

# SUPREME COURT

## Media Release



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Case decided November 22, 2021.

*Patrick Sheehan et al. v. Oregon Legislative Assembly*, (SC S068991; S068989)

On petitions for review of the decision to adopt Oregon Laws 2021, chapter 2 (Senate Bill 882 (Spec Sess 2021)) as the new Oregon state legislative district reapportionment, filed October 25, 2021. The petitions are dismissed. Opinion of the Court by Justice Christopher L. Garrett. Chief Justice Martha L. Walters did not participate in the consideration or decision of these petitions.

Today, the Oregon Supreme Court dismissed two petitions challenging the reapportionment of Oregon's legislative districts enacted by Senate Bill (SB) 882 in September 2021. In *Sheehan v. Oregon Legislative Assembly*, the Court rejected petitioners' arguments that the reapportionment plan in its entirety failed to comply with applicable statutory requirements. In *Calderwood v. Oregon Legislative Assembly*, the Court rejected petitioners' claims that the parts of SB 882 that defined House Districts 8 and 12 failed to comply with applicable statutory requirements.

The Legislative Assembly passed and the Governor signed SB 882 (Special Session 2021), reapportioning Oregon's legislative districts based on the federal decennial census data released by the United States Census Bureau in August 2021. Subsequently, two sets of petitioners sought review of that reapportionment plan, as provided in Article IV, section 6(2)(a), of the Oregon Constitution. In *Sheehan v. Oregon Legislative Assembly*, petitioners Patrick Sheehan and Samantha Hazel challenged the SB 882 reapportionment in its entirety and asked the Court to direct the Secretary of State to adopt a different plan that petitioners proposed. The *Sheehan* petitioners argued that the SB 882 reapportionment plan should be declared void because it had been drawn for a partisan purpose or a general purpose of favoring incumbent legislators, in violation of ORS 188.010(2), and because the Legislative Assembly had failed to adhere to certain

public hearing requirements set out in ORS 188.016. In *Calderwood v. Oregon Legislative Assembly*, petitioners David Calderwood and Gordon Culbertson challenged only the portions of the SB 882 reapportionment plan that defined two adjacent districts in the Eugene area -- House Districts 8 and 12. The *Calderwood* petitioners argued that those districts were apportioned in violation of the requirement in ORS 188.010(1) that the Legislative Assembly "consider" certain criteria in making a reapportionment -- including that each district, as nearly as practicable, be contiguous, be of equal population, utilize existing geographic or political boundaries, not divide communities of common interest, and be connected by transportation links. The Calderwood petitioners also argued that House Districts 8 and 12 had been drawn to favor an incumbent legislator, in violation of ORS 188.010(2).

In a unanimous opinion authored by Justice Christopher L. Garrett, the Court dismissed both petitions, holding that neither petition had established noncompliance with applicable law.

The Court first described the applicable law governing adoption of a state legislative district plan and the Court's own role in reviewing challenges to such a plan. The Court explained that, with respect to challenges based on ORS 188.010, it would void the legislature's plan only if it could say, based on the record, that the legislature either did not consider one or more criteria set out in ORS 188.010 or, having considered all those criteria, made a choice or choices that no reasonable reapportioning body would have made. And, the party challenging a reapportionment plan under ORS 188.010 has the burden to show that one of those circumstances -- that the legislature failed to consider the statutory criteria or made a choice that no reasonable legislature would make -- was present.

With respect to the *Sheehan* petition, the Court explained that the facts alleged by petitioners -- particularly, that the SB 882 reapportionment plan used many of the same district boundaries as exist in current law, and that oral public testimony had been subject to certain limitations -- were insufficient to permit a conclusion that the Legislative Assembly had created the entire statewide reapportionment plan for a partisan or otherwise improper purpose. The Court also concluded that petitioners' claims based on alleged noncompliance with ORS 188.016 failed because SB 882 expressly had made ORS 188.016 inapplicable.

As to the *Calderwood* petition, the Court addressed petitioners' argument that SB 882 violated ORS 188.010(1) by placing a small portion of southeastern Eugene in House District 12, with more rural areas of Lane County, rather than in House District

8 with other parts of south Eugene. Petitioners argued that the Legislative Assembly's stated reason for doing so -- to meet the target population for House District 12 -- was insufficient, given that the boundary between House Districts 8 and 12 could have been drawn in a way that satisfied all the criteria in ORS 188.010(1) -- specifically, by having the line run along Eugene's southern boundary and eastward to Interstate 5, thereby separating urban Eugene from the rural areas to its south. The Court concluded, however, that, particularly in light of evidence showing how the legislative committees' decisions about the boundary had responded to information received during the hearing process, petitioners had failed to make the necessary showing either that the Legislative Assembly had not "considered" the statutory criteria or that it had made decisions that no reasonable legislature would have made. The Court also concluded that the *Calderwood* petitioners had presented insufficient evidence to establish their claim under ORS 188.010(2) -- that the two districts had been drawn for the specific purpose of excluding the residence of a current legislator from the home district of another legislator, to protect that other legislator from a possible primary challenge.

The Court accordingly dismissed both petitions.