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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

Case No. 6:26-cv-01659-AP

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**DONICE NOELLE SMITH,**  
*Plaintiff,*

v.

**CHRISTINE KOTEK, Governor of Oregon,**  
in her official capacity;

**TOBIAS READ, Secretary of State of Oregon,** in his official capacity;

**DENA DAWSON, Director of the Oregon Elections Division,** *in her official capacity,*  
*Defendants.*

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**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND EQUITABLE  
RELIEF ARISING FROM THE UNEQUAL ADMINISTRATION OF  
MANDATORY CONSTITUTIONAL QUALIFICATIONS FOR PUBLIC  
OFFICE**

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**I. INTRODUCTION**

This action challenges Defendants' continuing administration of Article II, Section 22 of the Oregon Constitution under a constitutional interpretation that Plaintiff alleges became inconsistent with *Multnomah County v. Mehrwein*.<sup>1</sup>

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<sup>1</sup> *Multnomah County v. Mehrwein*, 366 Or. 295, 314, 322–26, 332–33, 462 P.3d 706 (2020) (reconsidering and overruling *Vannatta v. Keisling* to the extent *Vannatta* treated campaign-contribution limits as categorically subject to facial invalidation under Article I, section 8, and holding that the challenged contribution limits were not facially invalid under the governing *Robertson* framework).

Plaintiff was a candidate for Governor in the 2022 general election and contends that she complied with Article II, Section 22 of the Oregon Constitution. Plaintiff further alleges that competing candidates nevertheless remained eligible for election and continued occupancy of office despite campaign funding that exceeded the constitutional limitations established by that provision.

After the Oregon Supreme Court decided *Mehrwein*, Plaintiff requested that the Oregon Elections Division administer Article II, Section 22 consistent with that decision. The Elections Division responded by letter dated March 28, 2025, advising Plaintiff that Article II, Section 22 remained unenforceable under *Vannatta v. Keisling*.<sup>2</sup> (Ex. 6.)

Plaintiff alleges that no Oregon official has since withdrawn, superseded, or disavowed that interpretation.

Plaintiff alleges that Defendants continue administering Article II, Section 22 under that interpretation notwithstanding *Mehrwein*. As a result, Plaintiff contends that competing candidates for the same office have been subjected to materially different constitutional standards, conferring a governmental advantage upon candidates allegedly treated as qualified while denying Plaintiff the equal

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<sup>2</sup> Letter from Dena Dawson, Director, Oregon Elections Division, to Donice Noelle Smith (Mar. 28, 2025) (advising that Article II, Section 22 remained unenforceable under *Vannatta v. Keisling*).

administration of mandatory constitutional qualifications guaranteed by the Fourteenth Amendment.<sup>3 4</sup>

This action does not challenge vote tabulation, ballot counting, campaign-finance policy, or the political outcome of the 2022 gubernatorial election. Rather, Plaintiff challenges Defendants' continuing official administration of Article II, Section 22 and seeks only prospective declaratory, injunctive, and equitable relief under 42 U.S.C. § 1983. Plaintiff requests that this Court determine whether Defendants' continuing administration of Article II, Section 22 complies with the Fourteenth Amendment and, if not, award such prospective relief as federal law and Oregon law authorize.<sup>5</sup>

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## II. STATEMENT OF THE CASE

1. **This action challenges Defendants' continuing administration of Article II, Section 22 of the Oregon Constitution under a constitutional interpretation that Plaintiff alleges the Oregon Supreme Court materially altered in *Multnomah County v. Mehrwein*.**

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<sup>3</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908); *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (holding that prospective equitable relief is available where state officials continue administering an allegedly unconstitutional interpretation of law).

<sup>4</sup> U.S. Const. amend. XIV, § 1; *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam); *Snowden v. Hughes*, 321 U.S. 1, 8 (1944).

<sup>5</sup> 42 U.S.C. § 1983; *Ex parte Young*, 209 U.S. 123 (1908); 28 U.S.C. §§ 2201–2202.

2. This action concerns the constitutional administration of qualifications for public office prescribed by Article II, Section 22 of the Oregon Constitution. Plaintiff alleges that Defendants, acting under color of state law, refused to administer those mandatory constitutional qualifications equally among competing candidates seeking the same public office, thereby conferring governmental advantage upon certain candidates while imposing corresponding constitutional injury upon Plaintiff.<sup>6</sup>
3. Plaintiff alleges concrete, particularized, and ongoing competitive injury arising from Defendants' continuing administration of mandatory constitutional qualifications under standards different from those applied to Plaintiff. Plaintiff seeks only prospective relief directed toward ongoing official conduct and future compliance with the Constitution.<sup>7</sup>

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<sup>6</sup> Or. Const. art. II, § 22; *Multnomah County v. Mehrwein*, 366 Or. 295, 322–26, 332–33, 462 P.3d 706 (2020) (overruling *Vannatta v. Keisling* insofar as *Vannatta* treated campaign-contribution limits as categorically subject to facial invalidation under Article I, section 8, and holding that the contribution limits before the court were not facially invalid).

<sup>7</sup> *Anderson v. Celebrezze*, 460 U.S. 780, 786–88 (1983) (recognizing that restrictions affecting ballot access and candidacy implicate rights protected by the First and Fourteenth Amendments); *Bullock v. Carter*, 405 U.S. 134, 142–44 (1972) (holding that election laws unequally burdening candidates or voters are subject to heightened constitutional scrutiny); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016) (explaining the requirement of a concrete and particularized injury for Article III standing); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021) (reaffirming that a concrete injury is essential to federal jurisdiction).

4. Plaintiff asks this Court to determine whether Defendants may continue administering mandatory constitutional qualifications under the challenged interpretation consistently with the Fourteenth Amendment.<sup>8</sup>
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### III. JURISDICTION

8. This Court possesses original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. Plaintiff seeks redress for ongoing violations of rights secured by the Fourteenth Amendment to the United States Constitution and by federal civil rights statutes.<sup>9</sup>
9. This Court further possesses jurisdiction pursuant to 28 U.S.C. § 1343(a)(3), which confers original jurisdiction over civil actions authorized by law to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution of the United States.<sup>10</sup>

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<sup>8</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (establishing that it is emphatically the province and duty of the judiciary to say what the law is).

<sup>9</sup> 28 U.S.C. § 1331; *Gunn v. Minton*, 568 U.S. 251, 257–58 (2013) (holding that federal-question jurisdiction exists where federal law creates the cause of action or the plaintiff's right to relief necessarily depends upon resolution of a substantial federal question).

<sup>10</sup> 28 U.S.C. § 1343(a)(3).

10. Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants, acting under color of state law, deprived Plaintiff of rights secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment through the unequal administration and enforcement of mandatory constitutional qualifications governing candidates for public office.<sup>11</sup>
11. Plaintiff seeks only prospective declaratory, injunctive, and equitable relief directed toward Defendants' continuing official conduct. Plaintiff seeks neither damages nor retrospective relief. This action therefore falls squarely within the doctrine established by *Ex parte Young*, which authorizes prospective equitable relief against state officials to prevent continuing violations of federal law.<sup>12</sup>

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<sup>11</sup> 42 U.S.C. § 1983; *Maine v. Thiboutot*, 448 U.S. 1, 4–8 (1980) (holding that § 1983 provides a cause of action for violations of federal constitutional and statutory rights); *Monroe v. Pape*, 365 U.S. 167, 171–87 (1961), overruled in part on other grounds by *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) (recognizing § 1983 as a federal remedy for constitutional violations committed under color of state law).

<sup>12</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (recognizing that state sovereign immunity does not bar prospective equitable relief against a state official who is allegedly continuing to violate federal law); *Verizon Md. Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (explaining that the *Ex parte Young* inquiry asks whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective); *Virginia Office for Protection & Advocacy v. Stewart*, 563 U.S. 247, 254–55 (2011) (reaffirming that federal courts may enjoin state officials from continuing conduct contrary to federal law).

12. Resolution of this action requires interpretation and application of the United States Constitution, 42 U.S.C. § 1983, and the jurisdictional statutes enacted by Congress. The controversy presented is federal in character and does not depend upon the existence of diversity jurisdiction or any state-law cause of action.<sup>13</sup>
13. This is a civil rights action arising under the Constitution and laws of the United States. Plaintiff seeks prospective declaratory, injunctive, and equitable relief pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983 to remedy the continuing deprivation of rights secured by the Fourteenth Amendment through the unequal administration and enforcement of mandatory constitutional qualifications governing candidates for public office in the State of Oregon.<sup>14</sup>
14. Plaintiff invokes Article II, Section 22 of the Oregon Constitution not as an independent source of federal jurisdiction, but as the mandatory constitutional qualification whose alleged unequal administration gives rise to the federal constitutional violations asserted herein.<sup>15</sup>

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<sup>13</sup> 28 U.S.C. §§ 1331, 1343(a)(3); 42 U.S.C. § 1983.

<sup>14</sup> 28 U.S.C. §§ 1331, 1343(a)(3); 42 U.S.C. § 1983; *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (holding that federal courts may grant prospective equitable relief against state officials to end ongoing violations of federal law notwithstanding state sovereign immunity).

<sup>15</sup> Or. Const. art. II, § 22; *Multnomah County v. Mehrwein*, 366 Or. 295, 300–01, 322–26, 462 P.3d 706 (2020) (describing the facial challenge to campaign-contribution limits under Article I, section 8, rejecting *Vannatta*'s treatment of

15. Official ORESTAR campaign-finance records report substantial campaign funding from political committees, labor organizations, business entities, and other organizational contributors, together with substantial reported funding originating outside Oregon. Plaintiff alleges that the reported campaign funding substantially exceeds the constitutional ten-percent threshold.<sup>16</sup> (See Exs. 8–11.)
16. This action presents an actual, present, and justiciable controversy concerning Defendants' continuing administration of mandatory constitutional qualifications for public office. The controversy is neither hypothetical nor advisory and is capable of judicial resolution through prospective declaratory, injunctive, and equitable relief.<sup>17</sup>
17. Divisional venue lies in the Eugene Division under Local Rule 3-2 because a substantial part of the events and omissions giving rise to this action occurred in Marion County, Oregon, where the Secretary of State and

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contribution limits as categorically expressive, and applying the *Robertson* framework to hold that the challenged limits were not facially invalid).

<sup>16</sup> Official Oregon Elections System for Tracking and Reporting (ORESTAR), Christine Kotek Campaign Committee, Campaign Finance Records, reporting period Nov. 18, 2021–Nov. 8, 2022, summarized in Exhibits 8–11.

<sup>17</sup> 28 U.S.C. §§ 2201–2202; *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239–41 (1937) (holding that an Article III controversy must be definite and concrete, concern the legal relations of parties possessing adverse legal interests, and admit of specific relief through a conclusive decree); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126–27 (2007) (explaining that the dispute must be real and substantial and sufficiently immediate to warrant declaratory relief).

Elections Division maintain their principal offices and where the challenged interpretation and administration of Article II, Section 22 were adopted, communicated, and continue to be maintained.<sup>18</sup>

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#### IV. STANDARD OF REVIEW AT THE PLEADING STAGE

18. This Complaint is drafted in accordance with the notice-pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and is intentionally limited to the factual allegations necessary to state plausible claims for relief arising under the Constitution and laws of the United States.<sup>19</sup>
19. Plaintiff does not plead evidence, request findings of fact, seek credibility determinations, or seek resolution of disputed factual issues. Plaintiff alleges only those facts necessary to provide fair notice of the claims asserted and to plausibly establish entitlement to relief under Rule 8 of the Federal Rules of Civil Procedure.<sup>20</sup>

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<sup>18</sup> D. Or. LR 3-2; 28 U.S.C. §1391(b).

<sup>19</sup> *Fed. R. Civ. P. 8(a)(2); Johnson v. City of Shelby*, 574 U.S. 10, 11–12 (2014) (per curiam) (holding that federal pleading rules require a plausible factual statement of the claim, not citation to the precise statutory source of the requested remedy); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512–14 (2002) (holding that Rule 8 does not require a plaintiff to plead a prima facie case or satisfy a heightened pleading standard absent a rule expressly imposing one).

<sup>20</sup> *Fed. R. Civ. P. 8(a)(2); Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (explaining that a complaint must provide fair notice of the claim and the grounds upon which it rests and must contain more than labels, conclusions, or a formulaic recitation of the elements).

20. At the pleading stage, the Court accepts well-pleaded factual allegations as true, draws all reasonable inferences in favor of Plaintiff, and determines only whether the Complaint plausibly states claims upon which relief may be granted.<sup>21</sup>
21. The Court's inquiry at this stage is therefore limited. The Court does not determine whether Plaintiff will ultimately prevail, whether Defendants' competing factual assertions are correct, or whether Plaintiff will ultimately prove its allegations. Those questions are reserved for subsequent proceedings.<sup>22</sup>
22. The issues presently before the Court are limited to whether Plaintiff has plausibly alleged:
- a. subject matter jurisdiction;
  - b. Article III standing;
  - c. deprivation of rights secured by the Constitution and laws of the United

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<sup>21</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009) (requiring courts to distinguish well-pleaded factual allegations, which are accepted as true, from legal conclusions unsupported by factual matter); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007) (explaining that plausibility does not require probability and that a complaint may proceed even when actual proof appears unlikely); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (stating that, on a Rule 12(b)(6) motion, the court accepts properly pleaded facts as true and draws reasonable inferences in the plaintiff's favor).

<sup>22</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (explaining that a well-pleaded complaint may proceed even when proof of the alleged facts appears improbable and recovery appears remote or unlikely); *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009) (requiring plausibility rather than proof of the allegations at the pleading stage).

States;

d. claims upon which relief may be granted; and

e. entitlement to seek prospective declaratory, injunctive, and equitable relief.<sup>23</sup>

23. Nothing in this Complaint requests factual findings, evidentiary weighing, resolution of disputed factual issues, or determination of ultimate liability. On a facial challenge under Rule 12(b)(1), and on a motion under Rule 12(b)(6), the Court determines the legal sufficiency of the Complaint by accepting its well-pleaded factual allegations as true and drawing reasonable inferences in Plaintiff's favor. Questions requiring evidentiary weighing or resolution of disputed merits facts arise, if at all, only at a later stage of the proceedings.<sup>24</sup>
24. Accordingly, this Court's present inquiry is confined to the legal sufficiency of the claims alleged. Whether Plaintiff ultimately prevails

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<sup>23</sup> *Fed. R. Civ. P. 12(b)(1), (6); Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (explaining that a facial jurisdictional challenge accepts the complaint's allegations as true and asks whether they are sufficient on their face to invoke federal jurisdiction); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (stating that Rule 12(b)(6) review accepts properly pleaded factual allegations as true and draws reasonable inferences in favor of the plaintiff).

<sup>24</sup> *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (distinguishing facial and factual Rule 12(b)(1) challenges and explaining that a facial challenge accepts the plaintiff's allegations as true); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (requiring courts reviewing a Rule 12(b)(6) motion to accept properly pleaded factual allegations as true and draw reasonable inferences in the plaintiff's favor).

upon those claims presents a question for later stages of these proceedings.<sup>25</sup>

25. This action presents threshold questions of federal jurisdiction, standing, and constitutional administration. Plaintiff respectfully requests that any dismissal of this action identify the specific jurisdictional or pleading deficiency upon which the dismissal rests so that any necessary amendment or appellate review may address the precise grounds relied upon by the Court.

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## V. PARTIES

26. Plaintiff **Donice Noelle Smith** was a qualified candidate for Governor of Oregon in the 2022 general election. Plaintiff alleges that she complied with the mandatory constitutional qualifications prescribed by Article II, Section 22 of the Oregon Constitution and was entitled to compete for public office under the same constitutional standards applicable to every other candidate seeking that office.
27. Plaintiff brings this action in her individual capacity as a candidate who alleges concrete, particularized, and ongoing competitive injury arising

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<sup>25</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (holding that a complaint survives Rule 12(b)(6) when its factual allegations state a claim to relief that is plausible on its face); *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009) (explaining that plausibility is a context-specific inquiry distinct from proof of ultimate entitlement to relief).

from Defendants' unequal administration and enforcement of mandatory constitutional qualifications governing the office sought.<sup>26</sup>

28. Additional qualified candidates may be joined as plaintiffs pursuant to Rule 20 should joinder become appropriate.<sup>27</sup>
29. Defendant **Christine Kotek** is the current **Governor of Oregon** and presently occupies and exercises the powers of the Office of Governor. She is sued solely in her official capacity. Plaintiff seeks no damages or personal liability from Governor Kotek, but only prospective declaratory and equitable relief concerning the continuing legal entitlement to occupy and exercise the authority of that office under the constitutional framework alleged herein. Governor Kotek is named because the requested declarations directly concern the continuing legal status and entitlement under which she occupies and exercises the authority of the

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<sup>26</sup> *Mecinas v. Hobbs*, 30 F.4th 890, 899–902 (9th Cir. 2022) (holding that an unlawfully structured electoral environment that gives rival candidates a state-imposed competitive advantage constitutes a concrete and particularized injury and recognizing that a candidate or political organization need not establish that the challenged advantage changed the ultimate election result); *Owen v. Mulligan*, 640 F.2d 1130, 1132–33 (9th Cir. 1981) (recognizing standing to prevent an electoral opponent from obtaining an allegedly unlawful competitive advantage).

<sup>27</sup> Fed. R. Civ. P. 20(a)(1) (permitting multiple plaintiffs to join in one action when they assert rights to relief arising from the same transaction, occurrence, or series of transactions or occurrences and a question of law or fact common to all plaintiffs will arise in the action).

Office of Governor. Plaintiff does not allege that Governor Kotek administers Oregon campaign-finance law or the Elections Division.<sup>28</sup>

30. Defendant **Tobias Read** is the **Secretary of State of Oregon and the State's chief elections officer**. Oregon law assigns the Secretary responsibility for obtaining and maintaining uniformity in the application, operation, and interpretation of Oregon election laws; authorizes the Secretary to issue directives, instructions, and rules governing election administration; requires the Secretary diligently to seek evidence of election-law violations; and assigns the Secretary responsibilities concerning examination and investigation of campaign-finance and election-law complaints. Defendant Read presently possesses authority over the interpretation and statewide administration challenged in this action and is sued solely in his official capacity.<sup>29</sup>

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<sup>28</sup> Fed. R. Civ. P. 19(a)(1)(B) (requiring joinder, when feasible, of a person who claims an interest relating to the subject of the action and whose absence may impair or impede the person's ability to protect that interest or expose an existing party to inconsistent obligations).

<sup>29</sup> Or. Rev. Stat. § 246.046 (requiring the Secretary of State diligently to seek evidence of violations of election law); id. § 246.110 (designating the Secretary as Oregon's chief elections officer and charging the Secretary with obtaining and maintaining uniformity in the application, operation, and interpretation of election laws); id. § 246.120 (requiring the Secretary to issue comprehensive written election directives and to assist, advise, and instruct county clerks); id. § 246.150 (authorizing rules intended to achieve correctness, impartiality, and efficiency in election administration); id. § 260.205 (requiring filing officers to inspect campaign-finance statements and address omitted or insufficient filings); id. § 260.345(1)–(4) (requiring examination and, where necessary, investigation of written election-law complaints and prescribing further action upon a determination that a violation occurred).

31. Defendant Dena Dawson is the Director of the Oregon Elections Division. In that official position, Director Dawson administers the Elections Division, carries out election policies and directives on behalf of the Secretary of State, oversees matters involving candidate and election administration, and participates in the administration of Oregon campaign-finance and election laws. Director Dawson presently administers the challenged interpretation through the Elections Division and is sued solely in her official capacity.<sup>30</sup>
32. The named Defendants include the current officeholder whose continuing entitlement to occupy the Office of Governor is directly at issue, the chief state election officer responsible for statewide interpretation and administration of Oregon election law, and the Elections Division official who presently administers the challenged interpretation. Complete prospective relief concerning the controversy alleged herein may therefore be afforded among the existing parties.
33. At all times relevant to this action, each Defendant acted under color of state law within the meaning of 42 U.S.C. § 1983.<sup>31</sup>

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<sup>30</sup> Or. Rev. Stat. §§ 246.110–.150 (assigning statewide election administration responsibilities to the Secretary of State); Oregon Secretary of State, Agency Overview, Elections Division (identifying Dena Dawson as Director of the Elections Division).

<sup>31</sup> 42 U.S.C. § 1983 (providing a federal cause of action against a person who, under color of state law, subjects another to the deprivation of rights secured by the Constitution or federal law); *West v. Atkins*, 487 U.S. 42, 49–50 (1988) (explaining

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## VI. CONSTITUTIONAL AND LEGAL FRAMEWORK

34. The Oregon Constitution establishes mandatory qualifications governing candidates for public office. Among those qualifications, Article II, Section 22 prescribes mandatory limitations on campaign contributions and mandatory disqualification and forfeiture provisions applicable to candidates who exceed the constitutional limits established therein.<sup>32</sup> (Ex. 1.)
35. Plaintiff contends that Article II, Section 22 imposed mandatory constitutional duties upon Oregon officials responsible for administering candidate qualifications during the 2022 gubernatorial election. Plaintiff further contends that those duties were not discretionary and were required to be administered uniformly among all competing candidates.<sup>33</sup>

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that a person acts under color of state law when exercising power possessed by virtue of state law and made possible because the actor is clothed with state authority).

<sup>32</sup> Or. Const. art. II, § 22(1)–(2) (restricting the campaign contributions a candidate may use or direct and prescribing forfeiture and disqualification where more than ten percent of total campaign funding violates subsection (1)).

<sup>33</sup> Or. Const. art. II, § 22(1)–(2) (using mandatory terms to prescribe both the contribution limitation and the consequences applicable when the constitutional threshold is exceeded); see Or. Rev. Stat. § 246.110 (requiring the Secretary of State to obtain and maintain uniformity in the application, operation, and interpretation of Oregon election laws).

36. In *Multnomah County v. Mehrwein*, the Oregon Supreme Court overruled *Vannatta v. Keisling* to the extent *Vannatta* treated campaign-contribution limits as categorically subject to facial invalidation under Article I, section 8; held that the contribution limits before it were not facially invalid under the Oregon Constitution; and remanded the case for determination of the First Amendment question. Plaintiff contends that *Mehrwein* materially altered the governing constitutional framework applicable to Article II, Section 22.<sup>34</sup> (Ex. 2.)
37. On remand, the Multnomah County Circuit Court applied the framework established in *Mehrwein*, developed the factual record, and upheld the challenged contribution limits under the First Amendment. Plaintiff nevertheless alleges that Oregon election officials continued administering Article II, Section 22 pursuant to the earlier interpretation reflected in *Vannatta*.<sup>35</sup> (See Exs. 2, 3 & 6.)
38. Plaintiff invokes Article II, Section 22 solely as the source of the mandatory constitutional qualifications allegedly administered unequally.

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<sup>34</sup> *Multnomah County v. Mehrwein*, 366 Or. 295, 314, 322–26, 332–33, 462 P.3d 706 (2020) (overruling *Vannatta* to the extent it treated campaign contribution limits as facially invalid under Article I, section 8, and remanding for First Amendment analysis).

<sup>35</sup> Letter from Dena Dawson, Director, Oregon Elections Division, to Donice Noelle Smith (Mar. 28, 2025) (advising that Article II, Section 22 remained unenforceable under *Vannatta v. Keisling*).

Plaintiff's causes of action arise exclusively under the Constitution and laws of the United States.<sup>36</sup>

39. Plaintiff contends that the unequal administration of mandatory constitutional qualifications governing competing candidates constitutes state action subject to review under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.<sup>37</sup>
40. This action therefore presents a federal constitutional controversy concerning the continuing administration of mandatory state constitutional qualifications, not a request that this Court rewrite the Oregon Constitution or formulate campaign finance policy.<sup>38</sup>
41. The controversy presented requires interpretation and application of fixed constitutional text, official constitutional, judicial, and administrative records, and established federal Equal Protection and Due Process

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<sup>36</sup> 28 U.S.C. §§ 1331, 1343(a)(3); 42 U.S.C. § 1983; *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 164 (1997) (explaining that federal-question jurisdiction extends to civil actions in which federal law creates the cause of action).

<sup>37</sup> U.S. Const. amend. XIV, § 1; *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam) (recognizing that the Equal Protection Clause applies when state officials employ materially different standards in administering a single election process); *Snowden v. Hughes*, 321 U.S. 1, 8 (1944) (recognizing that intentionally discriminatory administration of state election law may constitute a denial of equal protection).

<sup>38</sup> 28 U.S.C. §§ 1331, 1343(a)(3); 42 U.S.C. § 1983; *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984) (holding that *Ex parte Young* does not authorize a federal court to order state officials to comply solely with state law); *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (explaining that *Ex parte Young* applies when the complaint alleges an ongoing violation of federal law and seeks prospective relief).

standards. It therefore presents judicially manageable legal questions within the traditional competence and responsibility of the courts. (See Exs. 1–11.)<sup>39</sup>

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## VII. ARTICLE III STANDING

42. Plaintiff satisfies each requirement of Article III standing. Plaintiff alleges concrete, particularized, and ongoing injuries arising directly from Defendants' continuing administration and enforcement of mandatory constitutional qualifications governing candidates for the Office of Governor.<sup>40</sup>
43. Plaintiff does not assert generalized taxpayer standing, generalized voter standing, or abstract disagreement with governmental policy. Plaintiff alleges direct competitive injury arising from Defendants' unequal administration of mandatory constitutional qualifications applicable to competing candidates seeking the same elective office.<sup>41</sup>

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<sup>39</sup> *Baker v. Carr*, 369 U.S. 186, 217 (1962) (holding that claims presenting judicially manageable constitutional standards are justiciable and identifying the limited circumstances constituting nonjusticiable political questions).

<sup>40</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (holding that Article III standing requires a concrete and particularized injury that is actual or imminent, a causal connection between the injury and the challenged conduct, and a likelihood that the injury will be redressed by a favorable decision).

<sup>41</sup> *Lance v. Coffman*, 549 U.S. 437, 439–42 (2007) (per curiam) (holding that a plaintiff does not establish Article III standing by asserting only a generalized interest in government officials' compliance with law); *Mecinas v. Hobbs*, 30 F.4th 890, 899–902 (9th Cir. 2022) (distinguishing a generalized grievance from concrete

44. Plaintiff's injuries are personal, concrete, and particularized. Plaintiff alleges that she complied with the governing constitutional qualifications while competing candidates allegedly received the benefit of unequal administration of those same constitutional requirements.<sup>42</sup>
45. Plaintiff's injuries are fairly traceable to Defendants' respective continuing official conduct. The Secretary of State and Elections Director maintain and administer the challenged interpretation of Article II, Section 22, while Governor Kotek continues to occupy and exercise the authority of the Office of Governor under the legal status produced and maintained through that interpretation. (Ex. 6.)<sup>43</sup>
46. Plaintiff's injuries are redressable through prospective declaratory, injunctive, and equitable relief requiring uniform administration of

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competitive injury caused by an allegedly unlawful state-created electoral advantage).

<sup>42</sup> *Mecinas v. Hobbs*, 30 F.4th 890, 899–902 (9th Cir. 2022) (holding that candidates and political organizations suffer concrete competitive injury when a state election practice allegedly gives rival candidates an unlawful electoral advantage); *Owen v. Mulligan*, 640 F.2d 1130, 1132–33 (9th Cir. 1981) (recognizing standing where government action allegedly afforded an electoral opponent an unfair competitive advantage).

<sup>43</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (requiring a causal connection between the alleged injury and the defendant's challenged conduct, rather than an injury resulting from the independent action of a third party not before the court); see *Mecinas v. Hobbs*, 30 F.4th 890, 900–02 (9th Cir. 2022) (finding traceability where the alleged competitive disadvantage resulted from the election practice administered by the defendant officials).

mandatory constitutional qualifications and adjudication of the legal issues presented by this Complaint.<sup>44</sup>

47. The controversy remains ongoing because Defendants continue to administer and enforce the challenged constitutional interpretation in their official capacities. Plaintiff therefore seeks only prospective relief directed toward continuing official conduct. (See Ex. 6.)<sup>45</sup>
48. Plaintiff remains ready, willing, qualified, and legally available to serve in the Office of Governor and continues to seek a judicial determination of her claimed legal status under the constitutional qualifications applicable to the 2022 gubernatorial candidates. Defendants' continuing administration of the challenged interpretation and continuing recognition of the present legal entitlement to occupy the office deny

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<sup>44</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (requiring it to be likely, rather than merely speculative, that the plaintiff's injury will be redressed by a favorable decision); *Utah v. Evans*, 536 U.S. 452, 464 (2002) (holding that redressability is satisfied where the requested relief would likely have a practical effect on the plaintiff's legal position); see *Mecinas v. Hobbs*, 30 F.4th 890, 901–02 (9th Cir. 2022) (finding competitive injury redressable where an order directed to the responsible election official would eliminate the challenged state-created advantage).

<sup>45</sup> *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (holding that the *Ex parte Young* inquiry turns upon whether the complaint alleges an ongoing violation of federal law and seeks prospective relief properly characterized as equitable); *Virginia Office for Protection & Advocacy v. Stewart*, 563 U.S. 247, 255–56 (2011) (reaffirming that continuing official conduct remains subject to prospective federal equitable relief notwithstanding state sovereign immunity).

Plaintiff a determination of the concrete legal status and entitlement she claims.<sup>46</sup>

49. Plaintiff therefore satisfies the constitutional requirements of injury in fact, traceability, and redressability required by Article III of the United States Constitution.<sup>47</sup>

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### VIII. JUSTICIABILITY AND REDRESSABILITY

50. This action presents a live and continuing constitutional controversy appropriate for judicial resolution under Article III of the United States Constitution. Plaintiff challenges the continuing official administration and enforcement of mandatory constitutional qualifications governing candidates for public office rather than the mere historical occurrence of the 2022 gubernatorial election.<sup>48</sup>

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<sup>46</sup> *Northeastern Florida Chapter, Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (holding that denial of the opportunity to compete on an equal footing constitutes a cognizable injury for Article III purposes).

<sup>47</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (identifying injury in fact, causation, and redressability as the irreducible constitutional minimum required by Article III).

<sup>48</sup> *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239–41 (1937) (holding that declaratory relief requires a definite and concrete controversy affecting adverse legal interests and admitting of specific judicial relief); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (holding that a dispute is justiciable where it is real, substantial, and sufficiently immediate to warrant declaratory relief).

51. The continuing recognition, certification, and administration of the Office of Governor under the challenged constitutional interpretation constitute ongoing official conduct. Plaintiff therefore challenges present and continuing state action rather than a completed historical event. (See Ex. 6.)<sup>49</sup>
52. The relief requested by Plaintiff is capable of redressing the constitutional injuries alleged. A declaration defining the constitutional obligations of Defendants, together with prospective injunctive and equitable relief directing the future administration and enforcement of Article II, Section 22, would remedy the continuing unequal administration of mandatory constitutional qualifications alleged in this Complaint.<sup>50</sup>
53. Should the Court determine that the mandatory constitutional conditions prescribed by Article II, Section 22 have been satisfied, the resulting constitutional consequences arise by operation of the Oregon Constitution itself. Plaintiff does not request that this Court create new constitutional qualifications, prescribe constitutional consequences, or impose remedies

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<sup>49</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (authorizing prospective relief against continuing official conduct violating federal law); *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (clarifying that the doctrine applies where the complaint challenges ongoing official conduct rather than completed historical acts).

<sup>50</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (requiring a substantial likelihood that the requested judicial relief will remedy the plaintiff's alleged injury); *Utah v. Evans*, 536 U.S. 452, 464 (2002) (holding that Article III redressability exists where the requested relief is likely to have a practical effect upon the plaintiff's legal interests).

not authorized by law. Rather, Plaintiff requests only that this Court adjudicate the federal constitutional questions presented, declare the legal consequences arising under Article II, Section 22 of the Oregon Constitution, and thereafter award such declaratory, injunctive, equitable, and ancillary relief as is authorized by federal law and Oregon law to give full effect to those determinations.<sup>51</sup> (Ex. 1.)

54. A favorable judgment would redress Plaintiff's injuries by declaring the constitutional rights, status, and legal relations of the parties; determining whether the mandatory forfeiture and disqualification conditions prescribed by Article II, Section 22 have been satisfied; enjoining continued administration under the challenged interpretation; and requiring the responsible officials to conform their prospective official conduct to the Court's judgment. (Ex. 1.)
55. The requested relief therefore redresses both the continuing deprivation of Plaintiff's federal constitutional rights and the continuing official conduct alleged herein. The Complaint accordingly satisfies the requirements of Article III standing, justiciability, and redressability.<sup>52</sup>

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<sup>51</sup> Or. Const. art. II, § 22(2) (providing that where the constitutional conditions are satisfied, an elected candidate "shall forfeit the office" and shall be subject to the prescribed period of disqualification); *Marks v. Stinson*, 19 F.3d 873, 886–89 (3d Cir. 1994) (recognizing the federal courts' broad equitable authority to remedy constitutional violations affecting elections through relief tailored to the proven constitutional injury).

<sup>52</sup> *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016) (holding that Article III requires a concrete and particularized injury); *TransUnion LLC v. Ramirez*, 594

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## IX. FACTUAL ALLEGATIONS

### A. Article II, Section 22 Established Mandatory Candidate Qualifications

56. Article II, Section 22 became part of the Oregon Constitution upon approval by the voters of Oregon and established mandatory constitutional qualifications governing campaign contributions and eligibility for public office.<sup>53</sup> (Ex. 1.)
57. Section 22 provides that a candidate receiving campaign contributions exceeding the constitutional limitations prescribed therein shall forfeit the office if elected and shall be disqualified from subsequently holding elective office for the period prescribed by the Constitution. Plaintiff incorporates the full text of Article II, Section 22 by reference.<sup>54</sup> (Ex. 1.)

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U.S. 413, 423–24 (2021) (reaffirming that a concrete injury remains indispensable throughout every stage of federal litigation).

<sup>53</sup> Or. Const. art. II, § 22 (adopted by the People of Oregon and establishing constitutional restrictions governing campaign contributions together with candidate qualifications, forfeiture, disqualification, and related enforcement provisions applicable to public office).

<sup>54</sup> Or. Const. art. II, § 22(1)–(3) (prescribing the campaign contribution limitations, mandatory forfeiture and disqualification consequences, and prohibited contribution practices forming the constitutional framework at issue in this action).

## **B. Plaintiff Complied with Article II, Section 22**

58. Plaintiff Donice Noelle Smith conducted her campaign in compliance with the mandatory constitutional qualifications prescribed by Article II, Section 22.
59. Plaintiff accepted campaign contributions only in the manner authorized by the Oregon Constitution and remained within the constitutional limitations applicable to candidates seeking the Office of Governor.

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## **C. Competing Candidates Allegedly Exceeded the Constitutional Threshold**

60. Resolution of this controversy requires determination of whether Defendants' continuing administration of Article II, Section 22 is consistent with the Equal Protection and Due Process Clauses of the Fourteenth Amendment and whether prospective federal relief is available to remedy any continuing constitutional violation.<sup>55</sup>
61. Official ORESTAR campaign-finance records report total reported campaign funding of approximately \$24,230,603.76 during the relevant reporting period. (See Exs. 8–11.)

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<sup>55</sup> *Baker v. Carr*, 369 U.S. 186, 209, 217 (1962) (holding that an Equal Protection challenge arising from state election administration presents a justiciable federal controversy and identifying the limited circumstances in which a case presents a nonjusticiable political question).

62. Official ORESTAR geographic analysis reports approximately \$14,969,158.63, or approximately 63.79% of the campaign funding reflected in that analysis, originated from outside Oregon. Plaintiff alleges that this substantially exceeds the constitutional ten-percent threshold prescribed by Article II, Section 22(2). (See Exs. 8–11.)
63. Representative reported campaign contributions, including forty-three reported contributions of \$100,000 or greater, are reflected in Exhibits 9 and 10. (See Exs. 9–10.)
64. Plaintiff relies exclusively upon the State's official ORESTAR campaign-finance records. At the pleading stage, Plaintiff alleges only the reported totals, classifications, percentages, and representative transactions necessary to state a plausible claim. Any dispute concerning particular classifications or calculations presents a question for factual development. (See Exs. 8–11.)

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**D. Oregon Officials Continued Administering Article II, Section 22 Under the Superseded Constitutional Interpretation**

67. Before the Elections Division responded, Plaintiff submitted a verified complaint supported by the Oregon Supreme Court's decision in *Multnomah County v. Mehrwein*, the subsequent remand proceedings, and official ORESTAR campaign-finance records. Plaintiff requested that

Article II, Section 22 be administered consistent with those authorities.

(See Exs. 2–4.)

68. The Elections Division did not dispute Plaintiff's chronology or the existence of *Mehrwein*. Instead, it responded in writing:

**"Article II, Section 22 of the Oregon Constitution was found to violate the US Constitution in *Vannatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998). As a result, it is not enforceable. Even though it is not being enforced, it is still printed in the Oregon Constitution and will remain so until it is removed through a vote of the people." (Ex. 6.)**

69. Plaintiff alleges that this written response memorializes the Elections Division's operative administrative position. Plaintiff further alleges that the Division adopted and maintained that position after *Mehrwein* and after the subsequent remand proceedings reflected in Exhibit 3.<sup>56</sup> (Exs. 2–6)

#### **E. Current Operative Interpretation and Continuing Official Conduct**

70. The Elections Division's March 28, 2025, interpretation has not been withdrawn, rescinded, or superseded and remains the operative position communicated to Plaintiff concerning Article II, Section 22. (Ex. 6.)

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<sup>56</sup> *Multnomah County v. Mehrwein*, 366 Or. 295, 314, 322–26, 332–33, 462 P.3d 706 (2020) (overruling *Vannatta* to the extent it treated campaign-contribution limits as facially invalid under Article I, section 8, and remanding for First Amendment analysis).

71. Defendants have not initiated or completed any proceeding applying Article II, Section 22 to determine whether the constitutional qualifications, forfeiture provisions, or disqualification provisions were satisfied by the candidates in the 2022 gubernatorial election.
72. The Elections Division has not withdrawn, rescinded, or superseded the interpretation communicated on March 28, 2025. Secretary Read and Director Dawson presently occupy the offices responsible for statewide administration of the provision and have continued to administer Oregon election law without withdrawing or replacing that interpretation. (Ex. 6.)
73. Governor Kotek presently occupies and exercises the powers of the Office of Governor while the state officials responsible for election administration maintain the challenged interpretation concerning the constitutional qualification and forfeiture provision.
74. The challenged official interpretation therefore governs present official conduct and is not contingent upon a hypothetical future event. Plaintiff challenges that present administration and the ongoing legal status maintained through it, not merely the historical conduct of the 2022 election. (See Ex. 6.)

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#### **F. Resulting Competitive Injury**

75. Plaintiff complied with the constitutional limitations alleged herein and bore the corresponding burdens of compliance while seeking the same

office as candidates whom Defendants allegedly treated as eligible notwithstanding campaign funding exceeding the constitutional threshold.

76. By treating candidates allegedly exceeding the threshold as equally eligible for election, certification, and continued occupancy of office, Defendants allegedly nullified the competitive value of Plaintiff's compliance and conferred a governmental competitive advantage upon candidates who did not satisfy the same constitutional qualification.
77. That differential administration injured Plaintiff in her personal capacity as a competing candidate and continues to deny her the legal status, determination, and prospective relief she claims under the federal constitutional guarantees alleged herein.
78. Plaintiff further alleges that such unequal administration deprived Plaintiff of the equal protection and due process guaranteed by the Fourteenth Amendment.<sup>57</sup>

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#### **G. Plaintiff's Diligence and Continuing Injury**

79. Plaintiff sought clarification and enforcement of Article II, Section 22 by submitting a verified complaint to the Marion County District Attorney on February 21, 2025, supported by official ORESTAR campaign-finance

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<sup>57</sup> U.S. Const. amend. XIV, § 1 (guaranteeing equal protection of the laws and prohibiting the deprivation of life, liberty, or property without due process of law).

records together with the Oregon Supreme Court's decision in *Mehrwein* and the subsequent remand decision applying that framework after factual development. (Ex. 4.)

80. Plaintiff did not receive a definitive written statement of the Oregon Elections Division's operative interpretation until its correspondence dated March 28, 2025, advising that Article II, Section 22 remained unenforceable based upon *Vannatta v. Keisling* and that no investigation would be opened concerning Plaintiff's complaint. (Ex. 6.)
81. Following receipt of the Elections Division's March 28, 2025, correspondence, Plaintiff pursued judicial review through quo warranto proceedings in the Oregon Supreme Court, seeking adjudication concerning the challenged interpretation of Article II, Section 22 and its legal consequences. (See Ex. 7.)
82. Those proceedings did not adjudicate the federal Equal Protection and Due Process claims asserted in this action and did not afford the prospective declaratory, injunctive, or equitable relief sought against the present Defendants.
83. Plaintiff commenced this action after those efforts failed to produce adjudication of the continuing federal constitutional controversy alleged herein.
84. Any passage of time did not terminate the controversy because the challenged interpretation remains operative, the complained-of official

conduct continues, and Plaintiff seeks relief directed toward present and prospective official conduct. (See Ex. 6.)

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## X. DEFENDANTS' OFFICIAL CONDUCT

### A. Constitutional Duties of Executive Officials

85. Defendants occupy constitutional and statutory offices charged with the administration, supervision, certification, and enforcement of Oregon election law. In performing those duties, Defendants remain bound by the Constitution of Oregon, the Constitution of the United States, and controlling judicial interpretations of governing law.<sup>58</sup>
86. Executive officers possess authority to administer and enforce the law but do not possess authority to suspend, disregard, decline to enforce, or effectively nullify mandatory constitutional provisions enacted by the People of Oregon. The interpretation of constitutional and statutory law remains the province of the judiciary.<sup>59</sup>

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<sup>58</sup> Or. Rev. Stat. §§ 246.046, 246.110, 246.120, 246.150, 260.205, and 260.345 (assigning the Secretary of State and Elections Division responsibility for statewide administration, interpretation, investigation, directives, and enforcement of Oregon election law).

<sup>59</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (holding that interpretation of the law is the province and duty of the judiciary); *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13 (2024) (reaffirming that courts—not executive agencies—exercise independent judgment in determining the meaning of law).

## B. Mandatory Constitutional Framework

87. Article II, Section 22 establishes a comprehensive constitutional framework governing campaign contributions to candidates for public office. That framework includes mandatory qualifications for candidates, mandatory civil consequences for noncompliance, and separate criminal provisions applicable to specified conduct involving prohibited campaign contributions.<sup>60</sup> (Ex. 1.)
88. Article II, Section 22(2) provides that where more than ten percent of a candidate's total campaign funding violates the constitutional limitations established by Section 22(1), an elected candidate **shall forfeit the office**, and an unelected candidate **shall be disqualified** from holding subsequent elective office for the period prescribed by the Constitution.<sup>61</sup> (Ex. 1.)
89. Article II, Section 22 further establishes separate criminal prohibitions applicable to specified conduct involving prohibited campaign contributions and classifies violations of those criminal provisions as an **unclassified felony**. Plaintiff does not seek adjudication of criminal

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<sup>60</sup> Or. Const. art. II, § 22 (establishing a constitutional framework governing campaign contributions, candidate qualifications, forfeiture, disqualification, and related enforcement provisions adopted by the People of Oregon).

<sup>61</sup> Or. Const. art. II, § 22(2) (providing that an elected candidate whose prohibited campaign funding exceeds ten percent "shall forfeit the office" and prescribing the period of subsequent disqualification).

liability or enforcement of those criminal provisions in this action. Rather, Plaintiff relies upon those provisions solely as evidence that Article II, Section 22 was adopted as a mandatory constitutional enactment rather than a discretionary policy statement.<sup>62</sup> (Ex. 1.)

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### C. Administration of Article II, Section 22

90. Plaintiff alleges that Defendants adopted and maintained an official administrative interpretation concerning Article II, Section 22 under which the mandatory constitutional qualifications prescribed therein were not administered or enforced against candidates seeking statewide office.<sup>63</sup> (See Ex. 6.)
91. Plaintiff further alleges that Defendants continued administering Article II, Section 22 pursuant to the constitutional interpretation previously reflected in *Vannatta v. Keisling* notwithstanding the subsequent decision of the Oregon Supreme Court in *Multnomah County v. Mehrwein*.<sup>64</sup> (See Exs. 2 & 6.)

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<sup>62</sup> Or. Const. art. II, § 22(3)–(4) (prohibiting indirect contribution schemes through qualified donors and classifying violations of subsection (3) as an unclassified felony, thereby reflecting the mandatory constitutional character of Article II, section 22).

<sup>63</sup> Letter from Dena Dawson, Director, Oregon Elections Division, to Donice Noelle Smith (Mar. 28, 2025) (advising that Article II, Section 22 remained unenforceable under *Vannatta v. Keisling*).

<sup>64</sup> *Multnomah County v. Mehrwein*, 366 Or. 295, 314, 322–26, 332–33, 462 P.3d 706 (2020) (overruling *Vannatta* to the extent it treated campaign-contribution limits as

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#### **D. Continuing Official Conduct**

92. Plaintiff alleges that Defendants' interpretation of Article II, Section 22 constituted official state action governing candidate eligibility, certification, and election administration throughout the period relevant to this action. (See Ex. 6.)
93. Plaintiff further alleges that Defendants continue to administer Article II, Section 22 under the challenged interpretation and continue to occupy the official offices responsible for the statewide administration of Oregon election law.<sup>65</sup> (See Ex. 6.)

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#### **E. Constitutional Consequences**

94. Plaintiff does not challenge Defendants' authority to administer Oregon election law.
95. Plaintiff challenges only Defendants' alleged unequal administration and enforcement of mandatory constitutional qualifications and the resulting

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facially invalid under Article I, section 8, and remanding for First Amendment analysis).

<sup>65</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (authorizing prospective equitable relief against state officials responsible for continuing violations of federal law); *Virginia Office for Protection & Advocacy v. Stewart*, 563 U.S. 247, 255–56 (2011) (holding that the *Ex parte Young* doctrine applies where state officials presently possess authority to implement or continue the challenged conduct).

deprivation of rights secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

96. Plaintiff therefore seeks only prospective declaratory, injunctive, and equitable relief directing future administration and enforcement of Article II, Section 22 in a manner consistent with the governing constitutional framework established by Article II, Section 22, *Mehrwein*, and the subsequent Bloch opinion.<sup>66</sup> (See Exs. 1–3.)

## **XI. CONSTITUTIONAL VIOLATIONS**

### **A. Equal Protection**

97. Plaintiff alleges that Defendants administered mandatory constitutional qualifications governing candidates for the same public office under materially different legal standards.
98. Plaintiff further alleges that constitutionally compliant candidates remained subject to the mandatory qualifications prescribed by Article II, Section 22 while competing candidates allegedly exceeding those qualifications nevertheless remained eligible for certification and election. (Ex. 1.)

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<sup>66</sup> 28 U.S.C. §§ 2201–2202 (authorizing federal courts to declare the rights and legal relations of interested parties and to grant further necessary or proper relief based upon such declarations); *Steffel v. Thompson*, 415 U.S. 452, 469–71 (1974) (recognizing the broad remedial purposes of the Declaratory Judgment Act).

99. Plaintiff alleges that such unequal administration constituted differential treatment by state officials acting under color of state law and deprived Plaintiff of the equal protection of the laws guaranteed by the Fourteenth Amendment.<sup>67</sup>

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### **B. Procedural Due Process**

100. Plaintiff further alleges that Article II, Section 22 established mandatory constitutional procedures governing candidate eligibility and forfeiture. (Ex. 1.)

101. Plaintiff alleges that Defendants departed from those mandatory constitutional procedures without lawful authority and thereby deprived Plaintiff of the procedural protections guaranteed by the Fourteenth Amendment.<sup>68</sup>

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### **C. Continuing Constitutional Injury**

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<sup>67</sup> U.S. Const. amend. XIV, § 1; *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam) (recognizing that materially different standards in the administration of the same election process implicate the Equal Protection Clause); *Snowden v. Hughes*, 321 U.S. 1, 8 (1944) (holding that intentionally discriminatory administration of state election laws may violate equal protection).

<sup>68</sup> *Mathews v. Eldridge*, 424 U.S. 319, 332–35 (1976) (holding that procedural due process requires constitutionally adequate procedures before the government deprives a person of protected interests and identifying the factors governing the sufficiency of those procedures).

102. Plaintiff further alleges that the constitutional violations described herein remain ongoing because Defendants continue to administer Article II, Section 22 under the challenged interpretation. (See Ex. 6.)
103. Plaintiff therefore seeks only prospective declaratory, injunctive, and equitable relief sufficient to remedy those continuing constitutional violations.<sup>69</sup>

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## **XII. CLAIMS FOR RELIEF**

### **COUNT I**

#### **42 U.S.C. § 1983**

##### **Equal Protection**

104. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
105. Defendants, acting under color of state law, administered mandatory constitutional qualifications governing candidates for the Office of Governor under materially different legal standards.
106. Plaintiff alleges that such unequal administration deprived Plaintiff of the equal protection of the laws secured by the Fourteenth Amendment to the United States Constitution.

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<sup>69</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908); *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (explaining that prospective relief remains available where the complaint alleges continuing official conduct violating federal law).

107. Plaintiff further alleges that Defendants' conduct constituted continuing state action actionable pursuant to 42 U.S.C. § 1983.
108. Secretary Read and Director Dawson presently possess and exercise responsibility for the statewide interpretation and administration challenged herein. Governor Kotek presently occupies and exercises the authority of the office whose continuing legal status is directly affected by that administration. The prospective relief requested is directed to those continuing official responsibilities and conduct. (See Ex. 6.)
109. Plaintiff has suffered and continues to suffer concrete constitutional injury as a direct result of Defendants' unequal administration of mandatory constitutional qualifications.
110. Plaintiff therefore seeks prospective declaratory, injunctive, and equitable relief sufficient to remedy those continuing constitutional violations.<sup>70</sup>

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## COUNT II

### 42 U.S.C. § 1983

#### Procedural Due Process

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<sup>70</sup> 42 U.S.C. § 1983 (providing a federal cause of action for deprivation of rights secured by the Constitution under color of state law); *Monroe v. Pape*, 365 U.S. 167, 180 (1961), overruled in part on other grounds by *Monell v. Department of Social Services*, 436 U.S. 658 (1978) (describing § 1983 as a federal remedy for constitutional violations committed under color of state authority).

111. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
112. Plaintiff alleges that Article II, Section 22 established mandatory constitutional procedures governing candidate eligibility and forfeiture.  
(Ex. 1.)
113. Plaintiff further alleges that Defendants departed from those mandatory constitutional procedures without lawful authority.
114. Plaintiff alleges that such departures deprived Plaintiff of procedural protections guaranteed by the Due Process Clause of the Fourteenth Amendment.
115. Plaintiff therefore seeks prospective declaratory, injunctive, and equitable relief pursuant to 42 U.S.C. § 1983.<sup>71</sup>

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### COUNT III

#### Declaratory Judgment

28 U.S.C. §§ 2201–2202

116. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

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<sup>71</sup> 42 U.S.C. § 1983; *Mathews v. Eldridge*, 424 U.S. 319, 332–35 (1976) (identifying the constitutional requirements governing procedural due process where governmental action affects protected interests).

117. An actual and continuing controversy exists concerning the constitutional administration of Article II, Section 22. (Ex. 1.)
  118. Plaintiff seeks declarations defining the constitutional obligations of Defendants governing future administration of mandatory constitutional qualifications.
  119. The requested declarations will resolve the parties' present legal controversy and guide Defendants' continuing official conduct.<sup>72</sup> (See Ex. 6.)
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## COUNT IV

### Permanent Injunction

120. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
121. Plaintiff has no adequate remedy at law.<sup>73</sup>
122. Defendants continue to administer Article II, Section 22 pursuant to the challenged constitutional interpretation. (See Ex. 6.)

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<sup>72</sup> 28 U.S.C. §§ 2201–2202; *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239–41 (1937) (holding that declaratory relief resolves definite legal controversies affecting adverse legal interests); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (holding that declaratory relief is appropriate where a substantial controversy exists between parties having adverse legal interests of sufficient immediacy).

<sup>73</sup> *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

123. Unless enjoined, Plaintiff will continue suffering ongoing constitutional injury.

124. Plaintiff therefore requests permanent prospective injunctive relief requiring administration and enforcement of Article II, Section 22 consistent with governing constitutional requirements.<sup>74</sup> (Ex. 1.)

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## COUNT V

### Equitable Relief

125. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

126. This Court possesses inherent equitable authority to fashion complete relief sufficient to remedy continuing constitutional violations.<sup>75</sup>

127. Plaintiff requests declaration of lawful entitlement to the Office of Governor under the governing constitutional framework together with such declaratory, injunctive, equitable, and ancillary relief as the Court determines is authorized by federal and Oregon law. (See Exs. 1–3.)

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<sup>74</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (authorizing prospective injunctive relief against continuing official conduct violating federal law); *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (describing the traditional equitable principles governing permanent injunctive relief).

<sup>75</sup> *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15–16 (1971).

128. Plaintiff further requests such additional declaratory, injunctive, equitable, and ancillary relief as the Court determines necessary to afford complete relief and give full effect to its judgment.<sup>76</sup>

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### XIII. SCOPE OF REQUESTED RELIEF

129. Plaintiff seeks only those forms of relief authorized by the Constitution and laws of the United States that are necessary to remedy the continuing constitutional violations alleged herein.

130. This action challenges the continuing official conduct of Defendants in their official capacities and seeks prospective declaratory, injunctive, and equitable relief sufficient to secure the equal administration and enforcement of Article II, Section 22 of the Oregon Constitution consistent with the Fourteenth Amendment to the United States Constitution.<sup>77</sup> (Ex. 1.)

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<sup>76</sup> *Marks v. Stinson*, 19 F.3d 873, 886–89 (3d Cir. 1994) (recognizing the broad equitable authority of federal courts to fashion complete relief for constitutional violations affecting elections); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15–16 (1971) (explaining that once a constitutional violation is established, federal courts possess broad equitable powers to eliminate its effects).

<sup>77</sup> *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (authorizing prospective declaratory and injunctive relief against state officials responsible for continuing violations of federal law); 28 U.S.C. §§ 2201–2202 (authorizing federal courts to declare the rights and legal relations of interested parties and grant further relief necessary to give effect to those declarations).

131. Plaintiff does not seek criminal prosecution, criminal penalties, or adjudication of criminal liability. References herein to the civil and criminal provisions of Article II, Section 22 are offered solely to demonstrate the mandatory constitutional character of that enactment and the constitutional duties imposed upon Oregon officials responsible for its administration.<sup>78</sup> (Ex. 1.)
132. Plaintiff further seeks declarations defining the constitutional obligations of Defendants respecting the administration and enforcement of Article II, Section 22 and determining whether the constitutional conditions requiring forfeiture and disqualification prescribed therein have been satisfied.<sup>79</sup> (Ex. 1.)
133. If the Court determines that the mandatory constitutional conditions prescribed by Article II, Section 22 have been satisfied, Plaintiff requests such prospective equitable relief as may be necessary to give effect to the constitutional consequences mandated by the People of Oregon, including

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<sup>78</sup> Or. Const. art. II, § 22(2)–(4) (prescribing mandatory constitutional forfeiture and disqualification provisions together with separate criminal prohibitions applicable to specified contribution practices; Plaintiff relies upon these provisions solely to demonstrate the mandatory constitutional character of Article II, section 22 and does not seek criminal adjudication or prosecution in this action).

<sup>79</sup> 28 U.S.C. §§ 2201–2202; *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239–41 (1937) (holding that declaratory relief defines the legal rights and relations of parties to an actual controversy); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (holding that declaratory relief is appropriate where the controversy is real, immediate, and substantial).

adjudication of lawful entitlement to the Office of Governor together with such additional declaratory, injunctive, equitable, and ancillary relief as the Court determines necessary and authorized to give full effect to that adjudication.<sup>80</sup> (See Exs. 1–3.)

134. Plaintiff does not presently seek monetary damages or assert claims against Defendants in their individual capacities because personal liability is neither necessary nor appropriate to resolve the constitutional questions presently before the Court. This action intentionally presents the narrowest constitutional controversy necessary to resolve the continuing violations alleged herein.<sup>81</sup>

135. Nothing contained in this Complaint shall be construed as waiving, abandoning, or limiting Plaintiff's right to amend this pleading pursuant to Rule 15 of the Federal Rules of Civil Procedure should discovery or subsequent factual development establish a good-faith factual and legal

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<sup>80</sup> Or. Const. art. II, § 22(2) (providing that an elected candidate whose prohibited campaign funding exceeds the constitutional threshold "shall forfeit the office"); *Marks v. Stinson*, 19 F.3d 873, 886–89 (3d Cir. 1994) (recognizing that federal courts possess broad equitable authority to fashion relief sufficient to remedy proven constitutional violations affecting elections).

<sup>81</sup> 42 U.S.C. § 1983 (creating a federal cause of action to remedy constitutional violations committed under color of state law); *Ex parte Young*, 209 U.S. 123, 155–56 (1908) (authorizing prospective official-capacity relief while distinguishing such relief from claims seeking personal liability or retrospective monetary recovery).

basis for asserting additional claims, additional parties, or individual-capacity claims.<sup>82</sup>

136. By limiting this action to official-capacity claims and prospective constitutional relief, Plaintiff seeks to present the Court with the narrowest judicial question necessary to resolve the continuing constitutional controversy while preserving all rights authorized by the Federal Rules of Civil Procedure.<sup>83</sup>
137. Plaintiff does not request that this Court formulate election policy, prescribe new constitutional qualifications, or create remedies not authorized by law. Plaintiff requests only the exercise of the Court's traditional judicial function of declaring the rights of the parties and awarding such equitable relief as the law authorizes upon those declarations.
138. Plaintiff seeks relief only against persons already before the Court. The current occupant of the office and the current officials responsible for the challenged interpretation and prospective statewide election administration are named Defendants. Plaintiff does not request an

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<sup>82</sup> Fed. R. Civ. P. 15(a)(2) (providing that leave to amend should be freely given when justice so requires); *Foman v. Davis*, 371 U.S. 178, 182 (1962) (holding that leave to amend ordinarily should be granted absent undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice, or futility).

<sup>83</sup> Fed. R. Civ. P. 1 (requiring that the Federal Rules of Civil Procedure be construed, administered, and employed to secure the just, speedy, and inexpensive determination of every action and proceeding).

adjudication imposing liability or affirmative obligations upon any absent candidate, contributor, political party, county, or voter. (See Ex. 6.)

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#### XIV. CONCLUSION

139. This action presents a single constitutional controversy arising from the continuing administration and enforcement of mandatory constitutional qualifications governing candidates for the Office of Governor of Oregon.
140. Plaintiff does not ask this Court to formulate campaign finance policy, rewrite the Oregon Constitution, supervise elections generally, or create new qualifications for public office. Plaintiff asks only that the Constitution adopted by the People of Oregon be administered equally and consistently with the guarantees of the Fourteenth Amendment to the Constitution of the United States.
141. The Complaint alleges that Article II, Section 22 (Ex. 1) imposed mandatory constitutional duties upon Oregon officials; that the Oregon Supreme Court fundamentally altered the governing constitutional framework in *Multnomah County v. Mehrwein* (Ex. 2); that the Multnomah County Circuit Court applied that framework on remand and upheld the challenged contribution limits under the First Amendment after factual development (Ex. 3); that, despite those authorities, Defendants continued administering Article II, Section 22 pursuant to the Elections Division's written declaration that the constitutional

provision "is not enforceable" (Ex. 6); and that such continuing unequal administration deprived Plaintiff of rights secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

142. Plaintiff has therefore alleged a justiciable federal controversy arising under the Constitution and laws of the United States, has established Article III standing, has stated plausible claims for relief under Rule 8 of the Federal Rules of Civil Procedure, and has requested only those prospective declaratory, injunctive, and equitable remedies necessary to resolve the continuing constitutional violations alleged herein.
143. Accepting the well-pleaded factual allegations as true and drawing all reasonable inferences in Plaintiff's favor, the Complaint states plausible claims upon which relief may be granted under the governing standards of Rules 8 and 12(b)(6).
144. Plaintiff therefore respectfully requests that the Court proceed to adjudicate the constitutional questions presented and grant the relief requested below.

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## **XV. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and grant the following relief:

1. Assume jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

2. Declare that Defendants' unequal administration and enforcement of Article II, Section 22 violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.
3. Declare the constitutional obligations of Defendants respecting the administration and enforcement of Article II, Section 22.
4. Determine whether the constitutional conditions requiring forfeiture and disqualification prescribed by Article II, Section 22 have been satisfied.
5. If the Court determines that the mandatory constitutional conditions prescribed by Article II, Section 22 have been satisfied, award such declaratory, injunctive, equitable, and ancillary relief as is authorized by federal law and Oregon law to give full effect to that determination, including adjudication of lawful entitlement to the Office of Governor.
6. Permanently enjoin Defendants from continuing to administer or enforce Article II, Section 22 under the challenged constitutional interpretation.
7. Award Plaintiff her recoverable costs and such attorney's fees as may be authorized by law.
8. Grant Plaintiff leave to amend this Complaint should subsequent discovery or factual development establish additional claims or parties consistent with Rule 15 of the Federal Rules of Civil Procedure.
9. Grant such other and further declaratory, injunctive, equitable, or ancillary relief as the Court deems just and proper.

Plaintiff presently seeks only declaratory, injunctive, and equitable relief. To the extent any claim or issue presented in this action is determined to be triable by jury under the Seventh Amendment or Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully demands trial by jury on all such issues. Plaintiff does not waive any right to trial by jury that may arise through amendment, discovery, or subsequent proceedings.

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**Respectfully submitted,**



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