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4 **IN THE SUPREME COURT OF THE**  
5 **STATE OF OREGON**

6 THE STATE OF OREGON,  
7 Plaintiff-Adverse Party,

8 vs.

9 COLUMBUS DINKEY GENE  
10 HAYLES,

11 Defendant-Relator

) Lane County Circuit Court  
) No. 24CR59872

) MEMORANDUM OF LAW IN  
) SUPPORT OF PETITION FOR  
) WRIT OF MANDAMUS OR  
) HABEAS CORPUS

) **MANDAMUS PROCEEDING**

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## INTRODUCTION

Relator Columbus Dinkey Gene Hayles is incarcerated in a Lane County jail cell without bail in violation of his constitutional right to bail. The trial court adopted an erroneous statutory interpretation of pretrial release procedures that directly conflicts with Article I, sections 14 and 43, of the Oregon Constitution. This case presents this Court with the opportunity to clarify Oregon law governing pretrial release. Relator respectfully petitions this Court to enter an emergency writ of mandamus or, in the alternative, a writ of habeas corpus ordering the Circuit Court to immediately release him on bail, as required by the Oregon Constitution. Further, the issues raised by this Petition affect many thousands of current and future detainees across the state. Even after he is released, relator requests that this Court issue a precedential opinion that will guide important release decisions and safeguard the right to pretrial liberty.

## FACTS

On October 31, 2024, Hayles was arrested and charged with driving with a suspended license in case 24CR59872. ER-1. Hayles is unhoused and needed the car for shelter. During arraignment on December 2, 2024, the Circuit Court for Lane County informed Hayles that Lane County Pretrial Release Services “determined that you can be released after court here today as long as you agree to those conditions of release.” ER-6. The court then entered a supervised release agreement, releasing

1 Hayles on the conditions recommended by pretrial services, and subject to their  
2 supervision. ER-6-7.

3 On December 29, 2024, Hayles was again arrested and charged with driving  
4 with a suspended license in a second case, 24CR69215. ER-15. On December 30,  
5 2024, a release officer with Lane County Pretrial Services filed an “Affidavit for  
6 Order Revoking Release Agreement,” alleging that Hayles had violated the release  
7 agreement in 24CR59872 due to the new charge. ER-16.

8  
9 On December 31, 2024, the circuit court held a new hearing in the first case,  
10 24CR59872. ER-17, 25. The court announced: “[Hayles is] here after having failed to  
11 comply with Pretrial Services, with new charges pending in 24CR69215.” ER-25. The  
12 court then ordered that Hayles “be held pursuant to ORS 135.240(4)(f)(A).” ER-25.  
13 Defense counsel objected to the detention order by referencing an objection made on  
14 the record earlier in the proceedings: “Your Honor, I would object to him being held.  
15 \* \* \* Holding [Defendant] without the possibility of release in this case violates  
16 Article I, section 14 and 43 of the Oregon Constitution, as well as the 14<sup>th</sup> \* \* \*  
17 Amendment to the United States Constitution.” ER-22, 25. The court responded:  
18 “And that objection is noted and overruled.” ER-25. The court then entered an order  
19 revoking Hayles’s pretrial release and remanding him without bail to the custody of  
20 the Lane County Sheriff. ER-44. A pretrial conference is currently set for January 27,  
21 2025, and a jury trial is set for February 19, 2025. Relator has been detained without  
22 bail since December 29, 2024.  
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## LEGAL AUTHORITIES AND ARGUMENT

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 US 739, 755, 107 S Ct 2095, 95 L Ed 2d 697 (1987). The Oregon Constitution embraces this principle and guarantees a right to pretrial release on bail with limited exceptions. Or Const, Art I, §§ 14, 43(1)(b). Unless the defendant is accused of murder, treason, or a violent felony, the Oregon Constitution “requires courts to set bail.” *State v. Sutherland*, 329 Or 359, 364, 987 P2d 501, 503 (1999).

Despite the clear right to bail, several judges of the Circuit Court of Lane County have adopted an interpretation of ORS 135.240(4)(f)(A) that permits pretrial detention any time a defendant is arrested while released pretrial in a prior case. Under this interpretation, several judges regularly order the pretrial detention of defendants who are not charged with an offense that qualifies for pretrial detention under the Oregon Constitution. Even though relator does not stand accused of murder, treason, or a violent felony, the Circuit Court ordered him detained without bail based on its erroneous understanding of the law. The Circuit Court’s order is unsupported by the statute and violates the fundamental protections of the Oregon Constitution.

### I. HISTORICAL, CONSTITUTIONAL, AND STATUTORY BACKGROUND

The Oregon Constitution has protected a right to bail for all people not charged with murder or treason since the founding of the state. *See* Or Const, Art I, § 14 (“Offences [*sic*], except murder, and treason, shall be bailable by sufficient sureties.

1 Murder or treason, shall not be bailable, when the proof is evident, or the presumption  
2 strong.”). As a matter of history and law, the term “bail” means, and has always meant,  
3 *release* before trial. *See, e.g., Armatta v. Kitzhaber*, 327 Or 250, 280, 959 P2d 49  
4 (1998) (describing Article I, section 14 of the Oregon Constitution as entitling  
5 arrestees to “release”); Timothy R. Schnacke, *A Brief History of Bail*, Judges’ J 4, 6  
6 (2018) (demonstrating that, throughout history, “bail” has “meant release and the bail  
7 process was not allowed to be used to intentionally detain”).  
8

9  
10 In 1973, the Oregon legislature adopted, and later amended, a comprehensive  
11 statutory system of pretrial release. *See* ORS 135.230–135.290. Under this system, an  
12 arrested person is *presumed eligible for release on personal recognizance* without any  
13 restrictions on their liberty. ORS 135.245(3). The magistrate may impose conditional  
14 release “[u]pon a finding that release of the person on personal recognizance is  
15 unwarranted.” ORS 135.245(4). Then, “[o]nly after determining that conditional  
16 release is unwarranted,” the law allows the magistrate “to consider security release.”  
17  
18 *Id.* The law defines “conditional release” as “a nonsecurity release which imposes  
19 regulations on the activities and associations of the defendant.” ORS 135.230(2).  
20 Typical regulations may require defendants to surrender their passport, restrict their  
21 movements to the state or even their home, check in regularly with the court, or use  
22 electronic monitoring to track their whereabouts. The law defines “security release”  
23 as “a release conditioned on a promise to appear in court at all appropriate times which  
24 is secured by cash, stocks, bonds or real property.” ORS 135.230(12).  
25  
26



1 In 1994, Oregon voters adopted Measure 11. *Sutherland*, 329 Or at 362 n 2.  
2 Subsection (4) of Measure 11 “require[d] a trial court to deny release to a defendant  
3 accused of [certain offenses], unless the court determine[d] by clear and convincing  
4 evidence that the defendant will not commit any new crime while on release.” *Id.* at  
5 363. This Court held that Subsection (4) was inconsistent with the right to bail  
6 articulated in Article I, section 14 of the Oregon Constitution. *Id.* at 364–65. This was  
7 an unsurprising conclusion given the clear language of Article I, section 14:  
8 “[o]ffences [*sic*], except murder, and treason, shall be bailable by sufficient sureties.”  
9 Subsection (4), this Court explained, “requires a court to *deny* release and, it follows,  
10 to deny bail, if the court concludes that the defendant might commit crimes while on  
11 release.” *Id.* (emphasis in original). However, “Article I, section 14, grants most  
12 defendants accused of crimes a constitutional right to bail.” *Id.* (citing *Priest v.*  
13 *Pearce*, 314 Or 411, 417, 840 P2d 65 (1992)).

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16  
17 In 1999, the voters of Oregon amended the Oregon Constitution to add Article  
18 I, section 43.1 This provision expanded the narrow categories of individuals eligible

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20  
21 1 In 1996, the voters of Oregon approved a “crime victims’ rights” constitutional  
22 amendment that, among other things, “chang[ed] the circumstances in which certain  
23 criminal defendants otherwise would be entitled to release under Article I, section 14  
24 [of the Oregon Constitution].” *Armatta v. Kitzhaber*, 327 Or 250, 280, 959 P2d 49,  
25 65 (1998). That amendment, which was voted on as Measure 40 in the 1996 election,  
26 would have mandated the jailing of any arrestee charged with certain crimes “unless  
a court determines by clear and convincing evidence that the person will not commit  
new criminal offenses while on release[.]” *Id.* at 280 n 12. This Court invalidated  
Measure 40 on the grounds that its adoption violated the separate-vote requirement of  
the Oregon Constitution. *See id.* at 252.

1 for detention in jail prior to trial. Under the plain terms of this provision, the State  
2 may now detain a person prior to trial if the person is charged with a “violent felony”  
3 and the State proves by clear and convincing evidence that the person poses a danger  
4 to the public.

5  
6 The framework for pretrial release in Oregon shows the state’s longstanding  
7 commitment to release presumptively innocent people, not detain them, prior to trial.  
8 Yet today, some trial courts evade these constitutional and statutory requirements,  
9 routinely detaining people accused of non-violent crimes who have a right to bail and  
10 should be presumed eligible for personal recognizance release.  
11

## 12 II. ARGUMENT

13 The Oregon Constitution, at Article I, sections 14 and 43, permits pretrial  
14 detention in only specified circumstances. An Oregon statute does not, and cannot,  
15 abridge the longstanding constitutional right to release prior to criminal trial or expand  
16 the carefully limited categories in which pretrial detention is permitted. By imposing  
17 detention outside of the constitutional parameters, the trial court violated both the  
18 letter of the law and the principle of pretrial liberty that undergirds Oregon’s system  
19 of criminal justice.  
20

### 21 A. *The Oregon Constitution Guarantees a Right to Pretrial Release.*

22 Since Oregon’s constitution was adopted, individuals charged with a crime  
23 have enjoyed a constitutional right to release on bail except in specific circumstances  
24 where the State makes a particular showing, including probable cause and future  
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26

1 dangerousness. This right is guaranteed by Article I, section 14, which provides,  
2 “Offences [*sic*], except murder, and treason, shall be bailable by sufficient sureties.  
3 Murder or treason, shall not be bailable, when the proof is evident, or the presumption  
4 strong.” Or Const, Art I, § 14; *see also Priest*, 314 Or at 417 (explaining that Article  
5 1, section 14 sets forth “[t]he concept of a right to bail”). Article I, section 43(1)(b)  
6 goes on to expand the circumstances in which defendants can be denied pretrial  
7 release:  
8

9  
10 “Murder, aggravated murder and treason shall not be bailable  
11 when the proof is evident or the presumption strong that the person is  
12 guilty. Other violent felonies shall not be bailable when a court has  
13 determined there is probable cause to believe the criminal defendant  
14 committed the crime, and the court finds, by clear and convincing  
evidence, that there is danger of physical injury or sexual victimization  
to the victim or members of the public by the criminal defendant while  
on release.”

15 Or Const, Art I, § 43. These provisions, taken together, permit pretrial detention only  
16 if a person is charged with treason, murder, aggravated murder, or violent felonies.  
17

18 In the present case, relator is charged with driving while his driving privileges  
19 were suspended. Driving with a suspended license is not treason, murder, aggravated  
20 murder, or a violent felony. Neither the state nor the trial court suggested that the  
21 allegations against relator fall within these categories. Because relator is not charged  
22 with a qualifying offense under Article I, sections 14 and 43, he has a constitutional  
23 right to release on bail prior to his trial. The trial court erred by ordering his prolonged  
24 detention without bail. This violation of the Oregon Constitution requires reversal on  
25  
26

1 an emergency basis.

2 B. *ORS 135.240(4)(f)(A) Does Not Authorize Pretrial Detention Unless a Defendant*  
3 *is Charged with a Violent Felony.*

4 The trial court imposed a no-bail order of detention based on an erroneous  
5 reading of ORS 135.240(4)(f)(A). This was wrong for two reasons. First, the statute  
6 itself does not even purport to permit relator's detention. Second, no application of a  
7 statute can infringe a fundamental constitutional right. Read properly, the statute  
8 tracks the release standards of the Oregon Constitution and lays out the procedures  
9 for pretrial detention when a presumptively innocent individual is charged with a  
10 *violent felony*. ORS 135.240 does not, and cannot, authorize Oregon courts to issue  
11 detention orders outside of the limits set by the Oregon Constitution. Because this  
12 case does not involve a charge of treason, murder, or a violent felony, ORS  
13 135.240(4)(f)(A) is inapplicable.

14 1. *The Language of ORS 135.240 Unambiguously Demonstrates that*  
15 *Paragraph (4)(f) Applies to Only Violent Felonies.*

16 The text, context, and structure of ORS 135.240(4)(f)(A) establishes that the  
17 law applies to only violent felonies. ORS 135.240 states, in relevant part:  
18

19 “(4)(a) When the defendant is charged with a violent felony, release shall  
20 be denied if the court finds:

21 (A) Except when the defendant is charged by indictment, that there  
22 is probable cause to believe that the defendant committed the  
23 crime; and

24 (B) By clear and convincing evidence, that there is a danger of  
25 physical injury or sexual victimization to the victim or members  
26 of the public by the defendant while on release.

1 \* \* \* \* \*

2 (f) When a defendant who has been released violates a condition of  
3 release and the violation:

4 (A) Constitutes a new criminal offense, the court shall cause the  
5 defendant to be taken back into custody and shall order the  
6 defendant held pending trial without release.

7 \* \* \* \* \*

8 (5) For purposes of this section, ‘violent felony’ means a felony offense  
9 in which there was an actual or threatened serious physical injury to the  
10 victim, or a felony sexual offense.”

11 ORS 135.240(4) - (5). Under this statutory scheme, “[a] defendant is eligible for  
12 pretrial release unless (1) the defendant is charged with murder, treason, or a violent  
13 felony; and (2) a court makes certain findings.” *Benjamin v. O’Donnell*, 372 Or 764,  
14 769, 557 P3d 1089, 1092 (2024). Paragraph (4)(f) unambiguously codifies the bail  
15 procedure for *violent felonies* and works in harmony with Article I, sections 14 and  
16 43. “Oregon’s statutory scheme for pretrial release—ORS 135.230 through ORS  
17 135.290—was created in furtherance of those two constitutional provisions.” *State v.*  
18 *Slight*, 301 Or App 237, 246, 456 P3d 366, 371–72 (2019).

19 When interpreting a statute, “text should not be read in isolation but must be  
20 considered in context.” *Stevens v. Czerniak*, 336 Or 392, 401, 84 P3d 140, 144 (2004).  
21 Oregon courts “do not look at one subsection of a statute in a vacuum;” instead, courts  
22 must “construe each part together with the other parts in an attempt to produce a  
23 harmonious whole.” *Lane County v. Land Conservation & Development Commission*,  
24 325 Or 569, 578, 942 P2d 278, 283 (1997).  
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1 Here, the structure and context confirm that the law applies to only violent  
2 felonies. The statute states that when a “defendant is charged with a violent felony,”  
3 the court shall deny release if the court finds “that there is probable cause to believe  
4 that the defendant committed the crime” and that there is “clear and convincing  
5 evidence” that the defendant poses a danger while on release. ORS 135.240(4)(a). If  
6 these standards are not met, “the court shall set security or other appropriate  
7 conditions of release.” ORS 135.240(4)(e). If a defendant who was released under  
8 these procedures “violates a condition of release” by committing “a new criminal  
9 offense,” the court “shall order the defendant held pending trial without release.” ORS  
10 135.240(4)(f)(A). Even then, before the court may deny bail, the Oregon Constitution  
11 requires the court to “determine[] there is probable cause to believe the criminal  
12 defendant committed the crime” in addition to “clear and convincing evidence” that  
13 the defendant would pose a danger if released. Or Const, Art I, § 43(1)(b). The  
14 statutory procedure tracks Article I, section 43, which contemplates pretrial detention  
15 for defendants charged with “violent felonies.” The statute contains no indication that  
16 it attempts to work a silent constitutional amendment by applying when someone is  
17 not charged with a violent felony.

22 2. *The Legislative History Confirms that ORS 135.240 Codifies the*  
23 *Constitutional Right to Bail.*

24 The legislative history confirms the statute’s plain meaning. ORS 135.240 went  
25 into effect in 1973. At that time, the statute mirrored the language of Article I, section  
26

1 14, providing that “a defendant shall be released,” except that “[w]hen the defendant  
2 is charged with murder or treason, release shall be denied when the proof is evident  
3 or the presumption strong that the person is guilty.” ORS 135.240(1) - (2) (1973). In  
4 1997, ORS 135.240 was amended by the legislature to provide that, when a defendant  
5 was charged with one of 19 specified crimes, “[r]elease shall be denied unless the  
6 court determines by clear and convincing evidence that the defendant will not commit  
7 new criminal offenses on release.” ORS 135.240(4)(a) (1997).  
8

9  
10 Following the adoption of Article 1, section 43, which addresses pretrial  
11 detention for violent felonies, the Oregon legislature passed HB 2138 in 2007 and  
12 again amended ORS 135.240. The legislative history demonstrates that the legislation  
13 was intended to resolve a conflict between the statutory release scheme and the  
14 Oregon Constitution. As stated by then-Assistant Attorney General Timothy  
15 Sylwester, the “sole purpose” of the legislation was “to conform the current statutes  
16 that govern pretrial release in the case of a violent felony, ORS 135.240, to the  
17 requirements of the victims’ rights provision that was enacted by the voters in 1999  
18 as Article I, section 43, of the Oregon Constitution.” Testimony, House Judiciary  
19 Committee, HB 2138, Mar 28, 2007, Ex C (statement of Senior Assistant Attorney  
20 General Timothy A. Sylwester). The bill “simply mends ORS 135.240(4) to conform  
21 prescribed pretrial-release procedures to the substantive standard that is mandated by  
22 Article I, section 43(1)(b).” *Id.*  
23  
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Similarly, the Staff Measure Summary explained that “HB 2138 attempts to

1 reconcile the statute with the Constitution.” Oregon Bill Summary, 2007 Reg Sess  
2 HB 2138. The summary noted that the “provisions appear to conflict with the Oregon  
3 Constitution.” *Id.* To resolve this conflict, the statute was amended to “adopt[] the  
4 constitutional phrase ‘violent felony.’” *Id.* Thus, under the current statute, a court can  
5 deny pretrial release only if it concludes “there is probable cause to believe that the  
6 defendant committed” a violent felony and “there is clear and convincing evidence  
7 that, if released, the defendant poses a danger.” *Id.*

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10 3. *The Trial Court’s Interpretation of ORS 135.240 Would Render the  
11 Statute Unconstitutional.*

12 The Oregon Constitution guarantees a right to bail. “[T]he text of Article I,  
13 section 14, *requires* courts to set bail for defendants accused of crimes other than  
14 murder or treason.” *Sutherland*, 329 Or at 364. It is axiomatic “that the legislature has  
15 no power to abrogate or deny a constitutional right.” *Tomasek v. State*, 196 Or 120,  
16 143, 248 P2d 703, 714 (1952); *see also State v. Stoneman*, 323 Or 536, 542, 920 P2d  
17 535, 539 (1996). “[A] state legislative interest, no matter how important, cannot trump  
18 a state constitutional command.”). Because it would allow for pretrial detention  
19 outside of offenses listed in the Oregon Constitution, such as, in the present case,  
20 driving with a suspended license, the interpretation of ORS 135.240(4)(f)(a) advanced  
21 by the Circuit Court would render the statute itself unconstitutional. But “when one  
22 plausible construction of a statute is constitutional and another plausible construction  
23 of a statute is unconstitutional, courts will assume that the legislature intended the  
24  
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1 constitutional meaning.” *State v. Kitzman*, 323 Or 589, 602, 920 P2d 134, 141 (1996);  
2 *see also Ex parte Anderson*, 191 Or 409, 419, 229 P2d 633, 637–38 (1951), *reh’g den*,  
3 191 Or 409, 230 P2d 770 (1951) (“There is a well-recognized rule that the court  
4 should, whenever possible, so construe legislative enactments as to avoid any  
5 construction which would render an act unconstitutional.”). The only way to read  
6 ORS 135.240(4)(f)(a) in harmony with the Oregon Constitution is to limit its  
7 operation to defendants charged with violent felonies.  
8

9  
10 The trial court’s conclusion, that ORS 135.240 authorizes pretrial detention any  
11 time a person is charged with a new crime during a release agreement, regardless of  
12 the underlying offenses, is without merit. Oregon legislators passed ORS 135.240 to  
13 make the substantive and procedural requirements for detention consistent with  
14 Article I, section 43 of the Oregon Constitution. ORS 135.240 reiterates that pretrial  
15 detention is permissible only when a defendant is charged with a violent felony and  
16 only when the court reaches specific findings.  
17

18  
19 Relator is not charged with murder, treason, or a violent felony. The trial court  
20 never considered alternatives to detention, or even whether relator’s release would  
21 pose a risk of flight or danger to the public. Instead, the trial court automatically  
22 ordered detention without bail based on an allegation of a new offense. Thus, the trial  
23 court’s order detaining him pretrial is plainly illegal.  
24

25 *C. This Case Presents an Ideal Opportunity to Decide an Important Issue of Law.*

26 This case presents an ideal opportunity for this Court to address the significant

1 questions presented for two reasons. First, the record in this case is straightforward.  
2 Second, this case will remain justiciable even if relator is tried or released before this  
3 Court is able to rule on this Petition.

4       The relevant facts of this case are simple. The trial court ordered relator  
5 detained without bail even though he is not charged with treason, murder, or a violent  
6 felony. Relator argued to the trial court that a detention order would violate the  
7 Oregon Constitution. The trial court overruled the objection, erroneously citing a  
8 clearly inapplicable statute.  
9

10  
11       Even if this case proceeds to judgment in the trial court before this Court has  
12 ruled on this Petition, this Court may retain jurisdiction to hear the matter because it  
13 is “capable of repetition,” yet “likely to evade judicial review in the future.” ORS  
14 14.175. “[J]udicial determination of such cases is consistent with centuries of  
15 historical practice and the sound prudential exercise of judicial power.” *Couey v.*  
16 *Atkins*, 357 Or 460, 521, 355 P3d 866, 901 (2015).  
17

18  
19       Pretrial detention is a paradigmatic example of an issue that is capable of  
20 repetition yet evades review. The unpredictability of such cases alone is sufficient to  
21 meet this standard. “The length of pretrial custody cannot be ascertained at the outset,  
22 and it may be ended at any time by release on recognizance, dismissal of the charges,  
23 or a guilty plea, as well as by acquittal or conviction after trial.” *Gerstein v. Pugh*, 420  
24 US 103, 111 n 11, 95 S Ct 854, 861, 43 L Ed 2d 54 (1975). Cases challenging pretrial  
25 detention are unlikely to remain pending in the trial courts long enough for this Court  
26

1 to review them. The pressure to plead guilty increases when a defendant is detained,  
2 making it unlikely that cases of pretrial detention remain live for the extended period  
3 of time necessary to ensure this Court's review. Because the constitutional issues in  
4 this case will affect many thousands of future detainees, and because the issues would  
5 otherwise almost certainly evade this Court's review because of the temporary nature  
6 of pretrial detention, this case will remain justiciable even if it becomes technically  
7 moot.  
8

9 Relator requests that this Court issue a precedential opinion that will guide  
10 important release decisions and safeguard the right to pretrial liberty. This Petition  
11 presents an issue that "arises frequently and concerns a matter important to the courts,  
12 the state, defendants, and others involved in criminal cases." *Benjamin*, 372 Or at 768.  
13 Therefore, even after relator is released, a published opinion is direly needed.  
14  
15

### 16 17 III.CONCLUSION

18 Columbus Hayles is sleeping in a jail cell tonight under a no-bail detention  
19 order that violates his constitutional rights. He asks this Court to enter an emergency  
20 writ of mandamus or, in the alternative, a writ of habeas corpus ordering the Circuit  
21 Court to immediately release him on bail, as required by the Oregon constitution.  
22

23 Dated: January 24, 2025

24 /s/Caitlin Plummer

25 Caitlin Plummer

26 Public Defender Services of Lane County

Counsel for Defendant-Relator

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/s/ Caitlin Plummer  
Caitlin Plummer  
Public Defender Services of Lane County  
*Counsel for Defendant-Relator*