March 12, 2025

Position on Bills at 2025 Session of Oregon Legislature:

SB 555: Oppose

CONSOLIDATED OREGON INDIVISIBLE NETWORK

The Consolidated Oregon Indivisible Network (COIN) is a coalition of over 50 local Indivisible groups throughout Oregon that cooperate and amplify their joint efforts to advance important federal and state legislation and engage with elected officials to promote causes for the benefit of all Oregonians.

COIN opposes SB 555, which would make research requested, collected, maintained or utilized by the Legislative Policy and Research Office (LPRO) confidential unless it is specifically authorized to be released by the legislator who requested it.

We see no warranted reason to keep this information from the press or public. LPRO staff are government employees. The products of those who are not lawyers or medical doctors would not be authentically privileged from disclosure.

The written testimony of William Clark cites Bogan v. Scott-Harris, 523 U.S. 44 (1998). That case was about legislative immunity, not legislative privilege. He cites LA Union Del Pueblo Entero v. Abbott, 93 F. 4th 310 (2024). That case involved a plaintiff seeking to obtain documents from the Harris County Republican Party, not from any entity of government.

So, first, if indeed there exists a judicially-recognized legislative privilege to keep documents secret, then SB 555 is not necessary.

Second, however, those cases were about immunity of legislators from prosecution, not keeping information cloaked from the public. When legislators are not subject to liability, the analysis is different.

> The purpose of the attorney-client privilege is to prevent the disclosure of information that would tend to inhibit a socially desirable confidential relationship. Put another way, the attorney-client privilege aims to keep information confidential in an effort to foster and preserve the attorney-client relationship. **The legislative privilege differs in that it is not meant to promote confidentiality or secrecy, but rather to protect legislators from potential challenges or pressures from other branches of government in response to their legislative actions.** This is exemplary of the legislative privilege's character as a use privilege and the fact that its animating concern is prohibiting the evidentiary use, not the disclosure, of information.

Z.A. Kervin, *The Legislative Privilege*, 85 Ala. Law. 330, 335.

> In particular, new issues of state legislative privilege are likely to arise as a result of the trend towards open government. All states now have some form of freedom of information statute analogous to the federal Freedom of Information Act (FOIA), as well as a variety of

> open meeting and other "sunshine" laws. Behind this trend is the powerful idea that in a democracy, good government requires transparency and greater access for citizens to the workings of their government. In this context, the Speech or Debate provisions may seem like anomalous safeguards of secrecy, rather than fundamental constitutional protections, especially to the extent that these provisions are construed not only to protect legislators against liability but also to prohibit judicial inquiries concerning non-public aspects of the deliberative process. **Indeed, interpreting the legislative privilege broadly to prohibit compelled questioning of, or document production from, legislators about their work appears to stand in direct opposition to the ideal of open government.**

Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 Wm. & Mary L. Rev. 221, 227 (2003). Professor Huefner points out that the highest courts of Maryland and Wisconsin have refused to recognize legislative privilege, "if legislators are not facing personal legal liability." Id. at 261.

> As to the public good, so long as there is no threat of prosecution, legislators must come forward when summoned and give an accounting when asked.

Abrams v. Richmond County S.P.C.C., 479 N.Y.S.2d 624, 628 (Sup. Ct. 1984).

> In Ohio, courts have twice refused to protect legislative staff from compelled questioning about the state legislature's revisions to a statutory public school funding formula. Other state courts similarly have construed their legislative privilege to be inapplicable for broad categories of cases, such as for committee files and records, or for actions seeking only declaratory relief.

Steven F. Huefner, *supra*, 45 Wm. & Mary L. Rev. 221, 225–26 (2003).

The Oregon Supreme Court in 2014 reversed a trial court's granting of a motion to quash subpoenas to legislators regarding enforcement of limits on public protest on Capitol grounds.

> Here, the trial court granted the state's motion to quash the subpoenas of the LAC co-chairs and the court assumed that the legislators would assert the legislative privilege in response to defendants' questions. The trial court erred in its determination because the legislators could not have asserted the privilege in response to questions about their direct involvement, if any, in enforcing the guideline.

State v. Babson, 355 Or 383, 427, 326 P3d 559, 585 (2014).

We agree with the observation by Professor Huefner that "interpreting the legislative privilege broadly to prohibit compelled questioning of, or document production from, legislators about their work appears to stand in direct opposition to the ideal of open government."

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