



November 5, 2021

Governor Kate Brown
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RE: EQC Appointee's Ethical Conflicts Would Undermine Public Trust

Dear Governor Brown:

We appreciate your vow to restore public trust in state government. We share your commitment to prioritizing transparency and ethics. To that end, we write on behalf of a coalition that needs to raise for your consideration significant concerns regarding ethical issues faced by one of your nominees for the Environmental Quality Commission.

Since we trust that you continue to prioritize maintaining public trust in government, we respectfully request that you withdraw your nomination of Amelia Schlusser to the Environmental Quality Commission (EQC). Ms. Schlusser's desire to serve in this role is admirable and she seems like a qualified and capable nominee. However, her service on the EQC, while also being employed as a staff attorney for an advocacy organization that pushes policy changes at the EQC, would place her in a uniquely difficult ethical conundrum that would undermine public trust in EQC decisions made during her tenure.

As an attorney for the Green Energy Institute (GEI), Ms. Schlusser has and continues to advocate for GEI's priorities including 100% decarbonized energy, indirect source regulation, opposing fossil fuels, cap and reduce, clean power plans, GHG and air emission taxes, and similar policies.¹ Her GEI bio emphasizes that she regularly communicates with state policymakers and "participates in regulatory proceedings convened by Oregon's Department of Environmental Quality."² Because the EQC oversees many of these very same policy areas, Ms. Schlusser cannot serve in both roles simultaneously without facing numerous and significant ethical conflicts. These conflicts would prevent her from fulfilling full EQC duties and undermine public trust in the EQC.

As a lawyer yourself, you know that the Oregon Rules of Professional Conduct (ORPC) are important ethical standards that apply to all attorneys. Because of their dual responsibilities,

¹ Green Energy Institute, Policy Recommendations, https://law.lclark.edu/centers/green_energy_institute/projects/ (accessed Nov. 4, 2021).

² Green Energy Institute, Amelia Reiver Schlusser, Staff Attorney, <https://law.lclark.edu/live/profiles/2100-amelia-schlusser> (accessed Nov. 4, 2021).

attorneys serving in current government positions while also working for nongovernment entities may not:

(i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

ORPC 1.11(d)(2)(i) and (ii).³ There are no exceptions to these standards. Any vote or discussion by Ms. Schlusser as an EQC member that supports or furthers GEI's positions would violate these rules. Given GEI's extensive advocacy on issues overseen by the EQC, it is questionable whether there are any substantive actions in which Ms. Schlusser could ethically participate while serving on the EQC. Having a commissioner who must recuse herself from such an extensive list of policies would not only present an operational challenge to the EQC, but would undermine public trust in the Commission more broadly.

Likewise, attorneys serving as current government officials may not:

- (1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment; ORPC 1.11(d)(2)(v); nor*
- (2) represent a client if the representation involves a current conflict of interest. . . . [such as when] the representation of one client will be directly adverse to another client [or] there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; ORCP 1.7; ORCP 1.11(d)(1).*

These two rules can only be waived if both GEI and the appropriate government agency give informed consent, confirmed in writing. It is unclear who would or could provide such consent in this situation. Since the EQC oversees a state agency, it would be inappropriate for the agency or agency director to attempt to waive Ms. Schlusser's conflicts here, not to mention that such a waiver would rightly shake public confidence in the objectivity of all EQC and agency work.

Further, regardless of who might provide such informed consent, that only—perhaps—addresses a *technicality* in the rule. It does not in any way address the *spirit* of the rule or the State's policy that interested parties, such as employees or representatives of regulated entities, are precluded from serving, while there are no similar limitations on environmental advocates. Confirmation of informed consent for this nominee may technically reconcile the ORPC conflict, but the appointment would remain fraught with ethical dilemma.

³ The ORPCs are available online: <https://www.osbar.org/docs/rulesregs/orpc.pdf>

Finally, Ms. Schlusser's own biography raises substantial questions about compliance with Oregon's lobby registration requirements due to her advocacy with state policy makers.⁴ Having a professional lobbyist who is paid to advance certain policies while simultaneously voting on those same policies as an EQC member also raises concerns about prohibited use of official position and both actual and potential conflicts of interest under the state ethics laws that you helped expand.⁵ We believe that the Oregon Rules of Professional Conduct, Oregon ethics rules, and expectations of public trust cannot be realistically met by Ms. Schlusser. Consistent with your commitment to restoring public trust and ethics in government, we respectfully request that you withdraw this nomination.

Yours truly,

/s/ Steve Elzinga

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cc:

Angela Wilhelms, Oregon Business & Industry
Chris Edwards, Oregon Forest & Industries Council
Dallin Brooks, Western Wood Preservers Institute
Dave Dillon, Oregon Farm Bureau
Jana Jarvis, Oregon Trucking Associations
Katie Murray, Oregonians for Food & Shelter
Mike Salsgiver, Associated General Contractors, Oregon-Columbia Chapter
Shaun Jillions, Oregon Manufactures and Commerce
Tammy Dennee, Oregon Cattlemen's Association
Tami Kerr, Oregon Dairy Farmers Association

⁴ See ORS 171.740 (registration); ORS 171.735(4) (no exception due to compensation); ORS 171.725 (definitions).

⁵ ORS 244.040 (prohibited use of official position); ORS 244.120 (conflicts of interest).