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In the Matter of a Violation of Oregon Election Law by:)
)
 Defend Oregon, a Political Action Committee (No. 13130)) Notice of Proposed Civil
) Penalty; Notice of Opportunity
) to Request Hearing
)
 for the violation of ORS 254.470, requiring timely return of ballots.)

February 12, 2019

Case Number: 18-151

Defend Oregon, a Political Action Committee (13130)
Attn: Becca Uherbelau and Christy Mason, Directors
c/o Steve Berman, Esq.
Stoll Berne
290 SW Oak St., Suite 500
Portland, OR 97204

Dear Mses. Uherbelau and Mason:

The Secretary of State’s Elections Division (hereinafter the “Elections Division”) hereby proposes to assess a civil penalty in the amount of \$94,750.00 against Defend Oregon, a Political Action Committee (hereinafter “Defend Oregon”) for the reasons stated below. Please read the information below carefully and contact our office if you have any questions about its contents or necessary actions on your part.

Reason for Notice:

This notice is being sent to you because Defend Oregon violated ORS 254.470(6) by returning ballots collected for the November 6, 2018 General Election on November 7, 2018.

Authority for Civil Penalty:

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.005(16), 260.995, OAR 165-013-0020, and Appendix B to OAR 165-013-0020.

Notice of Matters Asserted and Charged:

1. Under Oregon election law – specifically the Campaign Finance Manual adopted pursuant to OAR 165-012-0005 - a political action committee is a combination of two or more individuals, or a person other than an individual, that receives a contribution or makes an expenditure for the purpose of supporting or opposing a candidate, measure, or political party. Each political action committee bears certain responsibilities under Oregon election law, such as filing a Statement of Organization. A political action committee is a “political committee” for purposes of ORS 260.005(18).
2. Defend Oregon registered with the Elections Division as a political action committee effective May 31, 2018 by filing a Statement of Organization. Its Identification (ID) number is 13130. Several Amended Statements of Organization were filed with the Elections Division, including one

effective from August 14, 2018 to the present. This filing lists Christy B. Mason and Becca Uherbelau as Directors. Defend Oregon's response dated December 6, 2018 to inquiries from the Elections Division (hereinafter "December 6, 2018 response") states that Defend Oregon is a Political Action Committee and identifies Ms. Uherbelau and Ms. Mason as co-directors of Defend Oregon.

3. Defend Oregon organized individuals to undertake a number of political activities. Defend Oregon's December 6, 2018 response stated that, "[t]he 97 ballots were collected by canvassers on November 6, 2018 as part of Defend Oregon's get out the vote ("GOTV") efforts for the November 6, 2018 General Election." Some of the individuals who engaged in these activities were employees, and most were volunteers. Individuals working, volunteering, or otherwise acting on behalf of Defend Oregon's GOTV activity will be referred to herein as "Canvassers", which is also how Defend Oregon described them. Defend Oregon's GOTV efforts were based in part out of a SEIU office in Portland.
4. Defend Oregon's December 6, 2018 response stated that Defend Oregon "[u]sed both paid campaign staff and volunteer canvassers to go door-to-door, to encourage registered voters to turn in their ballots. * * * Canvassers were permitted to collect ballots from voters as part of their canvassing activity."
5. As pertains to this matter, one ballot issued for the May 15, 2018 Primary Election, and 96 ballots issued for the November 6, 2018 General Election were collected by Canvassers. For purposes of this matter, these Canvassers were acting on behalf of Defend Oregon, and not in their private, individual capacity. Also for purposes of this matter, the 97 ballots at issue will be referred to as the "Ballots."
6. According to Defend Oregon's December 6, 2018 response, Defend Oregon created and employed a detailed process that Canvassers were to use in collecting, handling, and returning ballots. Defend Oregon's December 6, 2018 response set forth the process used by Canvassers, which in general terms, called for Canvassers to do the following:
 - a. Display an "Unofficial Ballot Drop Site" sign as required by ORS 260.695(14);
 - b. Obtain the voter's signature, from each voter whose ballot the Canvasser collected, on a signature sheet;
 - c. Return collected ballots to a Ballot Captain who would log the ballots on a spreadsheet and collect the signature sheets and ballots;
 - d. Store collected ballots in a locked drop box, until they were set out for return; then
 - e. "At the end of the day, the Ballot Captain was required to unlock the box, count the ballots, and then check the ballots against the spreadsheet. The ballots were then delivered to an official 24-hour drop box that night."
7. The Ballots at issue in this matter were then prepared for delivery and return to an official drop site. The Canvasser who set the ballots out for delivery provided notice to the Canvasser who was assigned to pick them up and deliver them. Defend Oregon's response dated January 17, 2019 (hereinafter "January 17, 2019 response"), to inquiries from the Elections Division stated that "[a]t approximately 6:00 p.m. on November 6, 2018 [Canvasser A] removed the 97 ballots from the lockbox and checked them against the spreadsheet. He completed the process around 7:00 p.m. and put the ballots in a box to be delivered to the elections office or a drop box." Canvasser A "said that he informed [Canvasser B], the person assigned to turn in all collected ballots to the

elections office that day, that ballots had been set out for delivery. [Canvasser B] was not present when the ballots were removed from the lockbox and does not recall being informed about the 97 ballots." Defend Oregon's December 6, 2018 response stated, "[h]owever, due to a miscommunication about the ballots, staff did not deliver the 97 ballots before the 8:00 p.m. deadline with the other ballots that were delivered to a drop-box before 8:00 p.m. that day."

8. The Ballots at issue in this matter were not returned on November 6, 2018 by 8:00 p.m. as required by ORS 254.470. Defend Oregon's December 6, 2018 response stated that, "[u]fortunately, due to an inadvertent error, the 97 ballots were not delivered to a drop-box that day."
9. Defend Oregon's December 6, 2018 response then stated that, "[t]he following morning [November 7, 2018], the 97 ballots were discovered at the SEIU Local 503 office * * *. * * * Ms. Uherbelau then transported the 97 ballots in her car from the SEIU Local 503 office to the Multnomah County Elections Division * * * [.]"
10. The Ballots were not counted by any county elections official for purposes of tallying the votes in the elections for which the Ballots were issued.
11. On November 13, 2018 the Elections Division received a signed, written complaint from the Multnomah County Elections Director, which alleged a violation of election law. The Elections Division conducted its investigation into the allegations.
12. Defend Oregon's January 17, 2019 response stated that "Defend Oregon agrees that Defend Oregon is a 'person' under ORS chapter 260, pursuant to the definition of 'person' found in ORS 260.005(16) and for the purposes of this investigation. Defend Oregon agrees that it is a 'person' under ORS Chapter 254 for purposes of this investigation."

Determination

The Elections Division finds sufficient evidence to conclude that Defend Oregon failed to timely return the Ballots in violation of ORS 254.470.

Applicable Law

ORS 254.470 pertains to the conduct of elections, and states in relevant part as follows:

(1) The Secretary of State by rule shall establish requirements and criteria for the designation of places of deposit for the ballots cast in an election. The rules shall also specify the dates and times the places of deposit must be open and the security requirements for the places of deposit. At a minimum, the places designated under this section shall be open on the date of the election for a period of eight or more hours, but must be open until at least 8 p.m. At each place of deposit designated under this section, the county clerk shall prominently display a sign stating that the location is an official ballot drop site.

* * *

(6)(a) Upon receipt of any ballot described in this section, the elector shall mark the ballot, sign the return identification envelope supplied with the ballot and comply with the instructions provided with the ballot.

(b) The elector may return the marked ballot to the county clerk by United States mail or by depositing the ballot at the office of the county clerk, at any place of deposit designated by the

county clerk or at any location described in ORS 254.472 (Compartments for marking ballots) or 254.474 (Voting booths for primary and general elections).

(c) The ballot must be returned in the return identification envelope. If the elector returns the ballot by mail, the elector must provide the postage.

(d) Subject to paragraph (e) of this subsection, if a person returns a ballot for an elector, the person shall deposit the ballot in a manner described in paragraph (b) of this subsection not later than two days after receiving the ballot.

(e) A ballot must be received at the office of the county clerk, at the designated place of deposit or at any location described in ORS 254.472 (Compartments for marking ballots) or 254.474 (Voting booths for primary and general elections) **not later than the end of the period determined under subsection (1) of this section on the date of the election.**

* * * * *

(Emphasis added.)

The Elections Division has historically published an Election Law Summary. The Election Law Summary is available on the Election Division's website, and was available on that website at all times relevant to this matter. The Election Law Summary addresses the timely delivery of ballots on Page 45, where it explains:

ORS 254.470 requires that if a person returns a ballot for an elector, they must do so (by delivering it to the county clerk, an official ballot dropsite, or in the mail) not later than 2 days after receiving the ballot, or so that it is received by Election Day, whichever is sooner.

Under ORS 260.995(1), the Elections Division "may impose a penalty not to exceed \$1,000 for each violation of any provision of Oregon Revised Statutes related to the conduct of any election* * * for which a civil penalty is not otherwise provided." ORS 254.470 is a statute related to the conduct of an election. ORS chapter 254 does not define "person"; however, ORS 260.005 does and that definition is used for enforcing a civil penalty. ORS 260.005 defines "person" for purposes of ORS chapter 260 as "an individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity." ORS 260.005(16). Defend Oregon stipulates that it is a person for the purposes of ORS 254.470 and 260.995.

The Secretary of State has rulemaking authority. ORS 246.150 provides,

The Secretary of State may adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of election laws.

The Secretary of State adopted OAR 165-013-0020 to establish a penalty matrix for civil penalties for violations of election law that are not covered by other penalty matrices. OAR 165-013-0020(1). The rule clarifies what is considered a violation:

(d) When determining whether the offense is to be considered a single or multiple violations, the following factors are to be considered: (A) One occurrence is considered one violation.

OAR 165-013-0020(1)(d)(A).

Defend Oregon As Respondent

Defend Oregon is registered as a Political Action Committee in ORESTAR, the Oregon Elections System for Tracking and Reporting, pursuant to ORS chapter 260. ORS 260.005 provides definitions used for purposes of ORS chapter 260. It states in relevant part:

- (18) "Political committee" means a combination of two or more individuals, or a person other than an individual, that has
- (a) Received a contribution for the purpose of supporting or opposing a candidate, measure or political party; or
 - (b) Made an expenditure for the purpose of supporting or opposing a candidate, measure or political party. * * *.

As a political committee, Defend Oregon is an organization or other combination of individuals having collective capacity and is therefore a "person" under ORS 260.005(16) and for purposes of ORS 254.470.

Failure To Return Ballots Timely

Defend Oregon collected ballots from electors under ORS 254.470(6)(d) and was required to deposit the Ballots at the office of the county clerk, at any place of deposit designated by the county clerk or at any location described in ORS 254.472 (compartments) or ORS 254.474 (voting booths). ORS 254.470(6)(b). Defend Oregon was required to do this not later than two days after receiving the Ballots, or 8:00 p.m. on November 6, 2018, whichever came sooner. ORS 254.470(6)(d) and (e). Defend Oregon deposited the ballots on November 7, 2018 and thus failed to satisfy this requirement.

Each Ballot that was not returned timely was the result of the conduct of Defend Oregon, and each voter who entrusted Defend Oregon Canvassers lost their respective right to have their Ballot counted. As provided by OAR 165-013-0020(1)(d), each instance of a Ballot not returned timely by Defend Oregon therefore constitutes a separate violation for purposes of determining civil penalties under ORS 260.995.

Summary

Defend Oregon violated ORS 254.470 ninety-seven (97) times when it failed to timely return the ninety-seven (97) Ballots.

Proposed Civil Penalty:

The Secretary is proposing a total civil penalty in the amount of \$94,750.00. Each untimely returned Ballot constitutes a violation of Oregon election law. Each violation may be assessed a civil penalty of up to \$1,000 pursuant to ORS 260.995. OAR 165-013-0020 provides for the assessment of civil penalties in violations that are not related to campaign finance, and applies to the violations at issue in this matter. Appendix B to OAR 165-013-0020 sets out a scaled application of civil penalties according to violations of various statutes.

Appendix B to OAR 165-013-0020 – the Penalty Matrix

The Elections Division cannot anticipate every violation of election law and therefore the penalty matrix set forth in Appendix B to OAR 165-013-0020 provides a catch-all for violations not otherwise listed as "Penalties will be imposed under ORS 260.995 in the amount similar to those listed in this matrix." There is no penalty specifically identified in the matrix for ORS 254.470, and there is no penalty for a similar violation that results in an elector's vote not being counted. As a result, the Secretary has discretion up to the statutory limit of \$1,000 per violation. The severe harm of an elector's vote not being counted necessitates a maximum penalty.

In the Secretary’s view, the harm of not having a ballot counted is more severe than any other violation of election law. It is more severe than the harm that might accrue to individual voters due to betting on an election which carries penalties of \$75, \$150, and \$250 (for violations of ORS 260.635(1)). The harm of not having a ballot counted is also more severe than having a person, for any consideration, offer, propose, threaten or attempt to sell, hinder or delay any part of an initiative, referendum or recall petition (violations of ORS 260.575(2)). That violation carries penalties of \$2,500, \$5,000, and \$10,000.

In order for the penalties assessed in this case to be similar to the graduated penalties reflected in the penalty matrix, the Secretary will apply a general gradation, which is demonstrated throughout Exhibit B, according to Page 8 of Appendix B which states that “[a]ny other violation of non-campaign finance election law under ORS Chapters 246 – 260 or OAR 165 that is not included in this table * * * [p]enalties will be imposed under ORS 260.995 in amount similar to those listed in this matrix.” It is therefore appropriate under Appendix B, given the severity of the harm, for civil penalties to be applied on a scale starting at \$250 for the first violation, \$500 for the second violation, and \$1,000 for each violation thereafter.

Of the 54 specific penalties for violations listed in Appendix B, the penalty matrix, 47 of those (over 80%) call for a gradation of the penalty amount. Where a scale is used, there are multiple categories of gradation*:

Example – Penalty Scale Listed In the Matrix	1st Occurrence	2nd Occurrence	More than 2 Occurrences	Violations That Call For This Stratification (rounded)
\$250/\$500/\$1,000	25% of the max penalty	50% of the max penalty	100% of the max penalty	30% (14 of 47)
\$ 75/\$150/\$250	30% of the max penalty	60% of the max penalty	100% of the max penalty	34% (16 of 47)
\$100/\$200/\$250	40% of the max penalty	80% of the max penalty	100% of the max penalty	34% (16 of 47)

* One violation calls for a unique scale of: \$0/\$75/\$250 respectively.

The Secretary has discretion with respect to whether and how to use a graduated scale in this case. As the above chart demonstrates, there is wide variety in the gradation scales used in the penalty matrix, so the use of any of these would be permissible, and the scale applied in this case is reasonable.

Determining of the Number of Violations

Under ORS 254.470, a violation occurs for each ballot that is not deposited timely: if a person returns a ballot for an elector, the person shall deposit the ballot not later than 8 p.m. on the date of the election. ORS 254.470(1) and (6). OAR 165-013-0020(1)(d) specifically addresses how to determine when an offense is to be considered a single or multiple violations for various other statutes. It states in relevant part:

(d) When determining whether the offense is to be considered a single or multiple violations, the following factors are to be considered:

(A) One occurrence is considered one violation.

(B) Violations of Article IV, Section 1(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section 1(b) as a single occurrence.

(C) Violations of ORS 260.569 will be calculated by deeming each individual signature sheet that contains a signature a violation of ORS 260.569 or each signed voter registration card in violation of ORS 260.569 as a single occurrence.

This method of determining the number of violations is mirrored in the penalty matrix in Appendix B, for the penalties for violations of ORS 260.569, Article IV, Sec. 1b of the Oregon Constitution, and in OAR 165-014-0260 (prohibition of payment based on the number of signatures obtained on a petition or for voter registration cards). OAR 165-014-0260(5) expressly deems each voter registration card collected in violation of the law as a single occurrence. No weight is given to intent, which day(s) the violations occurred on, how many violations may have occurred in one day, or how the conduct giving rise to the violations was planned or carried out.

This method of determining the number of violations at issue in this case is employed for consistency. Just as each voter registration card returned in violation of the statute is an occurrence and a violation, each ballot that was not timely returned is an occurrence and a violation. Thus, there are 97 violations; one for each Ballot that was not timely returned.

Severity of the Harm

Some of the violations set out in Appendix B start and end with a lower civil penalty than is proposed here. However, the more egregious violations carry much higher penalties. The Secretary has considered this in light of the respective harm to individuals and the system associated with other violations. There is greater harm in effectively nullifying an elector's vote than in any other violation set forth in the penalty matrix. Each of the 96 voters whose Ballot was not timely returned for the 2018 General Election was harmed. Not only was there severe harm to the 96 electors whose Ballots were not returned to be counted, there was also harm to the election process and to the public's confidence in elections. Whether the actions of Defend Oregon were accidental or not, the harm to the electors and the election process is real. Although the harm was the same to all 96 electors whose Ballots were not returned, in order to be consistent with the graduated schedule reflected in the penalty matrix, the Secretary is proposing a total civil penalty of \$94,750.00.

Calculation of Proposed Civil Penalties

The Ballot issued for the May 2018 Primary Election was not valid at the time Defend Oregon collected it on November 6, 2018. Because it was not possible for Defend Oregon to have submitted the May 2018 ballot timely under ORS 254.470, no harm was caused to that elector. For this reason, no civil penalty is assessed for this violation. Civil penalties for the remaining violations are assessed as follows: 1) \$250 for the first of the Ballots; 2) \$500 for the second of the Ballots; plus 3) \$1,000 for each of the additional Ballots thereafter (94). This results in a total civil penalty of \$94,750.00.

Reduction or Waiver of Penalty:

A reduction or waiver of the penalty will be considered only if one of the permitted mitigating circumstances is present (see below). The burden of proof is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation are set out below.

A reduction or waiver of the penalty will be considered only under certain circumstances:

(2) Mitigating Circumstances: The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply.

These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed. For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of 165-013-0020 will apply. (See OAR 165-013-0020(3)(b).)

Opportunity to Request a Hearing:

You have the right to a hearing before an administrative law judge with the Office of Administrative Hearings. You have 20 days* from the date of service on this letter to take one of the following actions:

Notice of Right to Hearing; Authority and Jurisdiction for Hearing:

You are entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter 165. If you request a hearing it will be conducted in accordance with the contested case provisions of the Oregon Administrative Procedures Act ORS 183.413 through ORS 183.470; ORS 183.745(4); ORS 260.995(4-6); OAR Chapter 137, Division 003, and OAR 165-001-0009 through 165-001-0080.

You have the right to a hearing before an administrative law judge with the Office of Administrative Hearings. You have 20 days* from the date of service on this letter to take one of the following actions:

Action	Result
Do not take any action.	Your failure to comply with ORS 254.470 will be considered a violation of Oregon election law. A final order by default imposing the civil penalty may be issued against you. The Secretary designates the agency file on this matter as the record for the purpose of proving the prima facie

Notice of Proposed Civil Penalty

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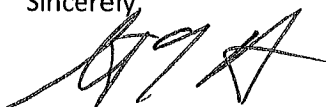
	case. OAR 165-001-0025 . Payment may be made to the Secretary of State prior to the issuance of a final order by default.
Complete and sign the Hearing Request Form choosing either the personal appearance or telephone hearing option. The hearing will be conducted by an independent Administrative Law Judge with the Office of Administrative Hearings.	A public hearing will be scheduled within 45 days and you will be notified of the date and time by the Office of Administrative Hearings. If, after the hearing is scheduled, you subsequently determine that you do not want to attend the hearing, you may choose to submit written notarized testimony and other evidence in lieu of appearing in person at the hearing. <i>Those documents must be received not later than three business days before the day of the hearing.</i>
Complete and sign the Hearing Request Form and choose the notarized testimony option. By choosing this option you are waiving your right to a personal appearance or telephone hearing.	The agency will refer your testimony and the Division's testimony to an independent Administrative Law Judge with the Office of Administrative Hearings. You have the right to submit rebuttal testimony to the agency not later than five business days from the date of service of the agency's testimony (the date the testimony was emailed or mailed.) OAR 165-001-0034 .

(*If the 20th day falls on a Saturday, Sunday or holiday, the deadline to request the hearing is the next business day.)

Active duty servicemembers have a right to postpone proceedings under the federal Servicemembers Civil Relief Act (SCRA) and may contact the Oregon State Bar at (800-452-8250) or the Oregon Military Department (800-452-7500) for more information. Servicemembers may also visit the United States Armed Forces Legal Assistance Legal Services Locator at: <http://legalassistance.law.af.mil/content/locator.php> for more assistance.

If you have questions about any part of this notice, please contact me at 503-986-1518.

Sincerely,



Stephen N. Trout
Director

DATE of Service: February 12, 2019

Enclosures:

Notice of Contested Case Rights and Procedures
Hearing Request Form (SEL 852)
Penalty Matrix, Appendix B to OAR 165-013-0020

cc: Sent VIA Electronic Mail
Karen Clevering, AAG
Oregon Dept. of Justice
General Counsel Division – Gov't Services Section
Karen.clevering@state.or.us

Notice of Contested Case Rights and Procedures

This is information you should read to prepare for a hearing.

1. **Time and place of hearing.** The hearing is not yet scheduled. If you request a personal appearance hearing, you will receive notice from the Office of Administrative Hearings of the time, date and place of the hearing once the hearing is scheduled. The hearing will be held by telephone unless you request to appear in person. A hearing held by telephone or in person is a "personal appearance hearing."
2. **Issues to be considered at hearing.** The issues to be considered at hearing are set forth in the accompanying notice and those issues related to the notice that are properly before the presiding officer to this proceeding.
3. **Law that applies.** The matter set for hearing (by the accompanying notice) is a contested case. The hearing will be conducted as provided in chapter 183, 260.232 and 260.995 (Election violations) of the Oregon Revised Statutes, the administrative rules of the Secretary of State, and the Attorney General's Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700.
4. **Right to attorney.** The Secretary of State will be represented by an attorney or by an employee of the Agency designated as an employee representative. Other parties are not ordinarily and customarily represented by attorneys. However, you have a right to be represented by an attorney. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary, you may request a recess to secure the services of an attorney.

Agencies, corporations and unincorporated associations must be represented by an attorney licensed in Oregon, unless the person is a political committee which may be represented by any officer identified in the most recent statement of organization filed with the filing officer, or may choose to be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.

5. **Subpoenas.** You may subpoena witnesses. The Secretary of State issues subpoenas upon request and upon a showing of reasonable scope and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
6. **Presiding Officer.** The person presiding at a personal appearance or notarized testimony hearing is an administrative law judge with the Office of Administrative Hearings. The administrative law judge will rule on all matters that arise at the hearing.
7. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to gather facts. The order of presentation of evidence is normally as follows:
 - a. Statement and evidence of the Secretary of State in support of its action.
 - b. Statement and evidence of the party disputing the Secretary of State's action.
 - c. Rebuttal.
8. **Burden of presenting evidence.** The Secretary of State has the burden of presenting evidence to support a fact or a position alleged by the Secretary of State. You have the burden of presenting

evidence to support a fact or position alleged by you. You have the right to respond to all issues properly before the administrative law judge and to present evidence and witnesses on those issues. You should be prepared to present evidence which will support your position and facts concerning mitigating circumstances, if any. Discovery is usually conducted through informal means. If you desire information from the agency to prepare for the hearing, please contact the Elections Division.

9. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by the agency, the party disputing the action or the administrative law judge.
10. **Admissible evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.

Four kinds of evidence may be admitted:

- a. Knowledge of the agency. The agency or administrative law judge may take "official notice" of commonly known facts and of facts and conclusions developed from experience in the specialized field of activity. You will be informed at the hearing if the agency takes "official notice" of any fact so that you may contest those facts.
 - b. Testimony of witnesses. This includes your own testimony.
 - c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.
 - d. Photographs, experiments, demonstrations and similar means used to prove a fact.
11. **Objections to evidence.** Evidence may be objected to on any of the following grounds:
 - a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
 - b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.
 - c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.
 - d. Unreliable. Reasonably prudent person would not commonly rely upon this evidence in the conduct of their serious affairs.
 12. **Telephone hearing.** If a hearing or a portion of a hearing is held by telephone, then each party must provide copies of documents sought to be introduced as evidence to the administrative law judge, all parties, and the agency not later than five business days prior to the hearing. If this timeline is not met, the party or agency must show that the documents meet admissibility standards and are needed to conduct a full and fair hearing in order for the administrative law judge to receive the documents into evidence.
 13. **Submitting written testimony or evidence in lieu of appearing at a scheduled personal appearance hearing.**
 - a. The person against whom a penalty may be assessed need not appear in person at a hearing under ORS 260.232 and 260.995, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the record.
 - b. Such documents must be received by the Secretary of State not later than three business days prior to the hearing.

- c. If written testimony is submitted in lieu of appearing at the personal appearance hearing, the Elections Division will forward the testimony to the administrative law judge assigned the case.
 - d. The Elections Division may also submit notarized testimony. The Elections Division testimony must be received by the Office of Administrative Hearings not later than 5:00 pm on the scheduled date of the hearing. If the Elections Division fails to submit notarized testimony, the Elections Division exhibits become part of the case file and may establish the basis for liability.
 - d. The administrative law judge will issue a proposed order based on its review of the Division's record and the submitted testimony or evidence.
14. **Continuances.** There are normally no continuances granted at the end of the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.
15. **Record.** An audio record will be made of the entire personal appearance hearing to preserve the testimony and other evidence for appeal. Ordinarily the record will not be transcribed unless you appeal the final order to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous. If you do not appeal, you may request a copy of the record, which will be made available to you upon payment of the preparation cost.
16. **Informal Disposition.** Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
17. **Proposed and final order.** After the hearing, the administrative law judge will recommend to you and the Elections Division a decision in the form of a proposed order. If the administrative law judge's proposed order recommends a decision favorable to you and the Elections Division intends to reject that recommendation, the Elections Division will issue an amended proposed order. You will be given an opportunity to make written exceptions (objections) to the proposed order and any amended proposed order if applicable. You will be notified when and with whom in the Elections Division the exceptions must be filed. The Secretary of State will then issue a final order.
18. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.480 through 183.497.

HEARING REQUEST FORM, NON CAMPAIGN FINANCE VIOLATIONS

SEL 852

rev 01/2019

If you wish to contest the charges in the Proposed Penalty Notice and assert that you have a valid mitigating circumstance, you must: **Complete this form and submit an answer.**

Name _____	Case # _____		
Address _____	City _____	State _____	Zip Code _____
Phone _____	Email Address _____		

Type of Hearing (select one)

- I want a **Personal Appearance Hearing** that will be presided over by an independent Administrative Law Judge at the Office of Administrative Hearings in Salem, Oregon.
 If a personal appearance hearing is requested you must deliver copies of any exhibits you intend to offer into evidence at the hearing no later than five business days before the date of the hearing.

- I want a **Telephone Hearing** that will be presided over by an independent Administrative Law Judge at the Office of Administrative Hearings in Salem, Oregon.
 If a telephone hearing is requested you must deliver copies of any exhibits you intend to offer into evidence at the hearing no later than five business days before the date of the hearing.

- I want to submit **Notarized Testimony** in lieu of a telephone or personal appearance hearing.
 I have attached my notarized testimony to this form.
I understand that by choosing this option I am waiving my right to a personal appearance or telephone hearing, and that the case will be decided by an independent Administrative Law Judge based solely on my written notarized testimony, the Elections Division record and written testimony, and my rebuttal notarized testimony, should I choose to submit it.

I have completed this form and attached my answer.

Signature _____	Date Signed _____
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Answer Worksheet

You may use the answer worksheet on the next page and/or attach additional sheets containing the required information.

Signature _____

STATE OF OREGON

County of _____

Signed and sworn to (or affirmed) before me on _____ by _____

 Notary Public of Oregon

For Office Use

Initials _____

Date Received _____

Answer Worksheet	Mitigating Circumstances Categories
<p>You must submit an answer that admits or denies the findings found in the intent to impose a penalty notice.</p> <p>You must indicate which mitigating circumstance applies to each finding you deny.</p> <p>A general denial is not sufficient, and evidence not included in your answer may not be considered.</p> <p>If a mitigating circumstance applies to the findings, complete the circumstance category and explanation summary.</p>	<p>A The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided.</p> <p>B The violation is the direct result of an error by an elections officer.</p> <p>C The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight.)</p>
Example	
Mitigating Circumstance Category: E	
<p>Explanation Summary: My supervisor asked me to complete the clerical task.</p>	
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1 st time	2 nd time	More than 2 times
247.012(2)(a)	Any person other than Secretary of State or County Clerk receiving a voter registration card must forward it within five days after receipt.	\$75	\$150	\$250
247.995	Use of lists of electors for commercial purposes prohibited with exceptions.	\$75	\$150	\$250
248.010	Each major and minor political party shall have exclusive use of the whole party name or any part of it.	\$75	\$150	\$250
251.049(3)(a)	A person shall not submit a false signature on a statement of endorsement for the state Voters' Pamphlet.	\$250	\$500	\$1,000
251.049(3)(b)	A person shall not alter a statement of consent after other person has signed statement consenting to use of person's name in any state Voters' Pamphlet statement.	\$250	\$500	\$1,000
251.075(1)	A candidate shall not submit a portrait for the Voter's Pamphlet that is more than four years old, as of the date the portrait is filed.	\$75	\$150	\$250
251.405(3)	A person shall not submit a false signature on a statement of endorsement for a County Voters' Pamphlet.	\$250	\$500	\$1,000
260.262	A chief petitioner of any state or local initiative or referendum petition who compensates petition circulators must keep detailed, current accounts about these payments; preserve these accounts; and submit them to the secretary upon request, all in accordance with the statutory guidelines.	As the purpose of this provision is to enforce the ban on paying by the signature, rather than the hour, in accordance with Article IV, Sec. 1b of Oregon Const., a violation of failure to submit adequate accounts, upon request of the secretary, shall result in one or both of the following actions. The secretary shall reject or order the appropriate elections filing officer to reject any petition signatures gathered after the date of notification of violation until the date that the request for accounts is satisfied; or if the accounts are supplied but are insufficient to prove compliance for payments to <u>each</u> circulator with Article IV, Sec. 1b of Oregon Const., then a penalty may be imposed as listed in this penalty matrix for this constitutional provision.		

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1st time	2nd time	More than 2 times
260.422	Acceptance of employment with the understanding that part of compensation from employment will be contributed for political purposes.	\$100	\$200	\$250
260.432(1)	No person shall coerce, command or require a public employee to influence or give money or services to support or oppose candidates or measures.	\$100	\$200	\$250
260.432(2)	No public employee shall solicit any money, service etc. to promote or oppose candidates or measures while on the job during working hours.	\$75	\$150	\$250
260.432(3)	Each public employer must have a notice posted regarding restrictions on employee's political activities during work hours.	None	\$75	\$250
260.550	No person shall knowingly or with reckless disregard describe a candidate in a way that implies that the candidate is the incumbent in office unless the candidate is qualified to be so considered.	\$100	\$200	\$250
260.555(1)	No person attempting to obtain signatures on, or causing to be circulated, an initiative, referendum or recall petition, shall knowingly make any false statement regarding the contents, meaning or effect of the petition to any person who signs it, attempts to sign it, is requested to sign it or requests information concerning it.	\$2,500	\$5,000	\$10,000
260.555(2)	No person shall attempt to obtain signatures to, cause to be circulated or file with a filing officer, an initiative, referendum or recall petition, knowing it to contain a false signature.	\$2,500	\$5,000	\$10,000
260.555(3)	No person shall attempt to obtain the signature of a person to an initiative, referendum or recall petition knowing that the person signing the petition is not qualified to sign it.	\$2,500	\$5,000	\$10,000
260.555(4)	No person shall knowingly sign an initiative, referendum or recall petition more than once, knowingly sign such petition when not qualified to sign it, or sign such petition in any name other than the person's own.	\$2,500	\$5,000	\$10,000

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1st time	2nd time	More than 2 times
260.555(5)	No public official or employee shall knowingly make a false certification concerning an initiative, referendum or recall petition.	\$2,500	\$5,000	\$10,000
260.558(1)	No person shall offer, pay or provide money or other valuable consideration to another person to sign or refrain from signing an initiative, referendum or recall petition, and for the other person to accept or agree to accept money or other valuable consideration for signing or refraining to sign an initiative, referendum or recall petition.	\$2,500	\$5,000	\$10,000
260.558(2)	No person shall sell, offer to sell, purchase or offer to purchase, for money or other valuable consideration, any signature sheet of an initiative, referendum or recall petition or any other portion of the petition used to gather signatures.	\$2,500	\$5,000	\$10,000
260.561(1)(a)	A violation of Oregon election law(except those subject to criminal penalty) or administrative rule related to circulation of petitions by a petition circulator is conclusively presumed to be a violation by chief petitioner if chief petitioner has knowledge of violation(unless chief petitioner notifies Secretary of State of violation in writing within one business day of obtaining knowledge of violation).	See specific violation for amount	See specific violation for amount	See specific violation for amount
260.561(1)(b)	A violation of ORS 250.048, 260.262, 260.555, 260.558, 260.567 260.575, 260.665 or 260.715(1) or section 1b, Article IV of the Oregon Constitution, or any rule adopted by the Secretary of State related to section 1b, Article IV of the Oregon Constitution, petition sheets or circulator training, registration or certification by a petition circulator is conclusively presumed to be a violation by chief petitioner if chief petitioner has knowledge or should have had knowledge of violation(unless chief petitioner notifies Secretary of State of violation in writing within one business day of obtaining knowledge of violation).	See specific violation for amount	See specific violation for amount	See specific violation for amount

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1 st time	2 nd time	More than 2 times
260.563	A violation of ORS 250.048, 260.555, 260.558, 260.567, 260.575, 260.665 , 260.715(1) or section 1b, Article IV of the Oregon Constitution, or any rule adopted by the Secretary of State related to section 1b, article IV of the Oregon Constitution, petition sheets or circulator training, registration or certification, by a subcontractor on behalf of a contractor (who has a contract with a chief petitioner) is conclusively presumed to be a violation by contractor if contractor has knowledge or should have had knowledge of the violation by subcontractor (unless contractor notifies Secretary of State of violation in writing within one business day of obtaining knowledge of violation).	See specific violation for amount	See specific violation for amount	See specific violation for amount
260.567	A person other than the signer of any state or local initiative, referendum, recall or candidate petition may not alter, correct, clarify or obscure any information about the signer, unless the person initials the change. In any case, a person other than the signer of such a petition <u>may not write any information left blank</u> by the signer, unless the signer at least signs the petition sheet and is a person with a disability who requested this type of assistance. (This disallows the practice of a circulator copying signer information from one petition signature sheet on which the signer signed and completed the other requested information onto another signature sheet on which the same signer signed but left the rest of the information blank.)	\$250	\$250	\$250

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1 st time	2 nd time	More than 2 times
260.569	A person may not pay or receive money or other thing of value based on the number of signatures obtained on a candidate nominating petition or on the number of signed voter registration cards collected.(Does not prohibit payment for signature gathering or collection of signed voter registration cards which is not based, directly or indirectly, on the number of signatures obtained or the number of signed voter registration cards collected.) Each individual signature sheet that contains signatures collected in violation shall be deemed as a single occurrence with a minimum civil penalty of \$100. Each individual signed voter registration card collected in violation shall be deemed as a single occurrence with a minimum civil penalty of \$100.	\$100		
260.575(1)	No person, for any consideration, shall offer, propose, threaten or attempt to sell, hinder or delay any part of an initiative, referendum or recall petition.	\$2,500	\$5,000	\$10,000
260.575(2)	No person, for any consideration, shall offer, propose or threaten to desist from beginning, promoting, circulating, or soliciting signatures to, any initiative, referendum or recall petition.	\$2,500	\$5,000	\$10,000
260.575(3)	No person, for any consideration, shall offer, propose, attempt or threaten in any manner to use an initiative, referendum or recall petition or any power of promotion or opposition concerning such petition for extortion, blackmail or private intimidation of any person.	\$2,500	\$5,000	\$10,000
260.635(1)	No candidate shall make a bet on an election.	\$75	\$150	\$250
260.635(2)	No person or candidate shall make a bet on an election in order to influence the results of an election.	\$100	\$200	\$250
260.665(2)(a)	Undue influence as defined in statute, cannot be used with the intent to induce a person to register or vote.	\$75	\$150	\$250
260.665(2)(b)	Undue influence as defined in statute, cannot be used with the intent to induce a person to refrain from registering or voting.	\$75	\$150	\$250

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1 st time	2 nd time	More than 2 times
260.665(2)(c)	Undue influence as defined in statute, cannot be used with the intent to induce a person to register or vote in any particular manner.	\$100	\$200	\$250
260.665(2)(g)	Undue influence as defined in statute, cannot be used with the intent to induce a person to challenge or refrain from challenging a person offering to vote.	\$75	\$150	\$250
260.665(2)(h)	Undue influence as defined in statute, cannot be used with the intent to induce a person to apply or refrain from applying for an absentee ballot.	\$75	\$150	\$250
260.675	A person employed or authorized to print official ballots may not give ballots to anyone other than the election official, or print any ballots in a way not directed by the election official. No person shall distribute any ballots contrary to law.	\$100	\$200	\$250
260.685	Election official shall not knowingly fail to comply with an interpretation or directive of the Secretary of State.	\$100	\$200	\$250
260.695(1)	A person may not print or circulate an incorrect sample ballot unless it has a disclaimer, "NOT FOR OFFICIAL USE." It is permissible to circulate a ballot that shows how a candidate's name can be written-in.	\$100	\$200	\$250
260.695(2)	A person may not electioneer within any building in which any state or local government elections office designated for the deposit of ballots is located, or within 100 feet from any entrance to the building. Applies after date ballots mailed and ends 8 p.m. election day or when all persons in line by 8 p.m. finish voting.	\$100	\$200	\$250
260.695(3)	A person may not obstruct an entrance of a building or location in which ballots are issued or deposited. Applies after date ballots mailed and ends 8 p.m. election day or when all persons in line by 8 p.m. finish voting.	\$100	\$200	\$250
260.695(5)	A person may not make a false statement about the person's inability to mark a ballot.	\$75	\$150	\$250

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1st time	2nd time	More than 2 times
260.695(6)	A person, except an elections official in performance of duties or another person assisting a disabled elector, may not ask a person at any ballot deposit site or voting booth how the person intends to vote, or examine or attempt to examine their ballot.	\$75	\$150	\$250
260.695(7)	A person may not show the person's own marked ballot to another person to reveal how it was marked.	\$75	\$150	\$250
260.695(8)	An elections official, other than in the performance of duties, may not disclose to any person how any elector has voted.	\$100	\$200	\$250
260.695(9)	A person, except an elections official in performance of duties, may not do anything to a ballot to permit identification of the person who voted.	\$75	\$150	\$250
260.695(10)	An elector may not willfully leave in any designated ballot deposit site or voting booth, anything that will show how the elector's ballot was marked.	\$100	\$200	\$250
260.695(11)	A person, except an elections official in performance of duties, may not remove a ballot from any designated ballot deposit site or voting booth.	\$75	\$150	\$250
260.695(12)	A person, except an elections official in performance of duties or a person authorized by that official, may not willfully deface, remove, alter or destroy a posted election notice.	\$100	\$200	\$250
260.695(13)	A person, except an elections official in performance of duties, may not willfully remove, alter or destroy election equipment or supplies, or break the seal or open any sealed package containing election supplies.	\$100	\$200	\$250
260.695(14)	A person, except an elections official in performance of duties, may not provide elections advice or attempt to collect voted ballots within any building in which any state or local government elections office designated for deposit of ballots is located, or within 100 feet measured radially from any entrance to the building.	\$100	\$200	\$250

Appendix B, OAR 165-013-0020, Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1st time	2nd time	More than 2 times
260.695(15)	A person, except an elections official in performance of duties, may not establish an unofficial ballot collection site, unless a sign is prominently displayed at the site stating, "NOT AN OFFICIAL BALLOT DROP SITE." The sign must be printed in all capital letters in bold 50-point type.	\$100	\$200	\$250
260.715(1)	A person may not knowingly make a false statement, oath or affidavit when a statement, oath or affidavit is required under the election laws.	\$2,500	\$5,000	\$10,000
260.737	A slate mailer organization must file a statement of organization with Secretary of State, and include the required disclosures with a slate mailer.	\$75	\$150	\$250
Article IV, Sec. 1b of Oregon Const.	No person shall pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition.(Does not prohibit payment for signature gathering that is not based, directly or indirectly, on the number of signatures obtained.) Each individual signature sheet that contains signatures collected in violation shall be deemed as a single occurrence with a minimum civil penalty of \$2,500.	\$2,500		
Other non-campaign finance election law violations	Any other violation of non-campaign finance election law under ORS Chapters 246-260 or OAR 165 that is not included in this table.	Penalties will be imposed under ORS 260.995 in amount similar to those listed in this matrix.		