

**Testimony before Joint Committee on Ways and  
Means Subcommittee on Public Safety  
In support of House Bill 5012**

February 27, 2025

Co-Chairs Broadman and Evans, and members of the committee,

My name is Robert Koch. I am the Chair of the Oregon State Bar's Appellate Practice Section. The Oregon State Bar's Appellate Practice Section wishes to express our support for appellate-related funding in the POP 107 and POP 116 budget requests by the Oregon Judicial Department (OJD) for the upcoming 2025–2027 biennium. POP 107 adds an appellate court manager for the Oregon Court of Appeals; POP 116 adds three paralegals for the Appellate Court Services Division and six limited-duration law clerks for the Court of Appeals. As discussed below, the identified requests by OJD would greatly assist the Court of Appeals in enhancing the speed and quality of its decision-making. The court's ability to do so would pay immediate dividends to OSB appellate practitioners, while enhancing access to justice and procedural fairness for all Oregonians; at the same time, the pertinent funding requests are remarkably modest.

As background, the Court of Appeals is one of the busiest intermediate appellate courts in the country in terms of the number of cases handled and opinions issued per judge per year. Given its substantial docket and limited resources, the court traditionally operated on a triage-type system, where the large bulk of judicial work occurred after oral argument in an appeal. That is, parties would brief an appeal; the court would hold oral argument; and the judges then would undertake the legal research and writing required for appellate decision-making.

As part of that process, many (if not most) appeals would be affirmed without an opinion (an AWOP), giving the parties the benefit of a quick resolution, but at the cost of any written explanation or evidence how the court had considered the parties' arguments. The other appeals slated for a written opinion joined a queue with a significant backlog, resulting in parties waiting months if not years for a resolution.

That process sought to make best use of the court's limited resources but had several drawbacks. A lawsuit (and its concomitant appeal) is often the most important thing in any person's life. Those who received an AWOP might wonder whether and to what extent the court grappled with the issues in their case. Those stuck in the backlog were left in limbo wondering when the court might issue a decision in

their case. Practitioners had to advise their clients amidst that uncertainty. And because the bulk of the court's research would happen later in the process, oral argument often focused more on identifying the pertinent legal issues in an appeal, rather than on debating those issues in depth.

To address those difficulties, the Court of Appeals is in the process of undertaking extraordinary, transformational change through the collective efforts of its judges, legal staff, and administrative staff. First, the court procured a grant from the National Center for State Courts to analyze how to increase the efficiency of its docket management and decision-making. Then, the court began issuing non-precedential memorandum dispositions, which give the parties the reasoning and result in an appeal without creating written law to bind future cases. This allows the court to resolve cases more quickly while still providing transparency on the court's decision-making.

Now, the court is working to "front load" their efforts in cases, conducting the initial legal research and writing on an appeal before oral argument, thereby optimizing the parties' and court's time at argument, and allowing for better and quicker decision-making after argument. The above efforts enhance access to justice and procedural fairness for all Oregonians, appellate practitioners included. Indeed, as appellate practitioners, we have seen and experienced the dramatic benefits that front-loading the work on appeals can bring to the tenor and quality of oral arguments, and to the speed and efficiency of decision-making. We therefore applaud—and seek to support—the substantial efforts by the Court of Appeals.

To fully transform into a front-loading court, additional resources are required. Indeed, the U.S. Court of Appeals for the Ninth Circuit, the federal intermediate appellate court for Oregon, already operates on a front-loading approach, as that court receives substantially more resources. As just one example, each Ninth Circuit judge typically receives funding for four law clerks each year, whereas Oregon's appellate judges typically receive funding for one.

Finally, the appellate-related funding requests by OJD in POP 107 and POP 116 for the 2025–2027 biennium further the above at a remarkably modest cost, making the funding requests a productive, efficient, and responsible stewardship of public dollars. The Appellate Practice Section wants to highlight three. First, the court seeks six temporary law clerk positions to help process the existing backlog of old appeals so that all four departments of the court can front-load new appeals. Second, the court seeks to make permanent an office manager position to help process all court filings, among other things. And third, the court seeks three paralegal positions to help process appeals, including those involving self-represented litigants. For the above reasons, funding those modest requests would improve the speed, efficiency, and quality of appellate decision-making and, in turn, enhance access to justice and procedural fairness for all Oregonians.