

**TESTIMONY ON SB 259-A4**  
***Congressional Redistricting Timelines***  
**BEFORE THE HOUSE COMMITTEE ON RULES**

**June 1, 2021**

**PRESENTED BY: Aja Holland, Assistant General Counsel**  
**OREGON JUDICIAL DEPARTMENT**

Chair Smith Warner, Vice-Chairs Drazan and Holvey, Members of the Committee, I am Aja Holland, Assistant General Counsel for the Oregon Judicial Department. I am here to provide some additional information regarding the direct appeal provisions of SB 259-A4. The Department does not have a position on the bill; however, we do have one minor concern that we believe is easily addressed.

SB 259 with the -A4 amendment establishes the process for an elector to file a petition in the Marion County Circuit Court to challenge a 2021 legislatively adopted reapportionment plan or, in certain circumstances, to request a 2021 reapportionment plan. The-A4 amendment directs the Chief Justice to appoint a special judicial panel on September 28, 2021, to resolve the petition(s), if any. The deadline to file a case-initiating petition is October 12, 2021, and the panel must decide any petition by November 24, 2021.

SB 259-A4 provides for direct appeal of a judicial panel decision to the Oregon Supreme Court. Any notice of appeal is due on or before November 29, 2021, and the Supreme Court's decision is due by January 3, 2022. That five-week period allocated by the bill must include time for the petitioner to file its opening brief, for the respondent to file a brief, and for the petitioner to file a reply (if allowed by the court); and then time for the Supreme Court to decide all questions raised in each appeal. Because there may be multiple petitions filed, and each appeal can raise multiple issues, the depth and breadth of work required to issue decisions could be substantial.

Briefing timelines typically are governed by the Oregon Rules of Appellate Procedure (ORAPs), a body of rules adopted pursuant to ORS 2.120 and ORS 2.560(2). Because the ORAPs do not presently include a rule addressing congressional redistricting under ORS 188.125 (the statute on which SB 259-A4 is based), and other generally applicable ORAPs contain processes or timelines that are not workable, we anticipate that, if SB 259-A4 becomes law, the Supreme Court may adopt a temporary rule setting forth briefing timelines for an appeal filed under SB 259-A4.

We anticipate the temporary rule would provide the court with a minimum of 17 days, including two holidays, to decide the case after the respondent's brief (and potentially 14 days after the reply brief, if any) is filed. We anticipate the Supreme Court will need at least that amount of time to analyze and decide the issues raised.

The -A4 amendment, specifically section 1, subsection (11)(a), directs the Supreme Court to, on or before November 30, 2021, set a schedule to receive written memoranda and a date to hear oral arguments. We think that a temporary rule, as described above, would comply with the requirement to set a schedule to receive written memoranda. We are concerned, however, that a requirement to hold oral arguments may in turn require too much time for the parties and the Court to prepare, and that this time could be better spent preparing written briefing and analyzing and deciding the issues presented. We would prefer wording that would give the Court flexibility to decide whether it is appropriate to hold oral argument, after any notice(s) of appeal are filed. Specifically, the words “if any” should be added on page 4, line 15, after “arguments.”

The following table outlines the case timeline and the potential briefing schedule in the Supreme Court, if the Court adopts a temporary rule as described above:

<b>Event</b>	<b>Deadline</b>
Notice of Appeal Due	November 29
Petitioner’s Brief Due	December 8
Respondent’s Brief Due	December 17
Petitioner’s Reply Due (if any)	December 20
Supreme Court’s Decision Due	January 3

This testimony is intended to be informational and to give you an idea of how the Supreme Court may choose to implement the very limited timelines for direct appeal in SB 259-A4. Ultimately, the decision of whether to adopt a temporary rule and the contents of that rule lies with the Supreme Court.

Thank you for taking the time to hear my testimony. I am happy to answer any questions.