

Inactive voters can't sign petitions for initiatives

By **PETER WONG**
Oregon Capital Bureau

SALEM — The Oregon Supreme Court has held again that only active voters, excluding people who remain on county registration rolls but are considered inactive, are eligible to sign petitions for ballot initiatives and referendums.

The court upheld the secretary of state, who declined to place an initiative on the 2016 statewide ballot because it relied on signatures from inactive voters to qualify it. Judge J. Channing Bennett upheld the state's action in mid-2020 in Marion County Circuit Court. But a three-judge panel of the Oregon Court of Appeals overturned it in a 2-1 decision released on Dec. 30, 2020.

Exactly one year later, on the final business day of 2021, the Supreme Court upheld the original 2016 decision by then-Secretary of State Jeanne Atkins to exclude signatures from inactive voters. The resulting total fell short of the amount required to qualify the initiative for a statewide ballot. (Atkins has had three successors: Republican Dennis Richardson, elected in 2016; Republican Bev Clarno, appointed in 2019 after Richardson died, and Democrat Shemia Fagan, elected in 2020. The case now bears Fagan's name as the respondent.)

The Oregon Constitution specifies the signatures required to qualify a referendum, initiative or constitutional amendment for a statewide election, based on the total votes cast in the most recent election for governor.

Justice Thomas Balmer, who wrote for the court, said that voter registration for elections has been required by state law since 1920 and by the Oregon Constitution since 1927.

He wrote: "Defining and regulating voter registration and verification of registrations has been within the purview of the legislative branch. And this court has issued several decisions squarely holding that voters may sign initiative petitions only if they could legally vote in an election at the time of signing."

"We conclude that voters with inactive registration, who statutorily may not vote, may not have their signatures counted on initiative petitions either."

Voters are considered "inactive" under a state administrative rule if they have not cast ballots for at least 10 years, and county elections officials have sent specified notices to them. They can become active and eligible to vote if they notify the Division of Driver and Motor Vehicle Services (DMV) or their county elections office.

The legal challenge was filed by Richard Whitehead on behalf of the Citizens in Charge Foundation, based in Virginia. It sought to qualify a ballot measure barring disclosure of certain voter information to third parties, such as the status of a voter's ballot, without a voter's written consent. The lawsuit was joined by Timothy Grant, who became an inactive voter because he joined his spouse on active military duty out of state.

Three lawyers from the Portland firm of Davis Wright Tremaine were involved with the plaintiffs' challenge: Chris Swift; Evan Christopher, who now is a counsel with the U.S. House Judiciary Committee, and Greg Chaimov, a former counsel for the Oregon Legislature.

Separate friend-of-the-court briefs were filed by Greg Wasson, a longtime advocate for Oregon's initiative process, and Daniel Meek on behalf of the Independent Party of Oregon and the Oregon Progressive Party.

High court changes course on motor vehicle searches

Ruling makes it harder for police to search vehicles without a warrant

By **PETER WONG**
Oregon Capital Bureau

SALEM — The Oregon Supreme Court has dropped its 35-year blanket exception for motor vehicles in requiring court-issued warrants before police can conduct most searches for criminal evidence.

The court ruling, which makes it harder for police to search vehicles without a warrant, came on the final business day of 2021. The 51-page opinion, penned by Justice Rebecca Duncan, said the 1986 exception carved out by the court was meant to be temporary.

"Notably, the court did not intend the automobile exception to be permanent," Duncan



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wrote. "The exception was based on the length of time it generally took to get warrants, which the court expected would be reduced in the 'near future' because of advances in technology."

The decision still allows police to conduct warrantless searches if there are "exigent circumstances," defined by the court as those "that require the police to act swiftly to prevent danger

to life or serious damage to property, or to forestall a suspect's escape or the destruction of evidence."

The decision was made by six justices plus senior judge Jack Landau, who retired from the court at the end of 2017. Justice Thomas Balmer, a former No. 2 offi-

cial at the Oregon Department of Justice, did not participate.

The Oregon Constitution bars "unreasonable" searches and seizures, and court warrants for police to conduct them must be based on "probable cause" and specify the place to be searched and the person or thing to be seized.

But like its federal counterpart in the Fourth Amendment, the state guarantee has been the subject of numerous interpretations.

Prior ruling

The court upheld a 2017 ruling by Judge Lindsay Partridge in Marion County Circuit Court to exclude the seizure by Salem police of evidence from a lawfully parked and unoccupied truck about a mile

east of the Marion County Courthouse.

A warrantless search on Nov. 28, 2016, uncovered heroin, a scale, and drug paraphernalia — and led to charges of possession and delivery of heroin against Charles Steven McCarthy, who had been the subject of an earlier investigation by police.

A detective testified in circuit court that police based the search on the "automobile exception," which the Oregon Supreme Court decided on a split vote in 1986 was not subject to the usual requirement for warrants under two conditions: "The car was mobile at the time it was stopped by the police, and the police had probable cause to believe that the car contained contraband or crime evidence."

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