IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

State ex rel

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, MELISSA GRASSL, an individual victim,

Plaintiffs-Relators,

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; OREGON YOUTH AUTHORITY

Defendants-Respondents.

No.: 22CV02609

PLAINTIFFS'-RELATORS' REPLY TO DEFENDANTS-RESPONDENTS' MOTION TO DISMISS

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INTRODUCTION

This case is about the refusal of the Governor to adhere to the existing clemency processes, procedures, and reporting requirements as set forth clearly in Oregon law. Defendants-Respondents (hereinafter referred to as "Defendants") fail to recognize the distinction between substance and process. Plaintiffs-Relators (hereinafter referred to as "Plaintiffs") are not asking this Court to impose any new restrictions on the Governor's substantive clemency power. Rather, the Plaintiffs are asking this Court to compel the Governor, and her agents and state officials and agencies, to follow the legal procedures that exist, and have been in place since the procedural statutes were enacted by the legislature, and were followed until 2020.

Defendants focus on old Oregon Supreme Court cases that rule on substantive challenges to the Governor's clemency power, long before the statutes dictating process and reporting were enacted. In this present case of first impression, Plaintiffs specifically challenge the Governor's failure—and, now, refusal—to follow the laws that clearly establish a process for commutations of criminal sentences and the Governor's improper delegation of her clemency power.

It is surprising that Defendants completely ignore the most modern, comprehensive, Oregon Supreme Court case on justiciability and standing in cases relating to public interest. 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, painstakingly 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. This decision – not cited at all by Defendants – will be carefully described below.

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Taken as a whole, Defendants' response is 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 process.

Also before the Court is the question as to whether the Governor may delegate the clemency power authorized by the Oregon Constitution. The case law is clear that the Governor is the only person who may exercise plenary clemency power.

I. CONSTITUTIONAL AND STATUTORY SCHEME REGARDING CLEMENCY

The Governor's clemency power is specified in Article V, Section 14, of the Oregon Constitution. This provision is presented in full in Appendix 1 to this Reply. This section of the Constitution gives the Governor the power to grant "reprieves, commutations, and pardons" for all offenses (except treason, which separately calls for consideration by the Legislative Assembly). The Governor also has the same power, under this section of the Constitution, to "remit fines, and forfeitures." The significant portion of Section 14, for consideration here, is the specific limitation contained in Section 14. The power to grant reprieves, commutations, and pardons is "subject to such regulations as may be provided by law." *Id.* In addition, the Governor is required, by the Constitution, to report to the Legislative Assembly "*each* case of reprieve, commutation or pardon granted, and the reasons for granting the same." (emphasis added).

So, the Constitutional scheme grants substantive power to the Governor but limits reprieves, commutations, and pardons to regulations as may be provided by law. This section of

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the Constitution also requires a report to the Legislative Assembly as to *each* case, not a general summary report of all cases or group of cases.

Then, we can turn to the statutory scheme which has been adopted by the Legislature. These provisions are presented in a set of consecutive statutes. These provisions have been quoted in full in earlier pleadings but, for the convenience of the Court, they are presented again as Appendix 2 to this Reply.

The statutory scheme runs from ORS 144.649 through ORS 144.670. In ORS 144.649, the Legislature recognizes the substantive power of the Governor as presented in the Constitution. We have generally referred to "clemency" in our arguments, but here it is important to be more specific. We focus on commutations of criminal sentences as these are the subject of this litigation.

In this context, it is noteworthy that ORS 144.650 provides no process for reprieves. It does provide a process for pardons, commutations, or remissions. The reference to a "remission" is basically a reference to reduction of penalties and forfeitures and does not involve commutation or sentencing. The key point here is that the entire process of ORS 144.650 omits any reference to reprieve but does cover commutations. This must be interpreted through the maxim of *expressio unius est exclusion alterius*, which, when applied, results in the realization that the legislature expressly chose to exclude reprieves from the application process. In its initial language, ORS 144.650 specifically states: "When an application for a pardon, commutation or remission is made…." ORS 144.650 (1). Then, the process which is an issue in this litigation is specifically described.

Defendants wrongly rely on the case of *Haugen v. Kitzhaber*, in which the Court decided no application was necessary when the Governor granted a reprieve to a criminal sentenced to

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the death penalty. *Haugen v. Kitzhaber*, 353 Or 715, 306 P3d 592 (2013). The present litigation is not about reprieves.

Following ORS 144.650, we find two statutes relating to pardons; these are not at issue in the present litigation. These are ORS 144.653 and ORS 144.655.

The next statutory provision is critical. This is ORS 144.660. Consistent with the constitutional reference to "each case of … commutation," the Legislature requires the Governor to report to the Legislative Assembly "each reprieve, commutation or pardon granted since the previous report to the Legislative Assembly…" This statute then requires the inclusion of not only the reason for the Governor's action, but the name of the applicant, the crime of which the applicant was convicted, the sentence and its date, and statements by the victims of the crime or any member of the victim's immediate family. This needs to be read again in its entirety because it clearly defines the legislative process as to any commutations of sentences. When one reads the language of this statute, one sees that the Governor is required to report to the Legislative Assembly as to "each" commutation. The statute clearly refers to the name of the applicant, the crime of which the applicant was convicted, and more. Here is the language of ORS 144.660:

> The Governor shall report to the Legislative Assembly in the manner provided in ORS 192.245 (Form of report to legislature) each reprieve, commutation or pardon granted since the previous report to the Legislative Assembly required by this section. The report shall include, but not be limited to the reason for granting the reprieve, commutation or pardon, the name of the applicant, the crime of which the applicant was convicted, the sentence and its date, statements by the victim of the crime or any member of the victim's immediate family, as defined in ORS 163.730 (Definitions for ORS 30.866 and 163.730 to 163.750), a statement by the district attorney where the conviction was had, photos of the victim, the autopsy report, if applicable, and the date of the commutation, pardon or reprieve. The Governor shall communicate a like statement of particulars in relation to each case of remission of a penalty or forfeiture, with the amount remitted. [Formerly 143.050; 1995 c.805 §2]

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The statutory scheme is completed by a requirement in which the Governor must file clemency documents with the Secretary of State. ORS 144.670.

The critical point here is that the actual processing of commutation of sentences and pardon (or remissions) is specifically described in ORS 144.650. The reason why reprieves are left out of this statute is obvious: a reprieve is a temporary action by the Governor. Later statutes require reports and documentation as to reprieves, but the process requirements do not include reprieves. In the old days, a Governor might grant a reprieve just hours before a person is to be executed. There would be no time to go through the detailed process required for commutations and pardons.

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 by the convicted person. That is why ORS 144.660 repeatedly refers to "the applicant" and not the convicted person.

When one reads the Constitutional provisions and the statutes, then takes them as a whole, the process which the statutes require for sentence commutation is not an option but is a requirement.

None of the above procedural requirements demonstrates any restriction as to the substantive power of the Governor as to her reasons for ordering a commutation of sentence.

As to statutory interpretation, Defendants are correct in their comment that *State v. Gaines* provides that statutory "text and context remain primary, and must be given primary weight in the analysis." *State v. Gaines*, 346 Or. 160, 171 (2009). However, Defendants have only examined partial context as to ORS 144.650 and have omitted relevant context from neighboring statutes.

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Context should be examined within ORS 144.649 to 144.670 as a whole under the maxim of *in pari materia*. We have done this above.

Defendants claim that the text of ORS 144.649 is controlling with the phrase "[u]pon such conditions and with such restrictions and limitations as the Governor thinks proper." Defendants seemingly interpret this statement to mean the Governor is not bound by any restriction beyond the executive office. However, the proper interpretation supplies a very different outcome: that the Governor may impose her substantive standards and may require specific actions of a person to receive clemency. Examples of this may be requiring a person to remain on house arrest for a period of time; to remain within the boundaries of the state; to refrain from using internet-accessible devices; or any other condition "the Governor thinks proper."

The legislature has not chosen to regulate the Governor's clemency power substantively, only procedurally. We merely assert that these procedural requirements must be followed, and that, if not required through mandamus, will continue to go unfollowed.

II. JURISDICTION

Our original Petition recites the statutory basis for this Court's jurisdiction. Defendants do not challenge this statutory scheme but assert that this case improperly allows the Court, via mandamus, to restrict the clemency power of the Governor, and that this Court has no jurisdiction to do so. We do not assert that this Court has jurisdiction over substantive clemency decisions. However, the Court does have jurisdiction to enforce the procedural and reporting requirements as to commutations of criminal sentences.

This mandamus action, as clearly set out in the Petition, is an urgent request to the Court to compel the Defendants to follow the law as to process, procedure, and reporting of each of the Governor's clemency actions involving commutations of criminal sentences.

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The Writ of Mandamus is the proper, and only, course of action that will cause the immediate halt to the Governor's unlawful actions and compel her to perform her duties consistent with the law. There is no other "plain, speedy and adequate remedy in the ordinary course of the law." ORS 34.110. Defendants fail to offer an alternative remedy because there is none. The undisputed facts make plain the urgency of the Petition. Unlawful "Juvenile Review Hearings," the first of their kind, devised by Defendants to unlawfully reduce criminal sentences, begin on March 4, 2022, and must be halted by this Court. We have attached as exhibits the Grassl Declaration (Exhibit 25), the Jones Declaration (Exhibit 26) the Tennant Declaration (Exhibit 27), the Pelker Declaration (Exhibit 28), and the Williams Declaration (Exhibit 29) to confirm this. The Governor has publicly indicated that she will continue to refuse to follow the statutorily prescribed process. This is confirmed by the position asserted by Defendants in their Motion to Dismiss. Defendants' Motion to Dismiss, pages 2, 15, 17, 19, 20, 22-24, 32.

III. CONSIDERATON OF FACTS

We agree with Defendants that the facts should be construed in a light most favorable to Plaintiffs in a Motion to Dismiss. In any event, beyond this, the facts are based on public records, and declarations and are not disputed. Defendants proclaim that they believe the illegal process is appropriate. *Id.* Plaintiffs seek an order compelling Defendants to follow the law which they have a public duty to follow. The real issue is the application of the law to the facts.

IV. STANDING

Each Plaintiff in this proceeding has standing to bring this mandamus action. "Standing" is a legal term that identifies whether a party to a legal proceeding possesses a status or qualification necessary for the assertion, enforcement, or adjudication of legal rights or duties. See *Eckles v. State of Oregon*, 306 Or. 380, 383, 760 P.2d 846 (1988) (discussing principle).

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A party who seeks judicial review of a governmental action must establish that that party has standing to invoke judicial review. This is where the *Couey* decision comes into play.

The *Couey* Principles

Defendants are mistaken in stating that "there is little case law interpreting…or setting forth the standing requirements for a writ of mandamus [and that] it is helpful to examine Oregon law as it relates to standing for other writs as well as that for declaratory judgments." Defendants' Motion to Dismiss, page 9. In its detailed opinion in *Couey v. Atkins*, the Oregon Supreme Court examined the complex historical application of justiciability doctrines regarding matters of public interest, particularly in cases involving writs. *Couey v. Atkins*, *supra*.

First, the *Couey* Court explained that the justiciability standards are different for Oregon than for federal cases. This is because the portion of Oregon's Constitution which grants judicial power to the courts lacks the same 'cases and controversies' clause as Article III of the U.S. Constitution. That clause is the basis for the three requirements of justiciability on the federal level: standing, mootness, and ripeness.

Curiously, Defendants cite *Kellas v. Dep't of Corrections* when they argue that standing must be established to invoke judicial review. However, Defendants fail to note that the Court in *Kellas* ultimately "found no constitutional impediment to the legislature granting any person the right to challenge administrative rules, regardless of whether a judicial decision on the matter would affect them." *Couey v. Atkins* at 488 (citing *Kellas v. Dep't of Corrections*, 341 Or. 471, 486, 145 P3d 139 (2006)).

The Court in *Couey* examined nineteenth-century American case law regarding prerogative writs. The court recognized that the "case law drew a distinction between obtaining prerogative writs to enforce private rights and those to enforce public rights…In the latter case,

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the authorities required no such showing [of a personal legal interest, and that] American courts recognized that strangers with no particular personal interest could bring such actions to vindicate public rights." *Couey* at 496. Further, the Supreme Court of the United States commented that "[t]here is a decided preponderance of American authority in favor of the doctrine, that private persons may move for a mandamus to enforce a public duty, not due to the government as such." *Couey* at 497 (quoting *Union Pacific R.R. v. Hall et al.*, 91 U.S. 343, 355 (1875)). The *Couey* Court went on to state:

> 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.

Following its analysis of nineteenth-century federal cases, the court in *Couey* moved on to examine Oregon cases of the same time period.

> Decisions of this court on the subject of justiciability…are few. Without exception…they reflect the view that the judicial power of the state broadly includes the authority to hear cases, particularly cases of public importance, without regard to whether the cases…have been brought by individuals without a personal stake in the outcome.

Couey at 508.

In further reassessing the justiciability doctrine, and after its examination of modern Oregon case law—including *Kellas*—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:

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> [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.

The Plaintiffs in this case do not need to seek a remedy as to their own personal grievances. Nevertheless, we present the concerns of the Plaintiffs, below, to put this case into perspective.

Plaintiff District Attorneys: Plaintiffs Patricia Perlow and Douglas Marteeny, as law officers of the state and the highest-ranking law officers of Lane and Linn Counties, respectively, properly bring this proceeding as prosecutors who have a duty to see criminal cases fully prosecuted to include ensuring the accused are properly investigated, charged, brought to judgment, sentenced, and incarcerated. Ensuring sentences are completed is often a critical step in the criminal justice system. The full life cycle of a criminal case is within the scope of duties of the district attorney, to include all proceedings up to and including clemency proceedings. District attorneys also have an obligation, sworn to under oath, to raise and address matters regarding the protection of victims of crime and the enforcement of crime victims' rights. Or Const, Art VII, § 17.

Plaintiff Victims: Consistent with the Governor's failure to honor the input of victims in her new and unlawful clemency 'process,' Defendants, in their Motion to Dismiss, fail to acknowledge that Plaintiffs Tennant, Williams, Jones and Grassl are in fact victims of crime, not just relatives of crime victims. Defendants' Motion to Dismiss, pages 2, 4. The plain language of ORS 131.007 provides that "victim" means the person or persons who have suffered financial, social, psychological, or physical harm as a result of a crime; this includes, in the case of a

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homicide or abuse of corpse in any degree, a member of the immediate family of the decedent. Plaintiffs Tennant, Williams, Jones, and Grassl all suffered the loss of their immediate family members by murder and should therefore be recognized as victims, with all the rights the Oregon Constitution and statutes afford victims of crime, including consideration in the clemency proceedings as to those who victimized them.

Plaintiff victims were deprived of notice and an opportunity to be heard by the Governor, and their respective rights to have the laws followed were violated. Affidavit of Patricia Perlow (Exhibit 21); Affidavit of Douglas Marteeny (Exhibit 22); Declaration of Melissa Grassl (Exhibit 25); Declaration of Amy Jones (Exhibit 26); Declaration of Randy Tennant (Exhibit 27); Declaration of Samuel Williams (Exhibit 29). The omissions and failures by the Governor are not merely "technical defects" as suggested by Defendants, but actual harm to Plaintiffs as described above and in the form of interference in the constitutional and statutory duties of the Plaintiff District Attorneys, and all district attorneys not parties to this action. Affidavit of Patricia Perlow (Exhibit 21); Affidavit of Douglas Marteeny (Exhibit 22); Declaration of Paige Clarkson (Exhibit 23); Declaration of John Wentworth (Exhibit 24).

Defendants assert Plaintiffs must demonstrate that a connection must exist between the rights the Plaintiffs seek to vindicate, and the relief requested. The relief requested is an order compelling Defendants to follow the law. Following the law provides Plaintiffs with the relief sought. The law is specifically written to regulate the process of criminal sentence commutations.

Representation of District Attorneys

Defendants assert that Plaintiff District Attorneys Perlow and Marteeny must be represented by the Attorney General or obtain permission from the Attorney General to hire

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outside counsel. Defendants rely 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 may choose for themselves how to carry out their authority and duties.

The powers of the Attorney General do not usurp the power of the District 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 is established by the Oregon Constitution. Article VII, section 17, states that the District Attorney "shall be the law officer of the State, and of the counties within their respective districts, *and shall perform such duties pertaining to the administration of Law*, and general police as the Legislative Assembly may direct." (Emphasis added).

Defendants raise *Gortmaker v. Seaton,* 252 Or. 440, 450 P2d 547 (1969) and *Foote v. State*, 364 Or. 558, 437 P3d 221 (2018) as providing authority on the matter of private representation of District Attorneys, yet 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* failed to overcome standing issues as to declaratory judgments and had nothing to do with attorney representation.

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V. THE GOVERNOR CANNOT DELEGATE HER CLEMENCY POWER

The Governor's clemency power is not delegable. The substantive (discretionary) clemency power the Governor derives from the Constitution may not be assigned to another person, agency, board or panel for immediate execution, or transferred in a dormant state to be 'activated' at a future time beyond the Governor's term office (a time determined by the unlawful delegee).

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. The case law is clear and the parties in this present action 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).

The clemency powers of the Governor cannot be given to others. *Application of Fredericks,* 211 Or 312, 320, 315 P2d 1010 (1957). The legislature cannot give a little of the Governor's pardon power to any other officer. *Id.* And neither can the Governor.

Reiterated in *Haugen*, the Governor's ability to grant clemency is a direct and complete check on specific actions of the judicial branch that is entrusted to the chief executive. *Haugen v.*

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Kitzhaber, 353 Or 715, 726, 306 P3d 592 (2013). Aside from the Governor, no other person, agency, or Board is a check on the judicial branch of the State of Oregon.

CONCLUSION

For the purposes of this mandamus proceeding, it does not matter to whom, or for what reason, the Governor grants a commutation; that is her prerogative, and the law does not allow us to challenge her substantive discretion. However, the Governor must, as a matter of law, comply with all the laws pertaining to the process and reporting of her clemency power. The legislature enacted ORS 144.649, 144.650, 144.660, 144.660 as process and reporting statutes. When read together, there is no question as to the intended processes ensuring, among other things, notifications to law officers and correctional facilities, honoring victims' rights, and ensuring absolute transparency to Oregonians. The statutes are not simply advisory or 'best practices' suggestions. Several government officials have specific obligations under the statutes, and the pivotal player in all clemency actions is, of course, the Governor. No aspect of the Governor's clemency power may be delegated.

The proposition that none of the process and reporting statutes apply to Governor Brown flies in the face of the language of the Oregon Constitution and statutes.

The Governor's substantive power to grant clemencies remains untouched by the proposed Writ of Mandamus. This Court should properly intervene and issue the writ as requested in the Petition and proposed Order submitted with this Reply.

DATED this 23rd day of February, 2022.

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APPENDIX 1

Oregon Constitution, Article V, Section 14:

> **Section 14. Reprieves, commutations and pardons; remission of fines and forfeitures.** He shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences [sic] except treason, subject to such regulations as may be provided by law. Upon conviction for treason he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislative Assembly, at its next meeting, when the Legislative Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a farther [sic] reprieve. —
> He shall have power to remit fines, and forfeitures, under such regulations as may be prescribed by law; and shall report to the Legislative Assembly at its next meeting each case of reprieve, commutation, or pardon granted, and the reasons for granting the same; and also the names of all persons in whose favor remission of fines, and forfeitures shall have been made, and the several amounts remitted[.]

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APPENDIX 2

144.649 Granting reprieves, commutations and pardons generally; remission of penalties and forfeitures. Upon such conditions and with such restrictions and limitations as the Governor thinks proper, the Governor may grant reprieves, commutations and pardons, after convictions, for all crimes and may remit, after judgment therefor, all penalties and forfeitures. [Formerly 144.640]

144.650 Notice of intention to apply for pardon, commutation or remission; proof of service; duties of district attorney. (1) When an application for a pardon, commutation or remission is made to the Governor, a copy of the application, signed by the person applying and stating fully the grounds of the application, shall be served upon:

(a) The district attorney of the county where the conviction occurred;

(b) If the person applying is housed in a correctional facility within the State of Oregon, the district attorney of the county in which the correctional facility is located;

(c) The State Board of Parole and Post-Prison Supervision; and

(d) The Director of the Department of Corrections.

(2) Proof by affidavit of the service shall be presented to the Governor.

(3) Upon receiving a copy of the application, the district attorney of the county where the conviction occurred shall:

(a) Notify the victim of the crime concerning the application and the victim's right to provide the Governor with any information relevant to the Governor's decision;

(b) Provide the Governor with any information relevant to the Governor's decision that the victim wishes to have provided; and

(c) Provide the Governor with copies of the following documents:

(A) Police and other investigative reports;

(B) The charging instrument;

(C) The plea petition, if applicable;

(D) The judgment of conviction and sentence;

(E) Any victim impact statements submitted or filed; and

(F) Any documents evidencing the applying person's payment or nonpayment of restitution or compensatory fines ordered by the court.

(4) In addition to providing the documents described in subsection (3) of this section, upon receiving a copy of the application for pardon, commutation or remission, any person or agency named in subsection (1) of this section shall provide to the Governor as soon as practicable such information and records relating to the case as the Governor may request and shall provide further information and records relating to the case that the person or agency considers relevant to the issue of pardon, commutation or remission, including but not limited to:

(a) Statements by the victim of the crime or any member of the victim's immediate family, as defined in ORS 163.730;

(b) A statement by the district attorney of the county where the conviction occurred; and

(c) Photos of the victim and the autopsy report, if applicable.

(5) Following receipt by the Governor of an application for pardon, commutation or remission, the Governor shall not grant the application for at least 30 days. Upon the expiration of 180 days, if the Governor has not granted the pardon, commutation or remission applied for, the application shall lapse. Any further proceedings for pardon, commutation or remission in the case shall be pursuant only to further application and notice. [Formerly 143.040; 1983 c.776 §1; 1987 c.320 §79; 1995 c.805 §1; 2019 c.369 §5]

144.660 Report to legislature by Governor. The Governor shall report to the Legislative Assembly in the manner provided in ORS 192.245 each reprieve, commutation or pardon granted since the previous report to the Legislative Assembly required by this section. The report shall include, but not be limited to the reason for granting the reprieve, commutation or pardon, the name of the applicant, the crime of which the applicant was convicted, the sentence and its date, statements by the victim of the crime or any member of the victim's immediate family, as defined in ORS 163.730, a statement by the district attorney where the conviction was had, photos of the victim, the autopsy report, if applicable, and the date of the commutation, pardon or reprieve. The Governor shall communicate a like statement of particulars in relation to each case of remission of a penalty or forfeiture, with the amount remitted. [Formerly 143.050; 1995 c.805 §2]

144.670 Filing of papers by Governor. When the Governor grants a reprieve, commutation or pardon or remits a fine or forfeiture, the Governor shall within 10 days thereafter file all the papers presented to the Governor in relation thereto, including any documents provided under ORS 144.650 (3) or (4), in the office of the Secretary of State, by whom they shall be kept as public records, open to public inspection. [Formerly 143.060; 2019 c.369 §6]

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2022, I served DEFENDANTS-RESPONDENTS, the REPLY TO DEFENDANTS-RESPONDENTS' MOTION TO DISMISS, our Supplemental Exhibit List, and our Proposed Mandamus Order, on the attorneys and/or parties listed below on the date set forth below by the method(s) indicated:

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DATED: February 23, 2022

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