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Sent via email

Oregon Legislature
House of Representatives Conduct Committee

Re: Rep. Diego Hernandez process

Co-Chair Noble, Co-Chair Fahey and members of the Conduct Committee:

As you know, I represent Rep. Diego Hernandez in regard to the proceedings currently going on. I write to inform you about important issues and concerns regarding the Committee's proceeding. I ask that this letter be added to the record of this case and submitted as evidence in this case. As I write this, powerful people in Oregon are trying to influence your decision, without having seen the evidence in favor of Rep. Hernandez.

The Committee's Rule 27 investigation and hearings have not comported with the legal requirements of due process of law. Rep. Hernandez has a constitutional right to due process and his job, pay, benefits and reputation cannot be taken from him without due process. The basic requirements of due process include notice and a meaningful opportunity to respond and rebut the allegations.

Here, **the Committee is making findings of fact and rulings under Rule 27 without considering the evidence that Rep. Hernandez has presented.** In the hearing of February 3, the Committee admitted that they will not hear the evidence that Rep. Hernandez submitted. While Rule 27 allows Rep. Hernandez to file a response to the investigator's report, and we did so, the Committee has allowed the Legislative Equity Office to withhold important information in our response from the Committee.

You are the jury appointed to decide the facts under Rule 27. What kind of jury would willingly refuse to hear the evidence?

The Committee, as fact finders, cannot delegate their duties to non-legislators. Here, the Committee has improperly delegated its important functions to the investigator and staff. This is unfortunate, but here it is also unconstitutional as it has caused a proceeding to occur without consideration of Rep. Hernandez's evidence, which violates his constitutional due process rights.

I strenuously argue against the Committee taking any action against Rep. Hernandez without having read, reviewed and considered his evidence. It doesn't just violate the constitution, it violates Rule 27 by allowing a rebuttal to be filed, but then not considering the evidence.

Specifically, we have presented evidence that directly rebuts testimony that you have heard this week, and important evidence regarding the subjects has been withheld from you.

That problem has been exacerbated by forcing Rep. Hernandez to testify first in the proceedings, and then to not give him an opportunity to respond to the new evidence that has been presented this week in the hearings.

As a jury, you should consider all of the evidence that we have submitted. You cannot selectively decide what you want to read and review. As a jury, you cannot allow your decision to be influenced by powerful people who are attempting to influence your decision without knowing the evidence.

Thank you.

Sincerely,

LAFKY & LAFKY

/s/ Kevin T. Lafky

Kevin T. Lafky

cc: client