

March 5, 2020

Via E-mail & Facsimile (503) 986-1876
Rep.PaulHolvey@oregonlegislature.gov

Hon. Paul Holvey
Chair, House Rules Committee
Oregon Legislative Assembly
Oregon State Capital
900 Court Street NE, Room 333
Salem, OR 97301

Re: Subpoena Response

Dear Chair Holvey:

I represent State Representatives Barreto, Bonham, Boshart Davis, Breese-Iverson, Drazan, Hayden, Leif, Lewis, Moore-Green, Nearman, Noble, Owens, Post, Reschke, Brock Smith, Sprenger, Stark, Wallan, Wilson, and Zika for the purpose of opposing a subpoena which you, on behalf of your committee purported to issue in a form substantially similar to that attached to this letter.

My clients object to these subpoenas on grounds which include, but are not limited to:

- 1) The Subpoenas were not issued to answer a question pertinent to any subject under inquiry before the Committee as required by ORS 171.522.
- 2) Members are absolutely immune from being subject to “any civil process” while the legislature is in session under Article IV, section 9, so Members cannot be served with the subpoenas, and any subpoenas that were purportedly served are a legal nullity;
- 3) Members are performing a legislative function by causing the absence of a quorum because their actions are calculated to affect a legislative result, and any censure or attempt to censure members through civil process for exercising a legislative function violate Article IV, section 9;
- 4) Even if Members were not immune from service of the subpoenas by operation of the Oregon Constitution, Members were not served properly pursuant to ORS 171.510 and ORCP 7 D because the subpoenas were not left at each legislator’s individual office with

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Hon. Paul Holvey
House Rules Committee
March 5, 2020
Page 2

the person most likely in charge of that office combined with follow-up mailing, so the subpoenas are defective and legally void;

- 5) Even if Members are not immune to service (they are) and even if Members were served properly (they were not), the circuit court cannot grant the House Rules Committee any relief because ORS 171.522 requires an order compelling attendance to be served on Members—and Members are immune from service of any process under Article IV, section 9, particularly process that has been issued by a circuit court of this state, which is a settled issue of law.

Therefore, they respectfully decline your invitation to attend the meeting you have noticed for March 5, 2020 at 1:00 p.m. in Hearing Room F of the State Capitol.

We are mindful that ORS 171.522 permits you to seek a court order requiring the persons against whom the subpoenas were issued to comply with your demand within 3 days after service of the court orders. Since the office of Legislative Counsel has a legal conflict of interest if called upon to represent one client against another, we assume you will need to retain independent counsel to represent you and the Committee. If you choose to do so, please be advised that since my clients are “represented parties,” independent counsel you retain should afford my office reasonable notice of any intention to seek judicial relief. In that case, we will assert our objections in the appropriate judicial forum.

Sincerely,

Davis Wright Tremaine LLP



John A. DiLorenzo, Jr.

Enclosure

JAD/mq

cc: Dexter Johnson, Legislative Counsel
dexter.johnson@oregonlegislature.gov
Samantha Koopman, Committee Assistant
samantha.koopman@oregonlegislature.gov
Clients

SUBPOENA

STATE OF OREGON

Legislative Assembly

SS.

IN THE NAME OF THE STATE OF OREGON

Eightieth Legislative Assembly

TO: [Name of Legislator to be served]

By virtue of the authority of and in compliance with ORS 171.510, and following a majority vote of the House Rules Committee on February 27, 2020, I, Paul Holvey, State Representative and Chair of the House Rules Committee, hereby require you to appear before the House Rules Committee at 1pm on Thursday, March 5, 2020 in Hearing Room F of the State Capitol, Salem, Oregon, 97301, as a witness before such committee and be prepared to testify about your unexcused absences during the 2020 regular session of the Legislative Assembly, the need for members to fulfill their oaths of office and constitutional duties as legislators by attending sessions of the Legislative Assembly, and how the work of the Legislative Assembly during the 2020 calendar year may be completed.

Witness my hand affixed at Salem, Oregon, this _____ day of _____, 2020.

Paul Holvey, Chair
House Rules Committee

CERTIFIED A TRUE COPY:

Paul Holvey, Chair
House Rules Committee