

Chair Lee Beyer
Vice Chair Brian Boquist
Oregon State Legislature
Senate Committee on Finance and Revenue

January 31, 2023

Re: Access Now's Written Testimony for the Public Hearing on SB 541

Thank you for the opportunity to submit our written testimony on Oregon State Senate Bill 541, amending Chapter 293 of the Oregon Administrative Rules.¹

Access Now is an international non-governmental, non-profit organization working to defend and extend the digital rights of people and communities at risk around the world.² Access Now has been bringing abuses of the surveillance and spyware industry to light for many years, including through conducting investigations, publishing reports, and submitting amicus briefs.³ We, along with our partners, have also been providing guidance on effective due diligence to help shareholders with investments in the surveillance technology ecosystem to identify, assess, prevent, and mitigate increasing human rights and other material risks.⁴

Access Now commends the Oregon legislature for introducing SB 541, which directs the Oregon Investment Council to develop, publish, and implement policy to incorporate human rights analysis into investment decisions.

Since its inception in 2011, the United Nations Guiding Principles on Business and Human Rights,⁵ the de-facto standard on responsible business conduct, have set the requirement as well as provided the guidance for conducting human rights impact assessments, or human rights analyses, to ensure relevant parties understand their direct or indirect involvement in potential human rights harms, and are thus able to put in place measures to mitigate such

¹ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB541>; see also <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB541>

² Access Now, *About Us*, <https://www.accessnow.org/>.

³ See, e.g., Access Now, *New report: FinFisher changes tactics to hook critics*, 14 May 2018, <https://www.accessnow.org/new-report-finfisher-changes-tactics-to-hook-critics/>; Access Now, *Exposed: civil society condemns use of Pegasus in El Salvador to spy on journalists and activists*, 12 January 2022, <https://www.accessnow.org/pegasus-el-salvador-spyware-targets-journalists-statement/>; Access Now, *Access Now tells the 9th Circuit Court: NSO Group cannot escape accountability in U.S. courts*, 23 December 2020, <https://www.accessnow.org/nso-group-whatsapp-lawsuit-civil-society-amicus-brief/>.

⁴ Access Now, *New guide: surveillance technology investors face significant risks if human rights are ignored*, 9 March 2022, <https://www.accessnow.org/surveillance-tech-investor-guide/>.

⁵ United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf

potential negative impacts from their operations. The basic minimum standard set forth by these Principles is very simple; “Do no harm.”⁶

Guided by these Principles, a host of civil society actors, including Access Now, The Citizen Lab,⁷ and our partners who advocate for digital rights, along with labor unions,⁸ noted with alarm the news that an Oregon state pension fund had invested \$233 million into Novalpina Capital,⁹ the owner of disreputable spyware purveyor NSO Group.¹⁰

As media reports and witness testimonies on the grave and sometimes even life-threatening impact of the use of NSO Group products spread across the globe, there is no credible way to dispute the significant and, furthermore, the absolute negative impact of the company’s products and business on the global community.¹¹ Investing in such business is enabling these abuses; while a human rights analysis prior to investing would have helped to identify such risks for the Council in support of an informed decision on investment, consistent with the appropriate duty of care and fiduciary responsibility.

To prevent such past oversights, the legislature now has an opportunity to step forward and show leadership by adopting the Senate Bill 541 to make it clear that the fiduciary responsibility of an investor must include relevant risks assessments to ensure the resulting investment decisions are consistent with the United Nations guidance for any business, which is to “do no harm.”¹²

We therefore support in full Senate Bill 541, and once again commend the legislature on its leadership in taking steps to close such obvious gaps in the Oregon Investment Council’s procedural work.

⁶ Laura Okkonen and Brett Solomon, *Why “do no harm” should be every tech investor’s mantra*, World Economic Forum, 19 January 2023,

<https://www.weforum.org/agenda/2023/01/davos23-do-no-harm-tech-investors-human-rights/>.

⁷ Sean Lyngaas, *Rights groups probe investments in NSO Group’s private equity firm*, Cyberscoop, 29 May 2019, <https://cyberscoop.com/nso-group-novalpina-capital-pension-groups-investment/>.

⁸ <https://www.theguardian.com/us-news/2022/mar/31/us-unions-pension-funds-investment-nso-group>

⁹ Stephanie Kirchgaessner, *Oregon public pension fund gave blessing to NSO Group deal, sources suggest*, The Guardian, 17 January 2022,

<https://www.theguardian.com/world/2022/jan/17/oregon-public-pension-fund-gave-blessing-to-nso-group-deal-sources-suggest>

¹⁰ See Business & Human Rights Resource Centre, *US: Oregon pension fund examines spyware investment amid Pegasus controversy*, 5 August 2021,

<https://www.business-humanrights.org/en/latest-news/us-oregon-pension-fund-examines-spyware-investment-amid-pegasus-controversy/>

¹¹ See, e.g., Access Now *et al.*, *Letter to Brian Fletcher, Acting Solicitor General Re: The United States Supreme Court’s Request For Solicitor General’s Views in NSO Group Tech. Ltd., et al. v. WhatsApp. Inc., et al.*, 21-1338, 3 August 2022,

https://www.accessnow.org/cms/assets/uploads/2022/08/Solicitor_General_NSO_Group.pdf, outlining various human rights abuses NSO has been implicated in.

¹² See also, United States Department of State, *U.S. Department of State Guidance on Implementing the “UN Guiding Principles” for Transactions Linked to Foreign Government End-Users for Products or Services with Surveillance Capabilities*, 20 September 2020,

<https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/due-diligence-guidance/>.

As an organization, Access Now carries over a decade of experience in working with investors to advance rights-respecting policies and practices in the telecom and technology sectors, having also contributed to the U.S. National Action Plan on Responsible Business Conduct.¹³ In that capacity, we remain available for providing additional support and information to the Oregon legislature and the Council on implementing the human rights analyses where required.

For more information, please contact Access Now's Senior Campaigner, Michael De Dora, at michael.dedora@accessnow.org.

¹³ United States Department of State, *National Action Plan on Responsible Business Conduct*, 22 June 2021, <https://www.state.gov/responsible-business-conduct-national-action-plan/>.