



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

February 17, 2023

Senator Dick Anderson  
Co-Chair, Senate Committee on Conduct  
900 Court Street NE S303  
Salem OR 97301

Senator Aaron Woods  
Co-Chair, Senate Committee on Conduct  
900 Court Street NE S425  
Salem OR 97301

Re: Complaint Against Senator Prozanski

Dear Senator Anderson and Senator Woods:

You asked us to review the December 5, 2022, complaint filed against Senator Floyd Prozanski (Complaint) alleging a violation of ORS 244.120 and Senate Rule 3.33. While the Complaint contains numerous allegations, our review and analysis is limited to the sole allegation that can properly be brought to the Senate Committee on Conduct under Senate Rule 3.33: whether Senator Prozanski's failure to declare a conflict of interest on November 28, 2022, prior to voting to rescind the Interim Safety Measures related to Senator Brian Boquist that were imposed by the Senate Special Committee on Conduct on July 8, 2019 (Interim Safety Measures), violated ORS 244.120 and Senate Rule 3.33.

While under the Oregon Constitution the Senate itself is the only entity authorized to determine whether a violation has occurred, we do not believe that Senator Prozanski violated ORS 244.120 or Senate Rule 3.33 by failing to declare a potential conflict of interest before voting to rescind the Interim Safety Measures.

Conflicts of Interest

ORS 244.120 requires members of the Legislative Assembly to announce actual or potential conflicts of interest before taking "action." By practice and custom, a member only takes action for purposes of this statute when the member casts a vote in committee or on the House or Senate floor. This understanding is codified at ORS 244.120 (1)(a), which directs members to declare conflicts of interest "pursuant to rules of the house of which the public official is a member[.]" In turn, the Rules of the Senate adopt the statutory definitions of actual and potential conflicts of interest (ORS 244.020) and require Senators to announce conflicts on the Senate floor or in committee "prior to voting on the issue giving rise to the actual or potential conflict."<sup>1</sup>

ORS 244.020 defines both "actual conflict of interest" and "potential conflict of interest." For a member of the Legislative Assembly, an actual conflict of interest occurs when a member

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<sup>1</sup> See Senate Rule 3.33 (1).

casts a vote “the effect of which *would* be to the private pecuniary benefit or detriment of the” member, the member’s relative or a business with which the member or a relative of the member is associated. (Emphasis added.)<sup>2</sup> A potential conflict of interest exists when a member casts a vote “the effect of which *could* be to the private pecuniary benefit or detriment of the” member, relative or business. (Emphasis added.)<sup>3</sup>

Critically, the conflict of interest laws are written—and have historically been interpreted by the Oregon Government Ethics Commission (GEC)—based on whether the content of the action taken by the public official could by itself create an actual or potential conflict of interest. With respect to members of the Legislative Assembly, this means that the relevant issue is whether the contents of the bill or motion that the member is voting on either *would* or *could* create a private financial benefit or detriment to the member, relative or business.

In contrast, we are not aware of any instance whether the GEC has either opined or held that a conflict of interest exists in a situation where the official action taken by a public official did not in itself result in the potential for private pecuniary benefit or detriment, but the public official subsequently received a financial benefit or detriment based on how a third party used the results of the official action.

As an illustration, in *A Guide for Public Officials*, the GEC uses the following as an example of when a conflict of interest does not exist:

NO CONFLICT OF INTEREST: A school district is soliciting bids for the construction of a new elementary school. One of the qualified bids was submitted by a construction company owned by a board member’s best friend but neither the board member nor any relative are associated with the construction company. The school board member would **not** be met with a conflict of interest when awarding this bid because the effect of her official decision **would not or could not** have a financial impact on herself, a relative, or a business with which she or her relative is associated. (Emphasis in original.)<sup>4</sup>

Notably, the GEC’s conflict of interest analysis stops at the time the school board member takes official action and is focused only with the impact of the official action itself. In that regard, it is irrelevant to the conflict of interest analysis if, e.g., the school board member also runs a tax preparation service used by the construction company that receives the contract and that it is very likely that receiving this contract will require the construction company to spend significantly more money on tax preparation services.

Similarly, we have been repeatedly advised by the GEC that a member of the Legislative Assembly who also works at, e.g., a law firm is not required to declare a conflict of interest before voting on a bill that could benefit clients of the law firm, even if it is possible that the clients would use the extra money to purchase additional legal services from the law firm. Likewise, a member of the Legislative Assembly would not be required to declare a conflict of interest on a bill that provided grants to businesses that meet specified statutory criteria if neither the member, nor a

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<sup>2</sup> ORS 244.020 (1).

<sup>3</sup> ORS 244.020 (13).

<sup>4</sup> GEC, “A Guide for Public Officials” (2021), at 12

<https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf> (last visited February 16, 2023).

relative of the member or business with which the member or relative is associated, would qualify to receive moneys from the grant at the time the member casts a vote on the bill. This is true even if the member casts a vote while intending to later establish a business that would be eligible to receive grant moneys.

### Interim Safety Measures

On July 8, 2019, the Senate Special Committee on Conduct adopted a motion to require Senator Boquist to give at least 12 hours' written notice to the Secretary of the Senate if he "intends to be at the Capitol and to have an increased Oregon State Police presence when Senator Boquist is present."<sup>5</sup>

Following adoption of the Interim Safety Measures, Senator Boquist filed a federal lawsuit alleging that the Interim Safety Measures violated the Due Process Clause of, and the First Amendment to, the United States Constitution. A federal district court initially dismissed the lawsuit in its entirety, based on the failure of the complaint to state a claim.<sup>6</sup> On appeal, the Ninth Circuit Court of Appeals affirmed part of the district court's decision<sup>7</sup> and reversed and remanded part of the district court's decision.<sup>8</sup> The remanded portion of the case is currently before an Oregon federal district court and includes an allegation that Senator Prozanski, acting as co-chair of the Senate Committee on Conduct, violated the First Amendment rights of Senator Boquist by imposing the Interim Safety Measures.

On November 28, 2022, the Senate Committee on Conduct met and adopted a motion that rescinded the Interim Safety Measures.<sup>9</sup> We understand that the Complaint alleges, in relevant part, that Senator Prozanski was required to declare a potential conflict of interest before voting to rescind the Interim Safety Measures because a federal court could find Senator Prozanski personally liable for violating Senator Boquist's constitutional rights by imposing the Interim Safety Measures and the rescission of the Interim Safety Measures was done "in an effort to moot the lawsuit in federal district court."<sup>10</sup>

As detailed below, we do not believe that Senator Prozanski could be held personally liable or forced to pay damages in the federal lawsuit filed by Senator Boquist. However, before even turning to that question, we do not believe that this allegation raises the correct issue for conflict of issue purposes.

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<sup>5</sup> Senate Special Committee on Conduct hearing, July 8, 2019, at 01:56:35 to 02:15:05, <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2019071001> (last visited February 16, 2023).

<sup>6</sup> *Boquist v. Courtney*, 432 F. Supp.3d 1221 (D. Or. 2020).

<sup>7</sup> *Boquist v. Courtney*, 2022 WL 1184730 (9th Cir. April 21, 2022) (holding, *inter alia*, that district court was correct to find that Senator Boquist failed to state claim for violation of his rights under Due Process Clause or against non-legislator defendants).

<sup>8</sup> *Boquist v. Courtney*, 32 F.4th 764 (9th Cir. 2022) (holding, *inter alia*, that district court erred by concluding that Senator Boquist failed to state claim for violation of his rights under First Amendment to United States Constitution or against defendants who were also legislators).

<sup>9</sup> Senate Committee on Conduct hearing, November 28, 2022, at 6:41 to 7:37 (describing motion) and 18:31 to 18:53 (vote on motion), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2022111026> (last visited February 16, 2023).

<sup>10</sup> Complaint at 3 (see Attachment A, enclosed). See *also id.* at 1 ("Senator Floyd Prozanski is one of three Defendants in a federal lawsuit regarding the exact interim safety measures of the committee work session. . . .When the Defendant loses a 42 U.S. Code 1983 civil rights lawsuit, as per *ex parte Young*, they become personally liable."); *id.* at 5 ("Senator Prozanski failed to provide any disclosure of a possible conflict under ORS 244.020. Despite questions posed by Senator Taylor and Senator Anderson to Senator Prozanski who proposed and explained the motion not one word was said of his personal and legal conflicts of interest.").

As explained above, the relevant question for a conflict of interest analysis is whether the content bill or motion that is being voted on by itself creates the opportunity for a financial benefit, or avoidance of financial detriment, by the member, a relative of the member or a business with which the member or relative is associated. The motion Senator Prozanski voted on was whether to rescind the Interim Safety Measure—i.e., whether Senator Boquist should continue to be required to provide at least 12 hours' written notice before entering the Capitol and whether an increased police presence remains necessary each time Senator Boquist enters the Capitol. We are not aware of any way in which the removal of these two requirements could result in the direct financial benefit, or avoidance of financial detriment, for Senator Prozanski, a relative of Senator Prozanski or a business with which Senator Prozanski or a relative is associated. As noted above, the fact that after the motion was adopted, there was a possibility that the rescission of the Interim Safety Measures could be used by the lawyers representing the State of Oregon in an argument that attempts to convince a federal court that a case is now moot does not change the scope of the conflict of interest analysis.

As the rescission of the Interim Safety Measures did not itself create the opportunity for personal financial gain, or the avoidance of personal financial loss, we do not believe that Senator Prozanski was legally required to declare a potential conflict of interest before voting on the motion to rescind.

#### Senator Prozanski Could Not Be Found Personally Liable Under the Federal Lawsuit

We believe that the analysis described in the preceding paragraphs is dispositive. However, for the sake of argument, we now explain the other reasons why Senator Prozanski could not be found personally liable under the federal lawsuit and, therefore, why a decision that could arguably moot the lawsuit would not be a decision that could or would lead to pecuniary benefit for, or the avoidance of financial benefit by, Senator Prozanski, a relative of Senator Prozanski, or a business with which Senator Prozanski or a relative is associated.

In *Boquist v. Courtney*, Senator Boquist is seeking declaratory and injunctive relief, plus nominal damages and fees.<sup>11</sup> Thus, at the time Senator Prozanski cast his vote on the motion to rescind the Interim Safety Measures and as of the date of this letter, Senator Prozanski's vote could not have resulted in the avoidance of a financial detriment because Senator Boquist is not seeking damages. The fees being sought in Senator Boquist's complaint include reasonable attorney fees, but for most of the course of this litigation, Senator Boquist represented himself *pro se*. He has been represented by counsel only since June 7, 2022.<sup>12</sup> Even assuming that a monetary settlement is agreed to by the parties to resolve *Boquist v. Courtney* or the court awards attorney fees as part of the court's resolution of the case, a public official or public employee is indemnified by the public body for whom the official or employee performs duties for liability arising from any tort committed in the course of performing those duties.<sup>13</sup> In other words, the State of Oregon would pay any settlement amount, monetary damages or award of attorney fees in *Boquist v. Courtney*. Accordingly, a decision by Senator Prozanski to vote in favor of rescinding the Interim Safety Measures—while arguably having an effect on the amount of any settlement or award in *Boquist v. Courtney*—could not result in a personal pecuniary benefit or detriment for

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<sup>11</sup> Plaintiff's Fourth Amended Complaint, at 8 (November 3, 2022), Case No. 6:19-cv-01163-MC, United States District Court of Oregon, Eugene Division (see attachment B, enclosed).

<sup>12</sup> Notice of Appearance of Counsel for Plaintiff (June 7, 2022) (see attachment C, enclosed) and Notice of Association of Counsel for Plaintiff (June 7, 2022) (see attachment D, enclosed), Case No. 6:19-cv-01163-MC, United States District Court of Oregon, Eugene Division.

<sup>13</sup> ORS 30.285.

Senator Prozanski, a relative of Senator Prozanski, or a business with which Senator Prozanski or a relative is associated, because Senator Prozanski would not be personally responsible for any payment.<sup>14</sup> Therefore, there could not be a conflict of interest in his vote to rescind interim safety measures.

#### Determination of Whether a Conflict of Interest Violation Occurred Is Vested with the Senate

Finally, we note that Oregon law prohibits the GEC from enforcing conflict of interest laws with respect to members of the Legislative Assembly. Even though ORS 244.120 requires members of the Legislative Assembly to declare conflicts of interest pursuant to the rules of the house of which the person is a member, the Attorney General has opined that the Debate Clause of the Oregon Constitution prevents the GEC from imposing sanctions on members of the Legislative Assembly regarding announcements of conflicts of interest.<sup>15</sup> The Attorney General said that under Article IV, section 9, of the Oregon Constitution, each chamber of the Legislative Assembly has the exclusive authority to adjudicate a member of that chamber for speech that takes place within the performance of the member's legislative function, including the member's failure to make a required disclosure of potential or actual conflicts of interest. Further, the Attorney General said that this authority has not been delegated to any other body, including the GEC.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,



Dexter A. Johnson  
Legislative Counsel

Encls.

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<sup>14</sup> As an aside, we note that Senator Boquist's complaint filed with the Senate Committee on Conduct asserts that *Ex parte Young*, 209 U.S. 123 (1908), renders Senator Prozanski personally liable for any liability arising out of *Boquist v. Courtney*. We disagree. *Ex parte Young* establishes that the Eleventh Amendment to the United States Constitution does not bar federal courts from exercising jurisdiction over state officials alleged to be in violation of federal law. See *111 Harvard L. Rev.* 269 (1997). *Ex parte Young* has no impact on the application of the state indemnification statute, ORS 30.285.

<sup>15</sup> See 49 Op. Att'y Gen. 167 (1999).

## **Conflict of Interest Failure to Disclose Complaint**

This is a formal complaint under Senate Rule 3.33 for Senator Floyd Prozanski failing to declare his conflict of interests under ORS 244.020 before the Senate Conduct Committee vote on interim safety measures in November 28, 2022. The complaint is made under Or Const Art IV Sec 15 calling for the reprimand, censure or expulsion of this gross intentional violation of rule, statutory and constitutional requirements.

This is not a LBPR 27 complaint. Appropriate multiple communications were made with the acting Legislative Equity Office in advance of the work session on November 28, 2022.

This is not a prohibited use of official position complaint under ORS 244.040 which falls under the jurisdiction of the Oregon Government Ethics Commission.

Issues of gross violations of Or. Const Art III Sec 14 by legislators and employees will be filed separately.

Senator Floyd Prozanski is one of three Defendants in a federal lawsuit regarding the exact interim safety measures of the committee work session. Senator Courtney and Senator Manning are the other two Defendants. Senator Boquist is the Plaintiff. When the Defendant loses a 42 U.S. Code 1983 civil rights lawsuit, as per *ex parte Young*, they become personally liable.

Personal legal expenses for lawyers, filings, depositions, transcripts, video, miscellaneous not including damages could exceed several hundred thousand dollars. Senator Prozanski is presently using Attorney General lawyers without legislative approval and in violation of Or. Const Art III Sec 1.

Further, the Defendants (Senators Prozanski, Courtney & Manning) with their AG attorneys claim the following respondents to be represented by themselves which have legal conflicts as well: Lori Brocker, Brenda Baumgart, and Jessica Knieling all whom have been deposed in the past 90 days. Defendant's lawyers assert to represent Senator Girod and Senator Fredrick as well who are conduct committee members. Other respondents are not germane at this time.

A second Oregon Supreme Court case is pending with Senator Courtney, Dexter Johnson and Brett Hanes in regards to the unconstitutional use of the Attorney General and Oregon State Police. All three have inherent legal conflicts of interest as well.

The Oregon Government Ethics Commission which was contacted for information confirms ORS 244.020 means when “a public official is met with a conflict of interest when participating in official action which would or could result in a financial benefit or detriment to the public official” that official must declare a conflict of interest.

The Legislative Assembly expanded the definition of conflicts in ORS 173.900 stating conduct committee members “shall be recused from service on a committee on conduct performing functions under Article IV, section 15, of the Oregon Constitution, if the facts and circumstances at issue could impair the member’s ability to act impartially and without bias.” This will be covered under a separate complaint but relative to OGEC authorities, or those of a single legislative house authority under AG Opinion No 8265 February 24, 1999.

Senator Floyd Prozanski is an elected legislator, lucrative office holder, public official under the Legislative Branch. Floyd Prozanski is a public prosecuting attorney, a lucrative office, an oath required public official, and an officer of the court in the executive branch of the government.

OGEC states “Public official” is defined in ORS 244.020 as “the First Partner and any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.” Gibson v. Kay (1914), Or Const Art III Sec 1, and Or Const Art II Sec 10 appear to mean Mr. Prozanski cannot be both in the legislative and executive government branches.

Timeline:

Senator Prozanski was deposed a second time on **November 14, 2022** ref a federal lawsuit in regard to the interim safety measures imposed against Senator Boquist on July 8, 2019.

Senator Prozanski, Secretary Lori Brocker and LC Dexter Johnson held a pre-work session Teams meeting on morning of **November 15, 2022** regarding the events that have transpired. Tracy White of the AG’s office is attempting to block the exposure of these committee deliberations in violation of Or. Const Art IV Sec 14. Marc Abrams of the AG’s office has attempted to block committee of the whole communications made by Secretary Brocker on the same topic the following day.

Lori Brocker, Secretary of the Senate, was deposed second time on **November 15, 2022** in the same federal lawsuit.

Co Chair Senator Hansell was contacted by Co Chair Senator Prozanski on or about **November 16, 2022** with a request to hold a Senate Conduct Committee meeting to rescind the interim safety measures sanctions set on July 8, 2019 against Senator Boquist. Immediately, rumors abounded regarding the effort by Senator Prozanski to rescind the interim safety measures in an effort to moot the lawsuit in federal district court. A purely personal gain or loss prevention attempt illegally using his official position.

The Senate Conduct Committee work session agenda was posted on **November 21, 2022** at 2:29 pm. The work session was to be held at 8:00 am Monday, November 28, 2022 after the Thanksgiving Weekend. This is 3 years 4 months 20 days after interim safety measures sanctions were imposed, yet, suddenly it had to be completed on Thanksgiving week. Afterward, the one-page recording log took five days to prepare, and the one-paragraph committee report took eight-days to prepare.

Melissa Leoni, Committee Administrator, after the agenda was posted on OLIS, emailed Senator Boquist at 2:33 pm on November 21, 2022, to advise him of the work session. Ms. Leoni inquired if Senator Boquist wanted to attend the work session. Senator Boquist saw the email on November 22, 2022 the next day.

Between November 22-23, 2022, Senator Boquist posed several questions before the holiday weekend in which staff were gone from Wednesday morning until Monday morning. Senator Boquist was told it was a LBPR 27 work session, Co Chair Prozanski would be attending, the Legislative Equity Officer would not be attending, the independent investigator would not be attending, all the HCR Rule 27 versions contained the same interim safety measures, ORS 173.900 establishing the conduct committees for Rule 27 did not apply, and Senate Rule 8:15 requiring the President's approval did not apply. The Committee Administrator provided the wording for a prepared motion that Senator Prozanski would read himself at the work session on November 28, 2022.

That Committee Administrator replied in 90 minutes with the answers then departed Wednesday morning for the weekend. Senator Boquist had requested the Committee Administrator contact the acting Legislative Equity Officer for guidance but this was ignored. Whom prepared the answers in advance raises serious legal questions as well as raises expanded legal conflicts of interest. Legislative Counsel is prevented by the



BOLI Conciliation Agreement from participating but sworn testimony says Dexter Johnson was a participant in the pre-committee meeting.

LBPR 27 is overseen by the acting Legislative Equity Officer whom knew nothing about the scheduled work session. Interim safety measure recommendations come for the LEO and/or independent investigators whom were not involved at all. Senate Prozanski personally filled those roles in the work session. Outside legal counsel was not used as required, instead, Legislative Counsel and the Attorney General were utilized in violation of the law.

ORS 173.900 directly mandated the recusal of Senator Prozanski but the Committee Administrator stated in writing it did not apply? False.

Senate Rule 8:15 still requires the Senate President to approve agenda's for the Senate Conduct Committee. The Presiding Officer is required by ORS 173.900 and LBPR 27 to ensure, as the appointing authority, that no conflicts of interest are apparent for serving members. The Committee Administrator when questioned claimed the Co Chair's approved the agenda. President Courtney, as a defendant himself, would have known legal conflicts existed but the Presiding Officer was intentionally by-passed.

The Committee Administrator was asked to identify which version of the many LBPR Rule 27s applied to this work session? The response claim was all various Rule 27 interim safety measures are "substantially similar" which is false. The Committee Administrator referenced the original committee having authority in 2019 to implement interim safety measure pursuant to HCR 20 Rule 33 which is false.

HCR 20 dated June 29, 2019 Rule 33 (2) states: "For periods after the adoption of this concurrent resolution and before notice is given under subsection (1) of this section, the Legislative Administrator and the Human Resources Director may impose interim safety measures as described in Legislative Branch Personnel Rule 27 (13), to protect any person present in the State Capitol from harassment, sexual harassment or retaliation." The committee had zero Rule 27 authority. Senator Prozanski became fully aware of that fact on November 14, 2019.

Senator Prozanski and Secretary Brocker both were on the Committee Administrator's emailed answers. Given the timeline in this complaint that raises serious legal concerns. Dexter Johnson, whom was in the pre-work session Teams meeting per Secretary Brocker, was not on the email responses. However, the BOLI Conciliation Agreement should have prevented his participation from the beginning but did not. Further,

Legislative Counsel was involved in June 2022 when the Parliamentarian stated in writing no procedure existed to rescind the interim safety measures.

On November 14-15, 2022, in the presence of Senate Boquist, it was quite apparent Senator Prozanski and others became aware their previous actions had been taken without any legal authority.

Between November 23-27, 2022, Senator Boquist communicated back and forth with acting Legislative Equity Officer in regards to the applicability of LBPR Rule 27. Again, the LEO claims to know nothing about the work session.

On November 28, 2019, the Senate Conduct Committee conducted a 19 minute work session.

Senator Boquist read a prepared statement outlining serious discrepancies in the process pointing out what a reasonable person would consider conflicts of interest.

As a reporter said, "it was a confusing conduct committee meeting this morning. Senator Taylor was asking good questions but I didn't hear answers." Senator Prozanski failed to recuse himself under ORS 173.990. Senator Prozanski failed to provide any disclosure of a possible conflict under ORS 244.020. Despite questions posed by Senator Taylor and Senator Anderson to Senator Prozanski who proposed and explained the motion not one word was said of his personal and legal conflicts of interest.

Important in the work session discussions is several admissions by Senator Prozanski of meetings before the work session that pre-determined the approval of his motion. All of which violate open meeting laws and the constitutional requirement for open deliberations. Deliberations blocked from at least two members if not three of the committee. Or Const Art IV Sec 14 and Senate Rules 3.05 and 203.05 require all deliberations to be open to the public. The OLIS video makes it clear the decisions were made outside of the work session.

The recording log which Senator Boquist had to request contains no declaration of conflicts of interest. The OLIS video feed contains no declaration of any conflicts of interest. Transcripts of media provided official CDs will show word for word what transpired.

Senator Prozanski as a lawyer is bound to the Oregon Rules of Professional Conduct approved by the Chief Justice of the Oregon Supreme Court. Senator Prozanski as a prosecuting attorney in the executive branch of government knows the definitions of

bias, conflict of interest, and recusal. Senator Prozanski served on the Joint Capitol Culture Committee that crafted and passed out HB 3377 (ORS 173.900) and HCR 20 A (LBPR 27). Senator Prozanski was the carrier on the Floor of the Senate of HCR 28 (LBPR 27) incorporating ORS 173.900 in which the staff measure summary, with Senator Prozanski's name on it, states "if co-chairperson is unable to serve, then other member from the same party is acting co-chairperson." Senator Prozanski's failure to recuse and declare conflicts is intentional, knowing and willful, therefore, he should be reprimand, censured or expelled from the Oregon State Senate.

Due to the established S.R. 3.33 conflicts of interest copies of this complaint are being provided to the Oregon Government Ethics Commission with additional information regarding ORS 244.040.

Any participation in any investigation by the identified individuals with conflicts of interest other than as respondents will constitute violations of the Oregon Revised Statutes and the Oregon Constitution which will be pursued outside of the Oregon State Senate and outside of Or Const Art IV Sec 9.

Formally submitted on December 5, 2022



Brian J. Boquist



Peggy L. Boquist

17080 Butler Hill Road  
Dallas Oregon 97338

Copies furnished:

Oregon Government Ethics Commission  
Senate President (2022)  
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Democrat Caucus Leader  
Republican Caucus Leader

**ATTACHMENT B**

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

OREGON STATE SENATE PRESIDENT  
PETER COURTNEY, in his individual and  
official capacities; SENATOR FLOYD  
PROZANSKI, in his individual and official  
capacities as Chairman of the Senate Special  
Committee on Conduct, SENATOR JAMES  
MANNING, in his individual and official  
capacities as member of the Special Senate  
Conduct Committee,

Defendants.

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**FOURTH AMENDED COMPLAINT**

42 U.S.C. §1983 - FIRST AMENDMENT  
VIOLATIONS

**INTRODUCTION**

1. Plaintiff Oregon State Senator Brian J. Boquist assumed office in 2009 and continues serving as an elected state senator in 2022. Defendants are elected members of the

Oregon Senate and were members of the majority party during the 2019 Legislative Session. Plaintiff was a member of the minority party during the 2019 Legislative Session when he made two political statements on June 19, 2019, which reportedly angered and caused concern among members of the Defendants' Democratic caucus, sparking a workplace harassment investigation. The investigation, initiated by Defendants, resulted in a Senate Conduct Committee hearing in which Plaintiff's First Amendment rights to speech, expression, and association were summarily discarded. The Committee, operating pursuant to Legislative Branch Personnel Rule 27: Harassment-Free Workplace ("Rule 27") imposed a 12-hour-notice sanction ("12-hour-notice rule") against Plaintiff, requiring him to declare to the Oregon State Senate his intent to enter the State Capitol building at least 12 hours ahead of his entrance.

The retaliatory and arbitrary restriction of Plaintiff's political speech and freedom of association remains in full effect to this day. The 12-hour-notice sanction has a chilling effect on Plaintiff and other minority members who wish to exercise their elected official duties and serves as a prior restraint on Plaintiff's protected speech.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343(4) in that the controversy arises under the United States Constitution and under 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202. This Court has authority to award attorneys' fees pursuant to 42 U.S.C. §1988. Each of the acts, or threats of acts, alleged herein were inflicted by Defendants, or their officers, agents, and employees, under color and pretense of the statutes, ordinances, regulations, customs, and usages of the State of Oregon and the applicable rules of the Oregon Senate.

3. Personal jurisdiction is proper over Defendants because they reside or work in this District and because the wrongful activity at issue occurred in this District.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391.

### **PARTIES**

5. Plaintiff Brian Boquist is an elected Oregon State Senator and a citizen of the United States and the State of Oregon.

6. Defendants Peter Courtney, Floyd Prozanski, and James Manning are elected Oregon State Senators, citizens of the United States and the State of Oregon.

### **FACTUAL ALLEGATIONS**

7. On June 19, 2019, Senator Boquist made a statement to Senate President Courtney on the floor of the senate during an ongoing political debate about a climate change bill. The climate bill stirred public protests and numerous media stories across the political spectrum in Oregon. During his floor speech, Senator Boquist said to Senate President Courtney, “I understand the threats from members of the majority that you want to arrest me, you want to put me in jail with the state police, and all the sort of stuff ... Mr. President, and if you send the state police to get me, Hell’s coming to visit you personally.”

8. The above statement related to threats Senator Boquist heard that Senator Courtney would ask Governor Brown to send Oregon State Police (“OSP”) to arrest and return minority members if the minority members walked out of the session and denied the majority a quorum.

9. Senator Boquist immediately apologized for his statement to Senator Courtney, a long-time friend and colleague, and the floor session continued as usual.

10. Senator Courtney did not file a Rule 27 report, complaint, or civil or criminal charges of any kind in response to Senator Boquist's statement on the floor.

11. On June 19, 2019, Boquist also made a statement to the media in response to the Governor's threat to send OSP troopers to arrest Republicans if they walked out of the legislative session and denied Democrats a quorum. Senator Boquist told a reporter, "[w]ell, I'm quotable, so here's the quote. This is what I told the [state police] superintendent: Send bachelors and come heavily armed. I'm not going to be a political prisoner in the state of Oregon. It's just that simple."

12. Senator Boquist did not believe the Governor would send OSP troopers to arrest legislators. He believed Senator Courtney's and the Governor's threat was political rhetoric and gamesmanship and he responded with the same.

13. On June 20, 2019, minority members of the Oregon Senate walked out of the chambers and the Capitol, denying majority members a quorum. As Senator Boquist expected, OSP troopers did not attempt to arrest any Republican legislators who walked out.

14. Senate majority leaders also threatened the minority senators, including Plaintiff, with \$500/day in fines for walking out. In response, Senator Boquist sent Senate President Courtney a check for \$3,500, for the seven days he walked out and denied Defendants a quorum. Senator Boquist's check was returned to him, uncashed. As Senator Boquist expected, the threat of fines was mere political rhetoric and no fines were actually assessed against minority legislators.

15. Sometime after Senator Boquist made his political statements on June 19, 2019, Brenda Baumgart, a private attorney under contract to function as an investigator, chose to review the Senator's statements to determine if any Rule 27 workplace harassment violations were present.

16. A week later, in a June 25, 2019 memo, Baumgart made an interim finding that Senator Boquist's comments violated Rule 27, and she recommended that he be kept out of the Capitol during the pendency of the investigation.

17. Baumgart indicated she had received reports that people in the building were frightened of Senator Boquist but admitted no one had yet been interviewed and no complaints or reports had been vetted for credibility.

18. Baumgart said her interim recommendation that Senator Boquist be kept out of the Capitol while her investigation played out would remain the same even if no one had voiced a concern.

19. On July 8, 2019, three weeks after Senator Boquist's statements and after the legislative session ended, the Senate Conduct Committee formally met to discuss whether to sanction Senator Boquist for his statements. At all material times, Defendant Senate President Courtney was an *Ex Officio* member of the Senate Conduct Committee with a responsibility to approve any agenda or formal meeting of the committee.

20. During the July 8 hearing work session, a majority of the conduct committee, including Defendant Prozanski, voted that the statements Boquist made on June 19th were not credible threats.

21. Baumgart stated during the July 8<sup>th</sup> hearing that Senator Boquist's statements could be considered workplace harassment under Rule 27 and she admittedly determined not to consider whether the elected official's statements were protected by the First Amendment.

22. At the time of the July 8, 2019 Senate Conduct Committee meeting, no formal or informal complaints had been made against Senator Boquist related to his statements.



23. At the time of the July 8, 2019 Senate Conduct Committee meeting, no reports related to concerns about Senator Boquist's statements had been vetted for credibility.

24. At no time did anyone initiate a criminal investigation related to Senator Boquist's statements.

25. Defendants knew Baumgart did not interview Senator Boquist, Senator Courtney, anyone affiliated with the Oregon State Police, or anyone who verbally reported a concern, before recommending Senator Boquist be denied entry to the Capitol for the duration of the investigation (which remains ongoing in October 2022).

26. The Senate Conduct Committee, including Defendants Prozanski and Manning, voted to implement a 12-hour notice rule against Senator Boquist – requiring him to provide a 12-hour notice before entering the Capitol building until a final report and recommendation was complete.

27. None of the reports allegedly received by Baumgart escalated into formal complaints before Senator Boquist was sanctioned for his statements.

28. None of the reports about Senator Boquist's statements allegedly received by Baumgart escalated into formal complaints after Senator Boquist was sanctioned for his statements.

29. Defendants know that no final investigation report has ever been completed.

30. Defendants know that no final investigation report was provided to the Senate Conduct Committee.

31. At the time of this filing, Senator Boquist remains subject to the 12-hour notice sanction issued on July 8, 2019.

**FIRST CLAIM FOR RELIEF**

**First Amendment Retaliation - 42 U.S.C. § 1983**

32. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs of this Complaint.

33. Plaintiff has a federally protected right and privilege to be free from retaliation for exercising his freedom of speech, expression, and association under the First Amendment to the United States Constitution as incorporated and applicable to the state by the Fourteenth Amendment to the United States Constitution.

34. The First Amendment rights violated by the Defendants were clearly established at the time Defendants violated them.

35. The Defendants are aware or should be aware that despite differences in political philosophies, public officials do not shed their constitutional rights to freedom of speech, expression, or association at the doors of the State Capitol building.

36. At all material times, Defendants were engaged in routine duties incident to their elected and leadership positions held as members of the majority party in the Oregon Senate.

37. In an act of deliberate indifference to the First Amendment rights of Plaintiff, Defendants arbitrarily and capriciously punished Plaintiff in retaliation for his protected speech, expression, or association, by requiring him to provide 12-hours-notice before entering the State Capitol, and thereby his Senate offices.

38. Plaintiff's protected speech did not cause a material and substantial disruption to Senate activities or to the function of the State Capitol, nor was it reasonably likely to do so.

39. As such, Defendants' actions violated and continue to violate Plaintiff's First Amendment rights.

**SECOND CLAIM FOR RELIEF**

**First Amendment Freedom of Assembly - 42 U.S.C. § 1983**

40. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs of this Complaint.

41. Under the First Amendment, Plaintiff has a clearly established right to assemble with constituents, elected officials, and others at the State Capitol.

42. The 12-hour notice rule significantly burdens Plaintiff's freedom of assembly by preventing him from exercising authority he enjoyed by virtue of his popular election. The restriction interferes with his ability to meet on short notice with constituents, elected officials, and others at the Capitol.

43. As such, Defendants' actions violated and continue to violate Plaintiff's First Amendment right to assembly.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment and relief against the future actions of each Defendant:

A. A declaration that the 12-hour-notice rule imposed against Senator Boquist constitutes a violation of his First Amendment right to be free from retaliation for exercising his political speech rights, and his First Amendment right to assembly;

B. A declaration that Legislative Rule 27, as applied to Plaintiff here, is unconstitutional;

C. An injunction preventing enforcement of the unconstitutional 12-hour-notice rule against Senator Boquist;

D. Nominal damages;

E. For fees, including reasonable attorney fees, costs, and interest, if authorized by law; and

F. Any other relief the Court deems just and proper.

DATED this 3rd day of November, 2022.

s/ Elizabeth A. Jones  
Vance D. Day, OSB #912487  
Elizabeth A. Jones, OSB #201184  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing FOURTH AMENDED COMPLAINT on:

Tracy Ickes White  
Marc Abrams  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Attorneys for Defendants

by the following indicated method or methods:

- by **electronic means through the Court's Case Management/Electronic Case File system** on the date set forth below;
- by **emailing** a copy thereof to each attorney at each attorney's last-known email address on the date set forth below;
- by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney's last-known address listed above and depositing it in the U.S. mail at Salem, Oregon on the date set forth below.

DATED this 3rd day of November, 2022.

s/ Elizabeth A. Jones  
Elizabeth A. Jones, OSB #201184  
Of Attorneys for Plaintiff

Vance D. Day, OSB #912487  
*vddpc@aol.com*  
Law Offices of Vance D. Day  
Post Office Box 220  
Powell Butte, OR 97753  
Telephone: (503) 409-5562  
Attorney for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-

Plaintiff,

v.

**NOTICE OF APPEARANCE OF  
COUNSEL FOR PLAINTIFF**

OREGON STATE SENATE PRESIDENT  
PETER COURTNEY, in his official capacity;  
SENATORY FLOYD PROZANSKI, in his  
official capacity as Chairman of the Senate  
Special Committee on Conduct, SENATOR  
JAMES MANNING, in his official capacity as  
member of the Special Senate Conduct  
Committee,

Defendants.

\_\_\_\_\_  
To: The clerk of court and all parties of record: I am admitted or otherwise authorized to  
practice in this court, and I appear in this case as counsel for plaintiff Brian J. Boquist.

PLEASE TAKE NOTICE that Vance D. Day, Oregon State Bar No. 912487, of the Law Offices  
of Vance D. Day, Post Office Box 220, Powell Butte, Oregon 97753, telephone (503) 409-5562,  
email *vddpc@aol.com*, is appearing as trial counsel of record for plaintiff Brian J. Boquist.

DATED this 7<sup>th</sup> day of June, 2022.

\_\_\_\_\_  
/s/  
VANCE D. DAY, OSB #912487  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing NOTICE OF APPEARANCE OF  
COUNSEL FOR PLAINTIFF on:

Tracy Ickes White  
Marc Abrams  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Attorneys for Defendants

by the following indicated method or methods:

- by **electronic means through the Court's Case Management/Electronic Case File system** on the date set forth below;
- by **emailing** a copy thereof to each attorney at each attorney's last-known email address on the date set forth below;
- by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney's last-known address listed above and depositing it in the U.S. mail at Salem, Oregon on the date set forth below.

DATED this 7th day of June, 2022.

\_\_\_\_\_  
/s/  
VANCE D. DAY, OSB #912487  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

ATTACHMENT D

Elizabeth A. Jones, OSB #201184  
*beth@montoyahisellaw.com*  
Law Offices of Montoya, Hisel and Associates  
901 Capitol St. NE  
Salem, OR 97301  
Telephone: (503) 480-7250  
Fax: (503) 779-2716  
Attorney for Plaintiff Brian J. Boquist

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**NOTICE OF ASSOCIATION OF  
COUNSEL FOR PLAINTIFF**

OREGON STATE SENATE PRESIDENT  
PETER COURTNEY, in his official capacity;  
SENATORY FLOYD PROZANSKI, in his  
official capacity as Chairman of the Senate  
Special Committee on Conduct, SENATOR  
JAMES MANNING, in his official capacity as  
member of the Special Senate Conduct  
Committee,

Defendants.

PLEASE TAKE NOTICE that Elizabeth A. Jones, Oregon State Bar No. 201184, of the Law Offices of Montoya, Hisel and Associates, 901 Capitol Street NE, Salem, Oregon 97301, telephone (503) 480-7250, email *beth@montoyahisellaw.com*, is being associated as counsel of record for plaintiff Brian J. Boquist.

DATED this 7<sup>th</sup> day of June, 2022.

s/ Elizabeth A. Jones  
Elizabeth A. Jones, OSB #201184  
Attorney for Plaintiff



**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing NOTICE OF ASSOCIATION OF  
COUNSEL FOR PLAINTIFF on:

Tracy Ickes White  
Marc Abrams  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Attorneys for Defendants

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DATED this 7<sup>th</sup> day of June, 2022.

s/ Elizabeth A. Jones  
Elizabeth A. Jones, OSB #201184  
Attorney for Plaintiff

CERTIFICATE OF SERVICE