IN THE SUPREME COURT OF THE STATE OF OREGON

DOUGLAS R. MARTEENY, District Attorney for Linn County, Oregon; and PATRICIA W. PERLOW, District Attorney for Lane County, Oregon; on behalf of all Oregonians and RANDY TENNANT, an individual victim; SAMUEL WILLIAMS, an individual victim; AMY JONES, an individual victim; and MELISSA GRASSL, an individual victim,
Plaintiffs-Relators-Respondents,
Petitioners on Review,

v.

KATHERINE BROWN, Governor of the State of Oregon; COLETTE PETERS, Director of Oregon Department of Corrections; OREGON DEPARTMENT OF CORRECTIONS; DYLAN ARTHUR, Executive Director of Oregon Parole Board and Post-Prison Supervision; MICHAEL HSU, Chairperson of Oregon Parole Board and Post-Prison Supervision; OREGON PAROLE BOARD AND POST-PRISON SUPERVISION; JOE O'LEARY, Director of Oregon Youth Authority; and OREGON YOUTH AUTHORITY,
Defendants-Respondents-Appellants,
Respondents on Review.

and
Timothy Espinoza,
Intervenor-Appellant,
Respondent on Review.

PETITION FOR REVIEW OF PLAINTIFFS-RELATORS-RESPONDENTS PETITIONERS ON REVIEW

Petition to review the decision of the Court of Appeals on an appeal from a judgment of the Circuit Court for Marion County Honorable David Leith, Judge

Opinion Filed: August 10, 2022
Author of Opinion: James, Presiding Judge
Before: James, Presiding Judge, and Aoyagi, Judge, and Pagán, Judge.

August 2022

Marion County Circuit Court
22CV02609

Oregon Court of Appeals
A178127

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PETITION FOR REVIEW

Petitioner on review asks this Court to review and reverse the decision of the Court of Appeals in *Marteeny v. Brown*, 321 Or App 250 (2022). A copy of the decision of the Court of Appeals is attached at ER-1 to 53. Petitioners request this Court grant Petitioners relief by upholding the writ of mandamus issued by the trial court against the Governor, the Department of Corrections (hereinafter "DOC"), the Oregon Youth Authority (hereinafter "OYA"), the Board of Parole and Post-Prison Supervision (hereinafter "Parole Board") and all other Respondents. Petitioners also seek reversal of that part of the judgment in regard to the procedures required in sentence commutation (clemency) matters, which dismissed the part of the claim Petitioners brought before the circuit court, and request that this Court order all Respondents to follow the clemency process statutes. Petitioners ask this Court to issue its own writ of mandamus as to this matter or to remand this case to circuit court for entry of a comprehensive writ of mandamus. The circuit court did properly issue a writ of mandamus to prevent the Parole Board from assuming jurisdiction where the legislature granted no such jurisdiction.

This is a case of first impression as to the Governor's failure to adhere to the clemency process statutes, as to the general delegation of her exclusively gubernatorial clemency power, and as to her effort to exercise her clemency power, by delegation, beyond her term of office. This is also a case of first

impression as to the Governor's attempt to grant the Parole Board jurisdiction where the law makes it clear no such jurisdiction exists.

STATEMENT OF HISTORICAL AND PROCEDURAL FACTS

The relevant historical and procedural facts in the opinion of the Court of Appeals are correct.

QUESTIONS PRESENTED ON REVIEW

The questions presented are:

1. Whether District Attorneys Marteeny and Perlow have standing to seek mandamus in their official capacity as District Attorneys.
2. Whether all Petitioners have standing to seek mandamus as private citizens.
3. Whether ORS 144.650 sets forth mandatory procedures that govern clemency proceedings as to all sentence commutations.
4. Whether the Governor unlawfully delegated her commutation decisions to the Board of Parole and Post-Prison Supervision (hereinafter "The Parole Board"), in regard to any commutation of sentence for a conviction prior to January 2020.

PROPOSED RULES OF LAW

1. Under the decision of this Supreme Court in *Couey v. Atkins, 357 Or. 460, 355 P.3d 866 (2015)*, any person may seek mandamus against a government official or agency to force compliance with the law,

regardless of whether that person is personally affected by the action or inaction of the government official or agency.

2. The enactment of Article VII (amended) to the Oregon Constitution did not supersede all the provisions of Article VII (original) of the Oregon Constitution, where section 17 of the original Article VII provides for District Attorneys.
3. ORS 144.650 establishes the exclusive process for the processing of sentence commutations by the Governor.
4. Under the process of ORS 144.650, the Governor is obligated to seek the input of District Attorneys as to clemency proceedings described in that statute and the Governor is obligated to hear the victims who are affected.
5. The Governor may not delegate her clemency decision-making powers to other persons or agencies. The Governor may not use the clemency power to extend jurisdiction to The Parole Board when the legislature has specifically refused to do so.

REASONS THIS COURT SHOULD ALLOW REVIEW

This case satisfies many of this Court's criteria governing discretionary review.

1. This case presents several significant issues of law that merit this Court's review. ORAP 9.07(1). Among these are the interpretation of

a statute and the interpretation of a constitutional provision and respect for the provisions of a Supreme Court decision (the *Couey* case). ORAP 9.07(1). These are identified above and discussed below.

2. Similar issues will arise often, as the procedure which the governor is required to follow will affect future clemency decisions. ORAP 9.07(2).
3. Many Oregonians are affected by the decision in this case, as it relates to all criminal convictions in this state, and thus the consequence of the decision is important to the public. ORAP 9.07(3).
4. The case includes an issue of state law, as it involves the interpretation of the Oregon Constitution and statutes. ORAP 9.07(4).
5. The issue is one of first impression for the Supreme Court. It appears that the Supreme Court has never had before it the issue of procedural limitations on the Governor's clemency powers as opposed to substantive restrictions. ORAP 9.07(5).
6. The issues in this case are not currently pending before this Court in any other case. ORAP 9.07(6).
7. The legal issues are properly preserved, as reflected in the Court of Appeals opinion, and the case is free from factual disputes or

procedural obstacles that might prevent the Supreme Court from reaching the legal issues. ORAP 9.07(7).

8. The record does, in fact, present the desired issues. ORAP 9.07(8).
9. The Court of Appeals has published a written opinion. ORAP 9.07(11).
10. The errors result in distortions or misapplication of legal principles and Supreme Court case law that cannot be corrected by another branch of government. ORAP 9.07(14).
11. The issues are well presented in the briefs of all the parties before the Court of Appeals. This petition presents the arguments on the merits which this Court should consider.

ARGUMENT

I. Each Petitioner in this proceeding has standing to bring this mandamus action.

A party who seeks mandamus as to governmental action must have standing to invoke judicial intervention. The *Couey* decision provides clear guidance in this mandamus matter, yet is not followed by the Court of Appeals.

In the landmark decision of *Couey v. Atkins*, 357 Or. 460, 355 P.3d 866 (2015), a unanimous Supreme Court, in an opinion authored by Justice Jack Landau, guides us through the pertinent historical and legal analyses which now

apply when courts are presented with public actions or cases involving public interest, such as the case at hand.

The Court of Appeals failed to honor and properly apply the *Couey* decision to the issue of standing.

In Couey, this Court stated:

> In short, both in 1857, when the original state constitution was adopted, and in 1910, when the people adopted Article VII (Amended), section 1, the general rule was that persons with no personal stake could initiate public actions to vindicate public rights…Even in states in which courts held that a private stake was required, the prerequisite was a function of substantive law. In no case of which we are aware did a court conclude that a private stake in the outcome of a controversy was required for the courts to exercise "judicial power."

Couey at 498.

In reassessing the justiciability doctrine, and after its examination of modern Oregon case law—including *Kellas v. Dep't of Corrections*, 341 Or. 471, 486, 145 P3d 139 (2006)—the *Couey* Court concluded that "Oregon courts long have recognized the authority of courts to entertain public actions without regard to whether those who initiate such actions have a personal stake in their outcome." *Couey* at 516.

The Court further stated:

> [B]ased on the foregoing analysis of the text, historical context, and case law interpreting Article VII (Amended), section 1, *there is no basis for concluding that the court lacks judicial power to hear public actions or cases that involve*

> *matters of public interest that might otherwise have been considered nonjusticiable under prior case law.*

Couey at 520 (emphasis added).

The Couey Court specifically provides its mandamus analysis as follows:

> "In *State v. Ware,* 13 Or. 380, 10 P. 885 (1886), the relator sought a writ of mandamus to correct certain election notices. At oral argument, a question arose about whether the relator had any personal interest in the outcome of the matter independent of the interest of the public generally. The court ultimately decided that the lack of such a personal stake was no impediment to proceeding to the merits:
>
> > "[T]he decided weight of authority supports the proposition that, where the relief is merely for the protection of private rights, the relator must show some personal or special interest in the subject-matter, since he is regarded as the real party in interest, and his right must clearly appear. On the other hand, where the question is one of public right, and the object of the *mandamus* is to procure the enforcement of a public duty, the people are regarded as the real party, and the relator, at whose instigation the proceedings are instituted, need not show that he has any legal or special interest in the result."

Id. at 382–83, 10 P. 885 (emphasis in original).

Justice Landau himself, the author of the unanimous *Couey* decision, wrote an elucidating law review article to distill the landmark decision. Jack L. Landau, *Couey v. Atkins: A Reevaluation of State Justiciability Doctrine*, 79 Alb. L. Rev. 1467 (2016). In his law review article, Landau writes:

> To the contrary, the court explained, English courts recognized the right of "strangers" with no personal interest in the outcome to enforce public rights by prerogative writs,

> and early American case law followed suit. The court also surveyed early Oregon case law, finding that early to mid-nineteenth century cases were perfectly consistent with the English and early American decisions that imposed no limitations on the constitutional authority of courts to adjudicate matters of public interest or public right. To be sure, the court acknowledged, courts long exercised the authority to dismiss cases for want of standing, mootness, or ripeness. But they did so as a matter of policy, not of constitutional command.

Couey v. Atkins: Reevaluating State Justiciability Doctrine at 1474.

Under Couey, Petitioners in this case do not need to demonstrate nor seek a remedy exclusive to their own beneficial interest, even though they do each have a beneficial interest as set out in Petitioners' previous briefs. This mandamus action is brought on behalf of the people as to a demonstrated public safety interest matter, not merely for the protection of the individual private rights.

Petitioners Patricia Perlow and Douglas Marteeny, as prosecuting attorneys, on behalf of the people of Oregon, have a duty to see criminal cases fully prosecuted to include ensuring the accused are properly investigated, charged, brought to judgment, sentenced, and incarcerated until their sentence is complete. The ability for Petitioner District Attorneys to fulfill their statutory and constitutional their duties is infringed upon by the Governor's failure to honor the clemency procedures. As accurately explained in the circuit court opinion, the prosecuting attorney retains an interest in preventing a judgment of

conviction from being unlawfully diminished. Certainly, all Oregonians have this same interest as well.

The Court of Appeals decision correctly provides the text of the original Article VII of the Oregon Constitution. However, as the opinion noted, in 1910, Article VII was amended. The Court of Appeals improperly interpreted the enactment of the 1910 Article VII, and subsequent limited case law, to have eliminated section 17 of the original Article VII from the Oregon Constitution rendering the role of Oregon District Attorneys as statutory, rather than constitutional. The Court of Appeals failed to note that the amended Article VII of the Oregon Constitution specifically provides that: "[t]he courts, jurisdiction, and judicial system of Oregon, except so far as expressly changed by this amendment, shall remain as at present constituted until otherwise provided by law." Or. Const. Art. VII (Amended), § 2. T

The Court of Appeals adopts the very narrow application of *State ex rel. v. Farrell*, 175 Or 87, 92, 151 P2d 636 (1944) and *State v. Farnham*, 114 Or 32, 34-35, 234 P 806 (1925) and then extrapolates that decisions in those cases lead to the complete abolishment of the original Article VII, section 17. This is a profound misinterpretation of the adoption of the Amended Article VII which will have reverberating impact far beyond the scope of this case if not addressed by the Oregon Supreme Court. Nothing in the amended Article VII "expressly changed" the duties charged to District Attorneys under original Article VII,

section 17, which provides that prosecuting attorneys "shall be the law officers of the State, and of the counties within their representative districts, and shall perform such duties pertaining to the administration of Law, and general police as the Legislative Assembly may direct."

The language of the original Article VII, section 17 is buttressed by the 1999 adoption of constitutional amendments which continue to rely upon "the prosecuting attorney" for support of the rights of crime victims in specific instances. Or Const Art I, sections 42-43. In fact, the Oregon Constitution also specifically establishes that the "prosecuting attorney" determines who has the status of a victim of a crime. Or Const, Art I, section 44(3). All of this supports the position that prosecuting attorneys elected by districts comprised of one or more counties are "the law officers of the state and of the counties within their respective districts . . . ."

The Court of Appeals ruled that District Attorneys Perlow and Marteeny must be represented by the Attorney General or obtain permission from the Attorney General to hire outside counsel. The Court of Appeals relied on ORS 180.220 (2). However, ORS 180.070 (4) states "The power conferred by this section, ...ORS 180.220..., does not deprive the district attorneys of any of their authority, *or* relieve them from any of their duties to prosecute criminal violations of law and advise the officers of the counties composing their districts." (Emphasis supplied.) The clemency process is part of the criminal

justice system. District Attorneys must carry out their duties and assert their authority.

The powers of the Attorney General do not usurp the power of the prosecuting attorney. The Attorney General is a creature of statute. The Attorney General is empowered, by statute, to represent public officers and agencies under ORS 180.220. However, the office of the District Attorney (prosecuting attorney for each district) is established by the Oregon Constitution, as described above.

The Court of Appeals cited *Gortmaker v. Seaton,* 252 Or. 440, 450 P2d 547 (1969) and *Foote v. State*, 364 Or. 558, 437 P3d 221 (2018), as providing authority as to the matter of private representation of District Attorneys. Neither of those cases discuss any representation challenges at all. In *Foote*, the plaintiff district attorney was represented by outside counsel. Neither party, nor the Court, made any mention of concern as to private representation. In *Gortmaker*, the district attorney petitioner appeared pro se, and there is no discussion that permission was first sought from the Attorney General, nor that the case was decided on the issue of representation at all. Both *Foote* and *Gortmaker* had nothing to do with attorney representation.

Here, the Attorney General supports what Petitioners assert is the violation of the clemency process laws. The Attorney General is enabling the Governor, and others from the executive branch, to refuse to follow the

clemency process statutes. There exists no rational need for the Petitioner District Attorneys to seek out representation by the Attorney General, or request permission and appointment of outside representation, as this would be futile and yield no timely relief.

Additionally, the Court of Appeals improperly asserts that the District Attorney petitioners are not empowered to bring a proceeding in Marion County. However, ORS 34.120 clearly allows this action to Marion County:

> "the circuit court or judge thereof of the county wherein the *defendant, if a public officer or body, exercises functions*, or if a private person or corporation, wherein such person resides or may be found, or such private corporation might be sued in an action, *shall* have exclusive jurisdiction of mandamus proceedings." (emphasis added).

In this case, the circuit court of Marion County was the correct place to bring this mandamus action.

II . <u>The Governor has exclusive substantive clemency power given by the Oregon Constitution and no claim or request made by Petitioners imposes on this power.</u>

<u>A. Petitioners do not challenge the Governor's substantive clemency power.</u>

The Oregon Supreme Court cases cited by the Court of Appeals rule only on substantive challenges to the Governor's clemency power. In the present case of first impression, Petitioners do not challenge the substance of the

Governor's clemency decisions. Petitioners specifically challenge the Governor's failure—and, now, refusal—to follow the laws that clearly establish the process for commutations of criminal sentences, and the Governor's improper delegation of her clemency power.

The Oregon Supreme Court has long recognized the substantive clemency power of the Governor and has acknowledged that, while clemency power is the exclusive substantive prerogative of the Governor, limited only by the Constitution, that power is subject to regulations as provided by law. Or Const, Art V, § 14; *Haugen v. Kitzhaber*, 353 Or 715, 306 P3d 592 (2013). This case is about the statutory regulation of process.

B. The Governor is not following the procedural requirements related to her clemency power as the law requires her to do.

The constitutional provisions and the statutory provisions clearly anticipate that the commutation of sentence process is to be handled on an individual basis and is to be based on an application "signed by the person applying and stating fully the grounds of the application." ORS 144.650. This is not restricted to an application by the convicted person. Even the Governor may initiate the paperwork entitled "Application" which then triggers an organized and transparent processing of the "Notice of Intention to Apply…." *Id.*

When one reads the Constitutional provisions and the statutes, then takes them as a whole, the process which the statutes require is not an option but is a requirement. No procedural requirement places any restriction as to the substantive power of the Governor nor are the reasons for ordering a commutation of sentence at issue in this case. The body of clemency statutes serve merely as an administrative vehicle by which each case must be processed. Following the required legal process ensures a fully informed governor, with input from the prosecutor and victim, and a fully informed public, as to the clemency decision.

The Court of Appeals has opined that the Governor does not have an obligation to follow the law as to procedures for sentence commutations set out in ORS 144.650, 144.660, and 144.670. The statutes implement the provision in the Oregon Constitution that the clemency power is subject to regulation. The question before the Court is whether the Governor and state agencies must follow the law prescribing the procedure and reporting as to criminal sentence commutations or are free to indulge in their own alternative methods. Petitioners do not attempt to limit or take away the Governor's substantive clemency power nor do Petitioners request this Court to do so. The Governor must, however, according to law, and as all previous Oregon governors have done, personally consider the merits of each application when making her decision, according to ORS 144.650. Governor Brown must follow the process

that ensures her access to all current information regarding the felon she is interested in releasing from custody and she must fully report all aspects of her clemency actions to the public.

C. A review of the relevant statutes shows that Petitioners are correct in their interpretation of current clemency laws.

As to statutory interpretation, we elaborated on the rules of statutory construction and the meaning of the body of clemency statutes in our opening brief. The statutes are not unclear. If they are, then basic rules of statutory construction ease the confusion. The clemency statutes must, inter alia, be taken in context as a whole, allow the specific to control the general, and unreasonable or absurd results must be avoided. This analysis was in Petitioners' previous briefs.

The constitutional provisions and the statutory provisions clearly anticipate that the commutation of sentence process is to be handled on an individual basis, by the governor, and is to be based on a compendium of information, an application, which serves as a vehicle to ensure orderly notifications, gathering of information, and a thoughtful and informed deliberation period.

D. If the statutory process is not followed, there is no opportunity for District Attorneys and victims to be heard.

Once Governor Brown successfully released 912 felons under the "COVID vulnerability" mass early release, she then released another 41 felons, granting one-year commutations with the sole reason being "firefighter work performed." No additional information about these felons has been produced in response to our public records requests. No individual, case-by-case review took place before the felons were granted clemency, beyond the sorting by DOC of hundreds of incarcerated people using the Governor's generic criteria. Since March 2020, the Governor has deliberately failed or refused to follow the established clemency process and the specific requirement to receive, or initiate, and properly process an application for clemency, as well as the required reporting to the Legislative Assembly. Because of Governor Brown's failure to adhere to the clemency processes, the Legislature, the Secretary of State, the victims, and all other Oregonians know nothing of those felons' levels of remorse, rehabilitation, or ability to re-enter our communities safely, or even the felons' release date.

III. The Parole Board lacks the authority to hold early-release hearings, or authorize actual early releases, of juvenile-offenders who committed crimes after November 1, 1989 and before January 1, 2020.

A. The Governor is not authorized to delegate her exclusive executive clemency power to any officer, board, or agency of the State.

Nothing in the history of clemency power in Oregon, nor the plain language of the constitution, provides for the delegation of executive clemency power. Or Const, Art V, § 14. To the contrary, the Oregon Supreme Court has affirmed the framers' intent that the Governor's substantive clemency power is hers alone. *Haugen,* 353 Or at 726; *Fehl v. Martin,* 155 Or 455, 457-58, 64 P2d 631 (1937).

Because no other Governor in Oregon's history has delegated his or her exclusively gubernatorial clemency power to another government official, state agency, or panel of people, there is no case law precisely in point. We must rely on the case law that establishes that the Governor's substantive clemency power is her exclusive plenary power that no court (and no agency or other person) can infringe upon. That case law is clear and the Petitioners do not dispute it.

Fehl reminds us that the Oregon Supreme Court, in 1937, said of Article V, Section 14, "It will thus be seen from a mere reading of this provision of the Constitution that the whole power to grant reprieves, commutations, and pardons after conviction for all offenses except treason, *subject to such regulations as may be provided by law*, is committed to the Governor. *Fehl v. Martin,* 155 Or 455, 457-58, 64 P2d 631 (1937) (emphasis added).

B. The individual analysis by the Governor and the executive power to decide to further reduce sentences has been unlawfully delegated to the Board.

The Governor states unequivocally she has no intention to revisit the 73 cases "commuted" to the Board and, she pronounces in her order, that the Board of Parole and Post-prison Supervision *shall* perform a case-by-case analysis to determine if a reduction in sentence is warranted. In Governor Brown's Commutation Order dated October 20, 2021, the Governor orders that, "Upon the Board's determination that a Commutee has demonstrated maturity and rehabilitation, it *shall release* that Commutee. . .". This is a clear unlawful delegation to the Parole Board, as to the statutorily required clemency process and the case-by-case consideration by the Governor, without the weighing of essential District Attorney and victim input. ORS 144.650; ORS 144.660; ORS 144.670. Also, by delegating to the Parole Board, Governor Brown successfully pulls all of her intended criminal sentence commutations, which the Board will now issue, outside of the scope of the clemency statutes.

The Governor's delegation is also a clear violation of ORS 144.050 which provides that the Parole Board has no jurisdiction as to crimes committed after November 1, 1989. All but five of the 73 clemency delegations to date relate to crimes committed after November 1, 1989.

C. Governor Brown's delegation to the Board unlawfully extends her clemency power beyond her term of office. Governor Brown's clemency power ends when her term ends.

The Governor's commutation order dated October 20, 2021, confers upon the 73 felons she lists at Exhibit A to her order, eligibility to pursue parole once they have served 15 years of their duly secured sentences. Of the 73 on her list, only 34 have served 15 years. The remaining 39 felons will not be eligible to seek parole and enjoy the benefit of Governor Brown's clemency power (albeit delegated) until after Governor Brown is no longer the Governor.

Essentially, the Governor has transferred her exclusive clemency power to the Parole Board for it to exercise almost a decade after she has left office, at a point where she has no clemency power. Even if she were authorized to delegate her clemency power, she can only delegate power that she possesses. Her power ends the moment she leaves office.

The Oregon Supreme Court decision in *Haugen v. Kitzhaber* supports the additional argument that a Governor's clemency power ends when the Governor leaves office. In *Haugen*, Governor Kitzhaber granted a reprieve of the death penalty to Gary Haugen, despite Haugen's objections to the reprieve. The reprieve did not have a specified "end date," which was part of Haugen's argument as to why the reprieve was ineffective. The court noted that any reprieve has a functional end date whether or not the end date is stated – a

reprieve ends when the Governor who grants the reprieve leaves office. *Haugen,* 353 Or at 728.

D. The Governor does not have the authority to expand the jurisdiction of an administrative agency nor the authority to fund such unlawful expansion.

As articulated by the Honorable Judge Leith in his letter opinion dated March 1, 2022:

> An administrative agency, whether exercising a legislative or adjudicative function, is a creature of statute, with its authorities circumscribed by statute. Before the Governor's challenged clemency order, the Board lacked delegated authority to hear the parole cases of the offenders at issue. It was only the clemency order that purported to provide that authority. An executive action, even a clemency action, cannot lawfully expand administrative jurisdiction.
>
> In addition to having sole constitutional authority to delegate and circumscribe administrative jurisdiction, the legislature holds the power of the purse. While considering the equities of retroactivity in this context, the legislature also would have weighed the additional burden on the Board and the resources needed to meet any new fiscal demand. The Governor alone could not constitutionally appropriate any resources needed to meet that fiscal impact.

Judge Leith is correct in his assessment and his peremptory writ on this issue should be honored. The writ has effectively caused the immediate halt to the unlawful early release of extremely dangerous offenders by a Board that has no authority to do so.

CONCLUSION

For the reasons presented, the circuit court's peremptory writ should stand and Petitioners' additional requested relief should be granted by this Court. A writ of mandamus should be issued to the Governor, the Department of Corrections, Oregon Youth Authority, and the Board of Parole, and all other Respondents, to require them to follow the regulatory process, and that process alone, as specified by Oregon law.

SUBMITTED: August18, 2022

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CERTIFICATION OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief Length:

I certify that pursuant to ORAP 9.07(3): (1) this Petition complies with the word-count limitation and (2) the word count of this Petition (as described in ORAP 5.05(1)(a)) is approximately 4,898 words.

Type Size:

I certify that the size of the type in this Petition is not smaller than 14-point for both the text of the Petition and footnotes as required by ORAP 5.05(1)(d)(ii) and ORAP 5.05(3)(b)(ii).

DATED: August 18, 2022.

Kevin L. Mannix, OSB #742021
Of Attorneys for Petitioners
on Review

CERTIFICATE OF FILING AND SERVICE

I certify that on August 18, 2022, I filed the original of this Petition for Review by electronic filing using the Court of Appeals' electronic filing system (Oregon Appellate eFile). I additionally certify that on August 18, 2022, I served a true copy of this Petition for Review on:

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by electronic service via electronic filing using the Court of Appeals' electronic filing system.

DATED: August 18, 2022.

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