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February 11, 2026

VIA E-MAIL (BOR.YANG@OREGONLEGISLATURE.GOV)

Bor Yang
Legislative Equity Officer
Public Service Building, First Floor
255 Capitol Street NE
Salem, Oregon 97301

Re: Senator Christopher Gorsek — Investigative Report

Dear Ms. Yang:

Thank you for providing Senator Christopher Gorsek with a copy of the final Confidential Investigation Report (the “Report”) prepared by Cristela Delgado-Daniel at Miller Nash LLP. You indicate that Senator Gorsek may submit a written challenge to the final report. After a careful review, we provide these brief comments:

First, Senator Gorsek appreciates that Ms. Delgado-Daniel concluded that his actions on June 20, 2025, did not constitute discrimination under Rule 27 and, further, that she found his explanation “to be believable.” The Report therefore forecloses any conclusion that Senator Gorsek’s conduct was motivated by gender or any other protected characteristic.

Second, Senator Gorsek respectfully challenges the conclusion that his conduct violated the Legislative Assembly’s Respectful Workplace Policy (the “Policy”). Rather than repeat arguments already presented, Senator Gorsek incorporates by reference his January 21, 2026 letter to Ms. Delgado-Daniel, which sets forth in detail why the Policy should not be applied to legislative debate and why, as applied here, such a finding is inconsistent with the Policy’s text, structure, and constitutional limitations. (See enclosed.)

The conduct at issue was passionate legislative debate over a significant bill. Senator Gorsek did not intend any disrespect toward Representative Boshart Davis; rather, he responded to partisan objections while defending the integrity of legislation that he spent considerable time championing. His conduct was not discriminatory, not harassing, and not the type of workplace behavior addressed by § 4(d)’s examples. Applying the Policy to moments such as this risks undermining the very nature of legislative deliberation.

Buchalter

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Please let us know if additional information would be helpful.

Sincerely,
BUCHALTER LLP

David J. Elkanich
David J. Elkanich

DJE:sr
Enclosure

January 21, 2026

VIA E-MAIL (CRISTELA.DELGADODANIEL@MILLERNASH.COM)

Ms. Cristela Delgado-Daniel
Investigator
Miller Nash LLP
1140 SW Washington St., Suite 700
Portland, OR 97205

Re: Senator Christopher Gorsek
Confidential Conduct Complaint: Draft Confidential Investigation Report

Dear Ms. Delgado-Daniel:

As you know, I represent Senator Christopher Gorsek concerning the Legislative Equity Office Conduct Complaint filed by Representative Shelly Boshart Davis. This letter provides Senator Gorsek's response to the Draft Confidential Investigation Report (the "Draft Report") pursuant to Rule 27(14)(f)(D). Senator Gorsek appreciates the opportunity to comment on your Draft Report.

I. Introduction

At the outset, we acknowledge and appreciate two central findings:

1. The investigation found no evidence that Senator Gorsek engaged in discrimination, including on the basis of gender or any other protected class.
2. The Draft Report found Senator Gorsek credible, describing his explanations as "believable."

These findings strongly support that no violation of Rule 27 occurred, and they align with the reality that Senator Gorsek never intended to harass, demean, or discriminate against Representative Boshart Davis or anyone else.

We respectfully disagree, however, with the Draft Report's conclusion that Senator Gorsek violated the Legislative Assembly's Respectful Workplace Policy (the "Policy"). Both the factual

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record and significant constitutional and structural considerations demonstrate that the Policy cannot and should not be applied to legislators for protected speech in a public legislative hearing.

II. Response to Finding of Violation of Respectful Workplace Policy

The Draft Report concludes that Senator Gorsek violated the Policy because “whether he intended them or not,” his actions were disrespectful and unwelcome and “they had the effect of causing [Representative Boshart Davis] to feel embarrassed and intimidated.” Senator Gorsek respectfully disagrees that his conduct violated the Policy. The interaction at issue occurred during a contentious legislative debate on a complex bill after months of work. He did not insult Representative Boshart Davis, demean her intelligence, or make any statement directed at her protected characteristics.¹

First, the Policy itself confirms that it targets *workplace* conduct, not legislative debate. The Policy defines “inappropriate workplace behavior” broadly, but its operative examples in §4(d) show that it is aimed at interpersonal workplace conduct, not statements made during public legislative proceedings. The examples include:

- Shout at someone in a staff meeting and demean their intelligence in front of others;
- Start or perpetuate rumors that you know to be false or harmful;
- Purposefully impede or prevent someone’s ability to do their job;
- Share information known about someone with the intent to embarrass, humiliate, or demean;
- Threaten someone with physical harm;
- Text, direct message or otherwise use technology to communicate insults or demeaning language to a colleague, co-worker or lobbyist;
- Post on a social media site insulting or derogatory language about someone who is subject to the protections of this policy.

(See Policy §4(d)(A)-(G).)

Each of these examples reflects private, workplace-context interactions, not public debate among legislators. Indeed, the only example that involves raised voices is explicitly limited to a *staff* meeting, which underscores the framers’ understanding that legislative debate is categorically different. If the Policy were intended to treat vigorous legislative disagreement, including firm, emphatic, or raised voice exchanges, as prohibited conduct, §4(d) would have said so, but it does not. As a result, the Policy should not apply here as a matter of law.

¹ Please see our prior December 22, 2025 letter for a full discussion of the interaction between Senator Gorsek and Representative Boshart Davis.

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Second, legislative debate is inherently robust, sometimes heated, and incompatible with the Policy’s framework. Legislative hearings, floor sessions, and committee debates often involve interruptions, strong disagreements, firm or impassioned statements, the use of strong or heated language, rebuttals to perceived mischaracterizations, and members speaking with emotion about high-stakes issues.

Doing so, however, is not misconduct—nor should it be. Even if arguments may be difficult to hear, or even hurt a legislator’s feelings, this is the legislative process functioning as designed. Applying a workplace-conduct policy to regulate the tone of substantive debate would fundamentally alter the Legislature’s ability to debate contentious matters. Here, the exchange was squarely within the realm of political disagreement:

- Senator Gorsek’s statements were directed at the characterization of the bill, not at Representative Boshart Davis personally;
- He did not comment on her intelligence, abilities, or any protected characteristic;
- He did not demean, threaten, or insult her;
- The Draft Report finds no discriminatory motive, no gender-based animus, and no harassment under Rule 27.

Thus, even if the exchange was tense, it fits within the kind of disagreement that naturally arises in legislative settings, and which is well outside the Policy’s examples of prohibited conduct.

Third, the Draft Report’s own findings do not support a Policy violation. The Draft Report finds that Senator Gorsek interrupted twice and raised his voice during the second interruption; and, further, that he did not act because Representative Boshart Davis was a woman, that his explanation was credible, and that his comments were focused on defending the integrity of the legislative work rather than at her personally.

The only basis for the Policy violation appears to be that Representative Boshart Davis felt “embarrassed” and “intimidated.” But feelings alone cannot be enough to transform political disagreement into a Policy violation, particularly where the conduct was not personal, the conduct did not target a protected class, did not prevent the Representative from performing her duties (or finishing her statement), and occurred in the heat of a contentious debate moments before a vote. Members must be able to express their political views, even forcefully, without fear that a colleague’s reaction to the substance or tone of debate will later be deemed a workplace violation. Indeed, the fact that charged political debates can lead to strong emotions is precisely why

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legislative bodies must preserve space for robust, even uncomfortable, exchanges on matters of public policy.²

We urge you to agree that subjective feelings of embarrassment during debate are not enough to trigger the Policy. Indeed, if that were so, nearly any contentious legislative exchange could be actionable, which would be an unjust result and inconsistent with the Legislature's needs.

Fourth, if the Policy is applied to regulate tone, interruptions, or disagreements during debate, doing so would have significant consequences for the Legislature. Among other things, legislators will inevitably self-censor if they believe a colleague could later allege a Policy violation based on subjective feelings; ordinary legislative disagreement could become a potential HR violation; and minority and dissenting voices may be chilled if forceful response are deemed "intimidating."

Although Senator Gorsek has recognized that, in hindsight, he should not have interrupted, this case illustrates the danger of applying the Policy too broadly. He interrupted briefly at the end of a long hearing in response to what he believed were mischaracterizations of the Committee's hard work; such interruptions, especially when they are not personal and not directed toward a protected class, are not reasonably understood as the kind of personal or targeted conduct §4(d) was designed to address.

Finally, and independently, applying the Policy to Senator Gorsek's legislative statements would violate Article I, section 8 of the Oregon Constitution. Oregon's free-speech clause provides broader protection than the First Amendment, and the Oregon Supreme Court has emphasized that the state may not, through statute or policy, restrict expression based on its content or restrict speech merely because it is uncomfortable, annoying, or emotionally charged. In *State v. Robertson*, 293 Or. 402 (1982), the Oregon Supreme Court established the controlling framework: A law that focuses on the content of speech (such as an opinion or the subject of the communication) is unconstitutionally overbroad unless it falls within a well-established historical

² Other legal principles reinforce this point. For example, broad protection has been afforded to political speech by elected officials. *See, e.g., Boquist v. Courtney*, 32 F.4th 764, 781 (9th Cir. 2022) (noting "the wide latitude given to elected officials 'to express their views,'...even when such political expressions are 'vituperative, abusive, and inexact'") (internal citations omitted). In *Boquist v. Courtney*, the Ninth Circuit Court of Appeals found an Oregon State Senator, Brian Boquist, had a plausible claim for impermissible retaliation against his protected First Amendment speech when the Legislative Assembly attempted to sanction him for charged statements that were taken as potentially violent. *Id.* This case demonstrates the limited ability for a state senator's oral remarks in a legislative session or hearing to be lawfully sanctioned, even when others claimed the speech to be violent. Senator Gorsek's brief, mild, responsive comments in a debate over a highly contested piece of legislation fall comfortably within the realm of protected political expression.

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exception (such as perjury, solicitation, or threats). It also forbids applying a facially neutral rule in a way that restrains protected expression because others find it offensive or feel harmed by it.

As applied here, the Policy is being used *because of the content and effect* of Senator Gorsek's speech during a legislative debate. The Draft Report finds no threats, no discriminatory content, no personal insults, and no harassment based on a protected class. The "harm" identified is that Representative Boshart Davis felt "embarrassed" and "intimidated" by the tone and content of Senator Gorsek's disagreement. Using the Policy to sanction speech on that basis amounts to restraining protected expression because another legislator found the debate upsetting. That is precisely the kind of "annoyance-based" or "discomfort-based" restriction that Article I, section 8 forbids.

For these reasons, even if the Policy could theoretically apply to some forms of legislative conduct, it cannot constitutionally be applied to the protected political expression at issue here. The Draft Report's recommended finding therefore raises significant Article I, section 8 concerns and should not be adopted.

III. Conclusion

Senator Gorsek appreciates the work that went into the Draft Report and the opportunity to respond. Based on the findings and the proper scope of the Policy, as discussed above, we respectfully request that you reconsider the conclusion of a Policy violation.

The conduct at issue was passionate legislative debate over a significant bill. Senator Gorsek did not intend any disrespect toward Representative Boshart Davis; rather he felt the need to respond to partisan objections while defending the integrity of a bill he spent a long time championing. His conduct was not discriminatory, not harassing, and not prohibited under §4(d)'s workplace-behavior examples. Applying the Policy to moments such as this risks undermining the very nature of legislative deliberation. Please let us know if additional information would be helpful.

Sincerely,
BUCHALTER LLP


David J. Elkanich

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