 18, 2025, Marion County District Attorney's responded to a "Complaint of Quo Warranto" from Petitioner, concluding "that there is not sufficient legal basis" without further explanation; please see *State ex rel. v. School District No. 9*, 148 Or. 273, 280-81, 31 P.2d 751 (1934) ("[A]lthough the statute makes the district attorney the sole judge of whether the action shall be commenced, it intended to confer no power upon him to arbitrarily refuse to bring an action in a proper case *** [I]n a case within a statute authorizing the attorney-general or state's attorney to institute the proceeding, or apply for leave of court to institute it, at the instance of private persons, if private rights or grievances are involved, the consent of the officer is essential, but he has no arbitrary and uncontrolled discretion; the only discretion vested in him is to determine whether the documents and evidence presented to him are in proper legal form and prima facie sufficient, and if they are, it is his duty to sign the petition and present it to the court."). ER-49. Petitioner assumes Paige Clarkson's decision was motivated by her own conflict of interest regarding the underlining question of law; please see *Automobile Club of Oregon v. State*, 314 Or 479, 487-89, 840 P2d 674 (1992) (only the courts, to state definitively the meaning of the Oregon Constitution).

CONCLUSION

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

Dated: May 5, 2025,

/s/ donice noelle smith
Donice Noelle Smith
4601 Carnes Rd. Ste 8
#112
Roseburg, Oregon 97471-4600
donice4oregon@proton.me
541-530-4718
Petitioner

CERTIFICATE OF SERVICE AND FILING

I hereby certify that I filed the foregoing AMENDED PETITION FOR PROCEEDING IN QUO WARRANTO TO OUST CHRISTINE KOTEK with the Appellate Court Administrator on May 5, 2025, through the Appellate Court eFiling system.

I further certify that on the same date, I served a copy of this AMENDED PETITION FOR PROCEEDING IN QUO WARRANTO TO OUST CHRISTINE KOTEK on the following persons identified below via email, e-Filing, office delivery, or certified mail.

Christine Kotek, in her official capacity as
Oregon Governor
900 Court Street, Suite 254
Salem, OR 97301-4047
503-378-3111
Governor.Kotek@oregon.gov
Respondent

BENJAMIN N. GUTMAN #160599
1162 Court Street NE
Salem, Or 97309
benjamin.gutman@ojd.state.or.us
Solicitor General

Harmeet K. Dhillon
Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington DC, 20530
(202) 514-3847

Dated: May 5, 2025,

/s/ donice noelle smith
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