

# CONFIDENTIAL REPORT

September 29, 2023

Prepared by: Sarah J. Ryan  
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*Investigation  
of Case #59*

## **I. INTRODUCTION**

Jackson Lewis P.C. conducted an investigation of conduct complaints by Senators Cedric Hayden and Lynn Findley against Senate President Robert Wagner. Due to the overlap between the two complaints, they were handled as one investigation. Senator Hayden's amended complaint is attached as Exhibit 1 (the Hayden Complaint). The Hayden Complaint alleges religious discrimination and creation of a hostile environment when Senator Wagner allegedly denied Senator Hayden's request for approval of Saturday absences so Senator Hayden could observe the Sabbath. While the Hayden Complaint acknowledges that Senator Hayden is likely not entitled to protected family medical leave under Oregon or federal law, it outlines denials of his request for time off to care for his disabled daughter. It also outlines his request to consult with his counsel and Brenda Baumgart (whose firm along with Jackson Lewis was providing process counseling during the LEO vacancy) regarding Rule 27 and to participate in federally mandated inspections as a federally contracted wildlife firefighter. Senator Findley's complaint is attached as Exhibit 2 (the Findley Complaint). It alleges improper denial of a request for excused absence to attend church services and generally alleges creation of a hostile work environment in response to Senator Findley's right to protest by not attending floor sessions. This Report contains factual findings based upon the information made available in the course of investigating this matter.

## **II. INVESTIGATIVE FRAMEWORK / PROCESS**

Set forth below is a summary of the relevant sections of Rule 27 and a description of the investigative process.

A. RULE 27

As relevant to this Report, Rule 27<sup>1</sup> states that the Legislative Branch is committed to providing a safe and respectful workplace. Rule 27(1)(b). “Members of the Legislative Assembly ... are expected to conduct themselves in a manner that is free of harassment and to discourage all harassment in the workplace and at professional meetings, seminars, or at any event at which the Legislative business is conducted.” Rule 27(1)(e). Rule 27 is designed to provide options to redress harassing behavior, discriminatory behavior, retaliation or other behavior prohibited by the rule. Rule 27(1)(f)(A). *See also* Rule 27(1)(g) (“This rule is designed to provide options to those who are experiencing or observing harassing behavior, discriminatory behavior, retaliation or other behavior [prohibited by the rule].”

1. Harassment Under Rule 27

Harassment that creates a hostile work environment is prohibited by Rule 27. Rule 27(8)(a). Harassment is defined as “verbal or physical conduct...that denigrates or shows hostility toward an individual or group of individuals.” Rule 27(4)(a). Examples include, but are not limited to :“(A) Name calling, slurs or stereotyping; (B) Threatening, intimidating or hostile acts that relate to a protected class; (C) Belittling, demeaning or humiliating a person or persons because of a protected class; or (D) Displaying written or graphic material that is described in subparagraphs (A) to (C) of this paragraph.”

A hostile work environment is created by “behavior that is unwelcome and is so severe or pervasive that it either affects a person’s ability to function in the workplace or denies the person the benefits of the workplace.” Rule 27(4)(b).

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<sup>1</sup> The conduct which is the subject of this report occurred under the current version of Rule 27 (HCR 28).

As relevant to this matter, the Rule defines protected class to include religion, engaging in whistleblowing activities, opposing an employer's actions when the employee reasonably believes the actions to be unlawful, taking leave from work for purposes protected by law including the Oregon Family Leave Act, the Federal Family and Medical Leave Act, or disability related leave and disability. Rule 27(3)(w).

2. Discrimination Under Rule 27

Rule 27 also prohibits conduct that constitutes “an unlawful practice that aids or abets discrimination in a place of public accommodation under the laws of the state.” Neither discrimination nor place of public accommodation are defined by the Rule. In the employment law context, discrimination is generally understood to mean treating an individual differently with respect to the terms or conditions of employment due to a protected class. The Oregon Bureau of Labor and Industries defines public accommodations as a private business or organization that offers goods or services to the public. This includes any place that offers the public something, whether it is goods, services, lodging, amusement or otherwise. ORS 659A.400 defines public accommodation to include any place that is open to the public and owned or maintained by a public body, as defined in ORS 174.109 regardless of whether the place is commercial in nature. ORS 174.109 defines public body as “state government bodies, local government bodies and special government bodies.” ORS 174.111 defines state government as “the executive department, the judicial department and the legislative department.” ORS 174.114 defines legislative department to mean “the legislative assembly, the committees of the legislative assembly and all administrative divisions of the legislative assembly and its committees, whether denominated as boards, commissions or departments or by any other designation.” For purposes of this

investigation, I have assumed, but not decided, that Rule 27 prohibits discrimination of those protected by the Rule due to their protected class.<sup>2</sup>

3. Retaliation Under Rule 27

Rule 27 also prohibits retaliation. Rule 27(8)(d). Retaliation is defined as treating another individual less favorably because the individual (a) made a good faith complaint about conduct that violates the Rule or participated in an investigation of such conduct, (b) engaged in a process described in Rule 27 or implemented one or more provisions of Rule 27, or (c) made a complaint or took action to address conduct prohibited under the Respectful Workplace Policy. Rule 27(6).

4. No Affirmative Duty to Accommodate Under Rule 27

The law requires employers to accommodate protected classes such as religion and disability. For example, in a recent case (Groff v. DeJoy, No. 22-174 (June 29, 2023)) the United States Supreme Court held that the United States Postal Service had a duty to accommodate a mail carrier who requested Sundays off due to his religion, unless doing so created an undue hardship. In contrast, Rule 27 does not impose a duty to accommodate religious observance or practices, disability, or any other protected class.

5. Who is Protected Under Rule 27?

Rule 27 provides that “any individual who experiences behavior prohibited by the Rule may utilize its reporting options ...” Rule 27(2)(A); *see also* Rule 27(1)(f) and (g).

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<sup>2</sup> Rule 27 also provides “in all investigations, the investigator shall consider whether the conduct that is the subject of the investigation constitutes discrimination by denigrating or showing hostility toward a protected class or toward an individual because of the individual’s status as a member of a protected class.” Rule 27(14)(e)(c). See also the sections of Rule 27(1)(f) and (g), quoted on page 3 above.

## B. ROLE OF THE INVESTIGATOR

### 1. Engagement and Independence

The Legislature<sup>3</sup> hired Jackson Lewis P.C. to conduct an independent investigation regarding the conduct complaints against Respondent. My investigation was independent from the Legislature, which did not conduct, direct, or otherwise manage or influence my investigation in any manner. No representatives of the Legislature imposed limits on my access to information, nor required or prohibited any specific investigative steps. I had sole discretion to employ investigative resources, techniques, and processes appropriate in my professional judgment to complete the investigation and issue this Report.

The facts and findings set out in this Report are my own and are based on my evaluation of the evidence collected and reviewed. No changes or edits were made to this Report by anyone other than me, and no draft or advance copy of the Report was shown to or reviewed by anyone, except in connection with the draft review process required under Rule 27 and outlined below.

### 2. Facial Review

Rule 27 requires a facial review of conduct complaints by the LEO or an independent investigator to determine whether the reported conduct, when taken on its face, could be prohibited by Rule 27. I conducted a facial review of the Hayden and Findley Complaints and determined the following:

- The denials of Senator Hayden's requests for time off to care for his family did not implicate Rule 27. Rule 27 protects those taking leave from work for purposes protected by law. Rule 27(3)(w)(L). Senator Hayden appeared to acknowledge that he is not entitled to legally protected leave because he is not an employee. I

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<sup>3</sup> The LEO position was vacant when the Complaints were made and the investigation commenced.

agree. Elected officials answer to their constituents, not the Senate President and cannot be considered employees of the Legislature or the Senate President. Moreover, in our interview, Senator Hayden stated that he was pursuing the family leave issues with the Oregon Bureau of Labor and Industries (BOLI) and that he was not in a position to discuss these issues with me due to the pending BOLI action.

- The denials of requests for time off to protest are not implicated by Rule 27. Engaging in free speech is not a protected class under the Rule, while engaging in whistleblowing activity is. Rule 27(3)(w)(J). Rule 27 does state that freedoms of speech and expression are protected as core values in the Legislative Branch (see Rule 27(1)(f)(B)). But upon a facial review, I conclude that denial of an excused absence which deprived the Senate of a quorum in order to protest did not implicate Rule 27. Protests may constitute whistleblowing activity, but the absence denial is not alleged to be in punishment for that activity.
- Denial of an absence to meet with an attorney regarding Rule 27 did not implicate Rule 27. While punishing someone for meeting with an attorney to discuss their rights under Rule 27 could be retaliatory conduct in violation of Rule 27, that is not what Senator Hayden's complaint alleges.

Based upon my facial review I determined that the denials of the requests for absences related to religion were the only assertions that implicated Rule 27. As a result, I investigated the facts relating to those denials.

### 3. Determination

Rule 27 directs the investigator to use best practices in conducting the investigation and to make findings of fact relevant to the allegations. Unlike investigations regarding the conduct of those who are not members of the Legislative Assembly, investigators are not asked to determine whether Rule 27 has been violated by a member. Rule 27(14)(d)(B)&(E). However, as stated above, Rule 27 directs the investigator to consider “whether the conduct that is the subject of the investigation constitutes discrimination by denigrating or showing hostility toward a protected class or toward an individual because of the individual’s status as a member of the protected class. The investigator shall report the investigator’s considerations under this subparagraph in the investigator’s draft, written findings. If the investigator determines that the conduct “constitutes discrimination by denigrating or showing hostility toward an individual because of the individual’s status, as a member of a protected class, the investigator may not specify in the investigator’s draft, written findings the protected class to which the individual belongs.” Rule 27(14)(d)(C). (Both Senator Findley and Senator Hayden authorized disclosure of their complaints (and thus their protected class)). I did not conclude that Senate President Wagner denigrated or showed hostility to members of a protected class (religion) based on my findings detailed below.

### 4. The Report

Section 14(d)(A) requires the Investigator to prepare draft written findings of fact at least eight (8) days before the investigation is concluded and to provide that draft to the Complainants and the Respondent. A draft of this Report was provided to Respondent and Senator Hayden on September 15, 2023, and a draft was provided to Senator Findley on September 19, 2023. Under Rule 27, the Respondent and Complainants had seven (7) days to provide responses to the draft written findings. Rule 27(14)(d)(C). I received a few typographical corrections from the

Respondent. Senator Hayden's representative did not request any changes but notified me that he disagreed with my conclusions. Senator Findley did not respond to my draft.

### **III. INTERVIEWS / DOCUMENTS REVIEWED**

I reviewed relevant documents, including all requests for excused absences and approvals and denials and related documents and press reports, and interviewed two witnesses in addition to the Complainants and the Respondent. I do not identify third-party witnesses by name in this Report because some witnesses are unwilling to participate in investigations unless I provide assurances that they will not be identified by name in my reports.

My Report describes conduct that I found to be supported by the evidence collected in the course of my investigation. When appropriate, I identify the absence of evidence or conflicts in evidence that I was unable to resolve. My Report does not detail every piece of information that I collected in my investigation, but, instead, contains the information that I believe is necessary to explain my factual findings and provide the Conduct Committee with information to enable it to determine whether a violation of Rule 27 occurred.

### **IV. FINDINGS**

The facts are largely undisputed. Where a dispute exists I have noted my resolution of the dispute and the basis for my finding.

1. In November 2022, Oregon voters approved amendments to the Oregon Constitution which limit lawmakers ability to run for a future election if they have ten or more unexcused absences in a single legislative session. Ballot measure 113 provides "Failure to attend, without permission or excuse, 10 or more legislative floor sessions called to transact business during the regular or special legislative session shall be deemed disorderly behavior and shall disqualify the member from holding office as a senator or representative for the term following the election after the member's current term is completed."

2. The Oregon 2023 Legislative Session began on January 17, 2023.
3. The 2023-2024 edition of the Rules of the Senate was adopted on January 9, 2023, by a vote of 21 to 8. Both President Wagner and Senator Hayden supported the adoption of the rules, as did the Senate Majority Leader and the Senate Republican Leader. (Senator Findley did not.) These rules govern the procedures of the Senate, including the excuse request process in Senate Rule 3.10 and the process by which the Senate sets its meeting time from day to day. Senate Rule 3.10 requires a written request for attendance excusal and a written approval or disapproval of the request.
4. For the first several months of the 2023 session, Senate President Wagner excused all absences requested. During this first part of the session, absences were requested and approved for medical appointments, speaking engagements, illness, family issues, weather, family health, a funeral, death of a friend, religious events, holidays, and for personal reasons. Among the approvals during this timeframe was an approval of Senator Hayden's request for an excused absence for a faith-based church event.
5. Senator Hayden is a Seventh Day Adventist. Senator Hayden serves as a leader in his church. It is a tenet of Seventh Day Adventism that practitioners may not perform secular work on Saturdays, barring a fire or similar life-threatening emergency.
6. Beginning on May 3, the Senate was unable to proceed with the transaction of business due to lack of a quorum. Senate Rule 3.01. Oregon Constitution Article IV, Section 12.
7. On May 3, the Senate President approved a request for absences due to medical treatment, a request for absence to care for parents, and a request to attend the Governor's tour. On the same date, the Senate President disapproved Senator Hayden's request to be absent on May 4 in protest.

8. On May 5, the Senate President announced that requests for an excused absences on May 6 onward would be granted only in “extraordinary circumstances.” President Wagner concluded the new standard was necessary because the Legislative Assembly was not able to conduct its work without a quorum. For example, the state budget cannot be enacted without the affirmative votes of a majority of Senators. The 2021-2023 state budget expired on July 1, 2023, and Senators needed to approve a new biennial state budget. The 2023-2025 state budget totals \$121.2 billion. President Wagner believed the lack of a quorum substantially threatened the Legislative Assembly’s ability to do its critical duty of funding state government. President Wagner concluded the extraordinary-circumstances standard was justified to ensure that the Senate and the Legislative Assembly could fulfill their constitutional roles.
9. Senate President Wagner also opined that the extraordinary-circumstances standard was necessary for financial reasons: each session day without a quorum created cost impact. According to President Wagner, Senators get paid a per diem, salary, and benefits that together equal about \$325 per day. When the Senate is not able to meet due to a lack of quorum, the non-attending Senators and the remaining group of Senators who are attending are not able to do any official business in a floor session. President Wagner calculated the lack of a quorum created a cost impact of about \$10,000 per day (\$325 multiplied by thirty senators).
10. On May 5 the Senate President revised prior approvals for absences on and following May 6, 2023, and reversed prior approvals for absences due to a family event, a garden show, a family members graduation, and to care for parents.

11. On or about May 2, 2023, Senator Hayden requested to be excused from attendance on Saturday May 6 and every other Saturday through mid-June. His request stated: “Mr. President: I wish to be excused from my duties in the Senate on: 5/6/2023. Due to: Duties scheduled as elder of my church. Duties include preaching on 5/6/2023 and other duties. \*Please note the following Saturdays also are requested also [sic]: 5/13/2023, 5/20/2023, 5/27/2023, 6/3/2023, 6/10/2023, 6/17/2023.” At the time of Senator Hayden’s request, President Wagner was aware that Senator Hayden’s religion was very important to him but does not believe he was aware that Senator Hayden was a Seventh Day Adventist nor was President Wagner aware of Senator Hayden’s sabbath requirements when he denied this request. On May 5, 2023, Senate President Wagner marked not approved on the form and his Deputy Chief of Staff sent an email to Senator Hayden stating that his request to be excused for May 6 had been denied.
12. The Senate did not meet on any Saturday between May 6 and the end of session, except on May 6 and June 24, 2023.
13. From May 3 until the end of the session (June 25, 2023) Senator Hayden did not attend any Senate sessions, requesting absence approval for a variety of reasons.
14. On or about May 4, 2023 Senator Findley requested to be excused on Sunday, May 7 to attend religious services. Senator Findley volunteered to me that he does not attend church services every Sunday. Senate President Wagner denied this request on or about May 6, 2023.
15. President Wagner did not question the sincerity of Senator Hayden's or Senator Findley's religious beliefs (nor anyone else's). I find that both Senator Hayden's and Senator Findley's religious beliefs are genuine and sincere.

16. From May 3, 2023 to June 15, 2023, Senator Findley did not attend session and requested approval for his absences in order to protest the asserted refusal of the Senate to comply with Senate Rule 13.02 and ORS 171.134.
17. On or about May 6, 2023, Connor Radnovich, the Senate President's Communications Director, was accurately quoted in the press stating “[t]his isn’t about religion...this is about this being a walkout. If we were able to get the work done on Wednesday and Thursday and Friday, we would not have to be here on Saturday.” The Senate President did not approve Mr. Radnovich’s statement before it was made.
18. On May 8, 2023, Senator Hayden was paraphrased and quoted by Oregon Public Broadcasting saying that he would not attend floor sessions or even appear in the State Capitol Building due to legislation related to the opioid crisis, specifically HB 2395:  
“Hayden is concerned about a package of policies expanding access to the opioid reversal drug naloxone which he believes harmfully allows parents to be kept in the dark if their children receive addiction treatment. “Until negotiations happen, if they do happen, I don’t intend to be in the building”, he said. Senator Hayden recalls speaking to an OPB reporter but not the specifics of those/that discussion. He states the OPB reported statements sound like something he could have said.
19. From May 5 through the restoration of quorum on June 15, the Senate President denied all requests for excused absences with the exception of:
  - Two members received approvals for extended absences during the session to recover from life-threatening health conditions, which prevented them from attending session.

- Senator Hayden received approval to be absent from the Senate on May 11 in order to meet with Brenda Baumgart relating to his Rule 27 complaint.
- A Senator received approval for a two day absence to contend with a burst waterline at his rural property which was critical to his household and animals.
- A Senator received approval to be absent for one day to attend the funeral of a family member.

20. During the period that the Senate was without a quorum (from May 3 to June 14, 2023), requests for absence approvals were denied for reasons such as protest, visit to family out of state, family health issues, member illness, child's high school graduation, religious services, medical appointments, and acting as an officiant at a family member's out of state wedding.

21. The Senate generally and historically does not hold sessions on Fridays, Saturdays and Sundays. Fridays are generally reserved for committee and other work and to allow impacted senators who must travel far from Salem to return to their districts. I found no evidence that the scheduling of pro forma sessions during this legislative session was a subterfuge for approving absences of favored members of the Senate. The pro forma session on Friday, May 26 was necessary due to the following Monday being a holiday and the constitutional requirement that each chamber of the legislative assembly not adjourn for more than three days. Article IV, section 11. The pro forma days on June 12, 13, and 14 were part of an effort to negotiate return of Senators so that the Senate could achieve a quorum and conduct business. The Senate did not meet on June 17 and 18 at the request of the Republican caucus and to allow members to attend Juneteenth events in their districts.

22. On June 1, 2023, the Senate members present voted to impose a fine on absent members of \$325 per day, effective June 5, 2023. Fines accrued on June 5, June 6, June 7, and June 8. As part of the negotiated agreement to end the loss of quorum, Senate Leadership agreed not to issue invoices to collect the fines that the members of the Senate had authorized. No invoices have been sent to date.
23. On June 15, 2023, the Senate again achieved a quorum and began conducting business. After the restoration of quorum on June 15, Senate President Wagner retained the extraordinary-circumstances standard of reviewing excuses because he felt it was necessary ensure that the Senate could complete its work by the constitutional deadline, June 25 2023. Article IV, Section 10.
24. After the quorum was restored on June 15, 2023, and through the end of the session on June 25, 2023, Senate President Wagner excused absences for a life-threatening health condition and for a critical medical appointment for a life-threatening health condition. After June 15, 2023, Senate President Wagner denied all other requests for excused absences.
25. After the Senate regained a quorum, the Senate President denied Senator Hayden's request for approval of an absence on Saturday, June 24 to observe the Sabbath. The Senate President also denied the request from a senator to be absent on June 25 in order to attend religious service.

## **V. CONCLUSION**

The above constitute my findings.

July 18, 2023

## **Rule 27 Conduct Complaint**

Please consider this my Rule 27 Conduct Complaint against Senate President Rob Wagner.

1. Senator Cedric Hayden is an elected official, a member of the Oregon Legislative Assembly, serving as a member of the state legislative assembly since 2015.
2. Respondent Wagner is the President of the Oregon Senate.
3. The Legislative Assembly is a legislative body housed at the Oregon State Capitol, a place of public accommodation. Additionally, through its senators, the body provides a public service as a necessary component of the legislative branch of state government.
4. The Legislative Assembly has adopted rules governing conduct. Rule 27(4)(a) prohibits harassment via verbal conduct that “denigrates or shows hostility toward an individual or group of individuals,” including “hostile acts that relate to a protected class.” Such conduct creates a “hostile work environment” if it “denies a person the benefits of the workplace.” Rule 27(3)(w) defines “protected class” to include “Religion” and “Taking leave from work for purposes protected by law, including but not limited to leave under the Oregon Family Leave Act, the federal Family and Medical Leave Act or disability-related leave.”
5. Rule 27(8)(a) prohibits conduct that is “harassment and creates a hostile work environment.”
6. Rule 27(8)(c) prohibits conduct that is “an unlawful practice that aids or abets discrimination in a place of public accommodation under the laws of the state.” There are a number of such laws that apply here.
7. Rule 27(8)(c) prohibits conduct that is “retaliation.”
8. Senator Hayden is a Seventh Day Adventist. Senator Hayden serves as a leader in his church. Senator Hayden’s religious beliefs are genuinely and sincerely held.
9. It is a tenet of Seventh Day Adventism that practitioners may not perform secular work on Saturdays, barring a fire or similar life-threatening emergency.
10. Senator Hayden informed the Senate President and his staff multiple times of his religious convictions, including not working on Saturdays.
11. In 2022, Ballot Measure 113 amended the Oregon Constitution to provide: “Failure to attend, without permission or excuse, ten or more legislative floor sessions called to transact business during a regular or special legislative session shall be deemed disorderly

behavior and shall disqualify the member from holding office as a Senator or Representative for the term following the election after the member's current term is completed.”

12. While Respondent is the President of the Senate, in practice, he is King. By checking a box, he exercises exclusive control over the decision to excuse senate absences, without analysis or reasoning, with no right to appeal.
13. On May 2, 2023, Senator Hayden voted to remove the Senate President from the office of Senate President. The vote did not pass.
14. It became clear that the Senate President would attempt to hold some floor sessions on weekends, requiring Senator Hayden’s presence and work efforts on a Saturday. On May 2, 2023, Senator Hayden requested to be excused from attendance on Saturdays for religious reasons, beginning on May 6, 2023.
15. On May 5, 2023, Respondent denied Senator Hayden’s request, marking all Saturday absences requested as “unexcused.” The form denied 8 requested Saturday excused absences in total.
16. Other senate absences have been excused, absences unrelated to religious reasons, including at least two excused absences on May 6, 2023 and seven excused absences on May 5, 2023.
17. In an article on May 6, 2023, the Senate President’s spokesperson publicly questioned Senator Hayden’s religious beliefs, saying that “[t]his isn’t about religion . . . [t]his is about this being a walkout. If we were able to get the work done on Wednesday and Thursday and Friday, we would not have to be here on Saturday.”  
<https://oregoncapitalchronicle.com/2023/05/06/senate-president-clamps-down-on-absences-as-walkout-continues/>
18. On May 8, 2023 the Senate President’s Deputy Chief of Staff stated in an email regarding a request by Senator Hayden to be excused that “I think that Sen. Hayden can expect that his request will not be approved as President Wagner has stated that no member – Democrat or Republican - will be granted an excused absence until a quorum is achieved.”
19. In fact, during the time that the Senate did not have quorum from May 3, 2023 to June 14, 2023, the Senate President excused absences for Senators numerous times:
  - a. Senator Hayden was excused May 11 for non-religious reasons;
  - b. Senator Boquist was excused June 5-6;
  - c. Senator Brock Smith was excused May 3-5;
  - d. Senator Girod was excused every session day;
  - e. Senator Gorsek was excused all session days through June 1;
  - f. Senator Hansell was excused May 3-4;

- g. Senator Knopp was excused May 5 and June 7;
  - h. Senator Thatcher was excused May 3-5;
  - i. Senator Weber was excused May 3-5;
  - j. Senator Robinson was excused May 3-5.
20. During the time that the Senate did not have quorum from May 3, 2023 to June 14, 2023, the Senate President chose to have no session on a number of days, including:
- a. Friday, May 12;
  - b. Saturday, May 13;
  - c. Sunday, May 14;
  - d. Friday, May 19;
  - e. Saturday, May 20;
  - f. Sunday, May 21;
  - g. Saturday, May 27;
  - h. Sunday, May 28;
  - i. Friday, June 2;
  - j. Saturday, June 3;
  - k. Sunday, June 4;
  - l. Friday, June 9;
  - m. Saturday, June 10;
  - n. Sunday, June 11.
21. Even during the time that the Senate did not have quorum from May 3, 2023 to June 14, 2023, the Senate President chose to have “pro forma” sessions where no roll call was taken and no business could have occurred several times, including:
- a. Friday, May 26;
  - b. Monday, June 12;
  - c. Tuesday, June 13;
  - d. Wednesday, June 14.
22. The only time the Senate President attempted to hold session on a Saturday during the time the Senate did not have quorum was on Saturday, May 6, 2023, when the Senate President denied Senator Hayden’s excused absence for religious reasons.
23. After the Senate had quorum again, the Senate President declined to hold a session on Saturday June 17, 2023 and then once again denied Senator Hayden’s request for an excused absence for religious reasons for Saturday, June 24, 2023. This was inconsistent with the claim by the Senate President’s spokesperson that the May 6, 2023 Saturday denial was only “about this being a walkout.”
24. After the Senate had quorum again, the Senate President excused absences for Senators several times:
- a. Senator Girod was excused June 15;
  - b. Senator Woods was excused June 16;

25. Depending on several legal questions outside the scope of this complaint, the Senate President's actions in denying excused absences may lead to or contribute to Senator Hayden's inability to seek reelection or serve another term at some point in the future. Additionally, such denials limit Senator Hayden's ability to be absent for non-religious reasons, on days other than Saturdays, described below.
26. In addition to denying excuses for absences, the Senate President voted on June 1, 2023 to fine senators \$325 per day for the same unexcused absences that the Senate President refused to excuse for some reasons but excused for other reasons.
27. Senator Hayden exercised his Free Speech rights to protest the Senate President's discrimination and illegal conduct. The Senate President denied excused absences for this purpose.
28. While Senator Hayden need not be an "employee" for rights protected under ORS 659A.400 et seq., under Ballot Measure 113, the level of control maintained over elected officials in Oregon may render Senator Hayden an employee for the purpose of the following provisions: religious accommodations under ORS 659A.030, modeled after Title VII; sick time under ORS 653.601 et seq.; and unpaid medical leave under ORS 659A.150, *et seq.*, or OFLA.
29. Senator Hayden's daughter suffers from a disabling condition that limits her ability to care for herself.
30. On April 13, 2023, Senator Hayden made a vote explanation on Senate Floor about his daughter being excluded from public school, and the Senate President thanked him for his statement.
31. Senator Hayden's wife is the sole caregiver for their disabled daughter during the week, 24 hours per day, in a remote rural area, as her husband performs secular duties such as serving as a state senator, running his business and fighting fires. Live-in or even part-time outside care, to the extent their child requires, has been impossible to find, and the couple works as their child's medical team.
32. The only days usually open for Senator Hayden to relieve his wife and care for his child during legislative session are Saturdays<sup>1</sup> and Sundays, his only option to provide his wife and daughter with needed support and relief.
33. Senator Hayden requested to be excused from a required Sunday floor session to care for his daughter, explaining what Respondent and others already know regarding her condition. On May 7, 2023, that request was flatly denied.

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<sup>1</sup> Caring for one's child on a Saturday is not prohibited by Complainant's church.

34. On May 7, 2023, Senator Hayden's email to Senate President's staff noted that the "record of denial [for the May 7 leave request] was signed by Senator Wagner on May 6th, 2023, but it was not sent to me until just minutes before the floor. As Senator Wagner is aware, I commute back and forth daily to my home in Fall Creek which is near on a two hour drive each way from the Capitol. This notice was sent 13 minutes before the floor session was scheduled. It would seem that denial should have been forthcoming yesterday and not in fact given at the near start of the Senate floor session."
35. Senator Hayden requested excused absences related to his need to care for his family multiple times that were denied by the Senate President.
36. On May 9, Senator Hayden requested an excused absence to consult with counsel regarding violation of legal rights and Rule 27. This was denied by the Senate President.
37. On May 11, Senator Hayden requested an excused absence to meet with Brenda Baumgarten regarding the Rule 27 complaint. This was granted by the Senate President.
38. Senator Hayden requested an excused absence related to his obligations to participate in federally mandated inspections as a federally contracted wildland firefighter May 17, 2023. This was denied by the Senate President.
39. Respondent has discriminated, harassed, and retaliated against Senator Hayden related to religion, family leave, legal rights, and federal obligations, creating a hostile work environment.
40. Senator Hayden requested multiple excused absences related to this hostile work environment. These were denied by the Senate President.
41. Senator Hayden requested reasonable accommodations from a place of public accommodation that provides a public service, and he was denied, without an interactive process or discussion regarding the denial.
42. Senator Hayden faced a Hobson's choice of suffering unexcused absences in order to honor his religious convictions when excused absences were freely granted to others.

As a result of the actions of respondent alleged herein, Senator Hayden has suffered humiliation, loss of reputation, emotional distress, and loss of constitutional rights, including religious freedom. Respondent should be enjoined from future violations.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in proceedings under Legislative Branch Personnel Rule 27 and is subject to penalty for perjury.**

Respectfully,

A handwritten signature in blue ink that reads "Cecile Ross Hagedorn". The signature is written in a cursive style with a long, sweeping tail that extends to the right.



Legislative Equity Office  
Conduct Complaint

Directions



Legislative Equity Office  
Conduct Complaint

Complainant Information

First Name: \_\_Lynn\_\_\_\_\_ Last  
Name: \_\_Findley\_\_\_\_\_

Street Address: \_\_1616 Graham Blvd\_\_\_\_\_

Apt/Unit #: \_\_\_\_\_

City: \_\_Vale\_\_\_\_\_ State: \_\_Oregon\_\_\_\_ Zip  
Code: \_\_97918\_\_\_\_\_

Email: \_\_sen.lynnfindley@oregonlegislature.gov Phone: \_\_541-212-  
9526\_\_\_\_\_

Role at Oregon Capitol (Select One):

- Member of Oregon House or Senate
- Partisan Staff  Non-partisan Staff  Lobbyist
- Member of the Public

## Respondent Information

*Complete only what you know*

First Name: Robert Last  
Name: Wagner

Street Address: 900 Court Street  
Apt/Unit #: \_\_\_\_\_

City: Salem State: OR Zip  
Code: 97301

Email: sen.robertwagner@oregonlegislature.gov Phone:  
\_\_\_\_\_

Role at Oregon Capitol (Select One):

- Member of Oregon House or Senate
- Partisan Staff
- Non-partisan Staff  Lobbyist
- Member of the Public  Don't Know

## Incident Information

*Complete only what you know*

Date of Last Incident: May 3 through current Location of Incident: State  
Senate \_\_\_\_\_

Incident Description (Please provide as much detail as you can. Include anything you feel is relevant or helpful. You are welcome to add additional pages or write on the back of this form.):

As a member of the Senate Minority party, I have been harassed by accelerated floor schedules (Friday Saturday and Sunday May 5,6, and 7), denial of all requested excused absences including a request of an excusal to attend church services on May 7, 2023, as well as a request to conduct constituent work in

my district. I have never received a reason for any denial of my requested excused absences, and I believe I have been continually harassed for exercising my constitutional right to protest by not attending floor sessions and this has created a Hostile Work Environment.

Senator Wagner accelerated the floor schedule to seven days a week to force members to return to the floor or reach the threshold of 10 unexcused absences. Once most members reached the threshold the floor schedule was returned to Monday- Thursday.

This harassment has continued up to last Thursday June 1 where Senator Wagner gave a floor speech chiding missing members and introducing a fine for quorum denial by members. The reason for my quorum denial is by the Senate acting on Bills that the summaries do not comply with ORS 171.134 and Senate Rule 13.02 (5) relating to the Flesch readability test would violate my Oath of Office to uphold the Constitution and the Laws of the State of Oregon.

I have requested the ability to participate virtually in a Ways and Means Committee meeting on Friday May 26 so I could go home for the Memorial Day Weekend and Senator Wagner failed to respond to my request. I live 377 miles from Salem, and I felt it would be best to avoid major traffic issues by traveling before Friday May 26. By going home for Memorial Day weekend, I was counted absent from the committee meeting even though other members are allowed to participate remotely.

I feel the work environment in the Oregon State Senate is extremely hostile for me and I believe it is adversely affecting my health due to extreme stress and I feel Senator Wagner's actions are the direct impact.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in proceedings under Legislative Branch Personnel Rule 27 and is subject to penalty for perjury.

Signature: \_\_\_\_\_ Date: \_\_June 5, 2023\_\_\_\_\_

Printed Name: \_\_Lynn Findley\_\_\_\_\_