IN THE SUPREME COURT OF THE STATE OF OREGON

MARQUIS COUEY, an individual,
Plaintiff-Appellant,
Petitioner on Review,

v.

KATE BROWN, in her official capacity as Secretary of State of Oregon,
Defendant-Respondent,
Respondent on Review.

Circuit Court for Marion County 10C14484
Judge Claudia Burton

Court of Appeals
A148473

S061650

REPLY BRIEF ON MERITS BY PLAINTIFF-APPELLANT, PETITIONER ON REVIEW MARQUIS COUEY

Includes Challenge to Constitutionality of *former* ORS 250.048(9)

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I. INTRODUCTION.

This case presents a question of first impression: What can "moot" a properly brought overbreadth challenge under Oregon Constitutional jurisprudence? Petitioner and amicus ACLU argue that, because of the special nature of overbreadth challenges, only the effective repeal (without adverse consequences to anyone's expressive rights) of the unconstitutional legislation violating expressive rights can moot the controversy and render the challenge nonjusticiable.

Defendant disagrees but offers no rationale other than arguing cases of mootness drawn from "as-applied" challenges.

Oregon overbreadth challenges cannot be mooted by incidental facts about the plaintiff [***State v. Spencer***, 289 Or 225, 228 (1980); ***State v. Hirsch***, 338 Or 622, 628-629 (2005)], because the actual and existing controversy about *former* ORS 250.048(9)'s overbreadth is that the Oregon Constitution "forbade its very enactment as drafted." ***State v. Robertson***, 293 Or 402, 412 (1982) ("***Robertson***"). The actual controversy is the chill imposed by an unconstitutional law. An overbreadth challenge is mooted only when the Legislature cures the statute through amendment or repeal before it has adverse consequences. ***Bigelow v. Virginia***, 421 US 809, 817-88, 95 SCt 2222 (1975); ***Massachusetts v. Oakes***, 491 US 576, 582, 491 US 576, 582 (1989). See pages 10-12, *post*.

II. FACTS.

There are no disputes on relevant procedural or evidentiary facts. Defendant's argument rests entirely on the proposition that Plaintiff's suit became "moot" in July 2010, when his then-current circulator registration for the 2010 election cycle expired. Defendant seems to suggest in her Brief on the Merits of Respondent on Review Kate Brown [hereinafter "Defendant" followed by a page number], p. 15 n7, that Plaintiff lacked standing to file his First Amended Complaint ("FAC") [ER 1-11] in September 2010 to add his challenge the rule proposed by Defendant[1] to implement *former* ORS 250.048(9).[2] The Circuit Court accepted the FAC. OJIN #28. Plaintiff referred to the FAC in appellate briefing, because it summarized more completely the facts accumulated through discovery. But the FAC only supplemented the overbreadth challenge to the statute filed in April 2010 and pending at the time of the alleged "mootness" in July 2010. That Complaint (OJIN #1) raised Plaintiff's overbreadth challenges, alleging *former* 250.048(9) was facially unconstitutional because:

> (1) It cast a chill upon Plaintiff's political activities on behalf of Chief Petitioners and ballot measure campaigns for which Plaintiff sought signatures, because they might too might suffer penalties and loss of valid signatures should he unknowingly violate the statute;

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1. OAR 165-014-0285, adopted November 5, 2010.

2. The trial court found Plaintiff had standing under ORS 28.020 and ORS 246.910 (ER-40). Defendant filed no cross-appeal. At the Court of Appeals, Defendant's Answering Brief (p. 3) disavowed any argument regarding standing.

(2) It chilled his own rights to engage in political speech he otherwise would have expressed at social events and other times (¶ 19); and

(3) Upon expiration of the then-current 2-year signature gathering cycle in July 2010, he would seek paid circulator employment in future cycles, and the statue would continue to chill his future employment and expressive rights, as well presently and prospectively chill the rights of other paid circulators and campaigns in subsequent election cycles (¶¶ 23, 24).

Plaintiff sought declarations that the statute and any implementation violated the Oregon Constitution and the First Amendment.

III. SUMMARY OF RESPONSE.

Defendant's arguments hinge on "mootness." ***Yancy v. Shatzer***, 337 Or 345, 346, 97 P3d 1161 (2004), reexamined Oregon Constitution, Article VII (and amended Article VII):

> Oregon courts [do not] have the power to consider disputes that * * * are capable of repetition and yet evade review because they became moot at some point in the proceedings. [W] conclude that our judicial power does not include the authority to adjudicate cases in which there is no existing controversy.

The facts of ***Yancy*** are well known and discussed in Opening Brief on Merits by Plaintiff-Appellant, Petitioner on Review Marquis Couey [hereinafter "PR-OBM"], pp. 15-16, 54; Brief Amicus Curiae of ACLU of Oregon [hereinafter "ACLU"], pp. 1, 3, 26, 29, 37, 41-42, 54. ***Yancy*** held that, <u>if</u> a case is moot, it cannot be adjudicated by the courts even if the aggrieving events are capable of repetition yet evade review. Plaintiff argues:

(1) ***Yancy*** did not reach any question regarding Oregon constitutional overbreadth jurisprudence;

(2) ***Yancy*** does not hold that overbreadth challenges are mooted by the technical operation of an elections calendar; and

(3) ***Yancy*** does not hold that the harms to others which are part of a facial overbreadth challenge are not "actual" or capable of remedy with practical effects on them and the state actor.

The question presented by Plaintiff's overbreadth claim is whether this case is moot at all. If not, then ***Yancy*** is irrelevant.

Defendant (p. 10) seems to settle on "mootness" as a question of whether "plaintiff's claims involved an 'actual' controversy involving 'present facts,' such that a decision on the merits would have a practical effect on his rights." Defendant argues that the instant case became "moot" by the operation of the elections calendar, which caused Plaintiff's paid circulator registration to expire in July 2010. Defendant presumes that the temporary interruption in Plaintiff's petitioning activities on particular measures caused by the expiration of that election cycle *pendent lite* completely mooted his standing to complain of future and continuing overbreadth, narrowing the "actual" controversy to an as-applied dispute over only the chill upon Plaintiff's ability to circulate Petitions #28 and #70 (2010) as a paid petitioner and to circulate Petition #42 (2010) as a volunteer.

The "personal stake" or "practical effects" elements of justiciability upon which Defendant relies to argue "mootness" under the Oregon judicial powers amendments have expressly been held to <u>not</u> be inherent Oregon constitutional limitations on justiciability. ***Kellas v. Department of Corrections***, 341 Or 471, 480 (2006) ("***Kellas***"). ***Kellas*** holds that the Legislature may "empower any citizen to act as a private attorney general to enforce public rights." *Id.* "[A]ny

permissible legislative interest * * * is sufficient to meet any constitutional requirement that might exist." 341 Or at 483. Thus, depending on the injury or interest the Legislature identifies to confer or maintain standing, the "practical effects" of a court's decision may be broader than the immediate impact of a decision on a particular litigant and may include vindication of public rights.

Plaintiff urges that:

(1) He has shown sufficient likelihood of threat his expressive rights and important public rights, which can be remedied by a ruling of the court impacting the conduct of the state actor, so as to maintain a justiciable challenge under the ORS 28.020, *et seq.*, ("DJA") and ORS 246.910;

(2) Vindication of "public rights" by his continued overbreadth standing is especially relevant when that "public right" is core political speech protected by the First Amendment and Oregon Constitution, Article I, §§ 8, 26, subject to analysis under ***Robertson***, *supra*, 293 Or at 413-14; and

(3) ORS 14.175 is itself a constitutional expression of legislative policy and should have been applied, if necessary, by the courts to engage in the ***Robertson*** analysis of the text of the challenged statute, before deciding whether an as-applied challenge remained or had become moot.

IV. THE CASE WAS NOT MOOT UNDER THE OREGON DECLARATORY JUDGMENTS ACT, DOCTRINE OF OVERBREADTH, AND ORS 246.910.

A. DECLARATORY JUDGMENTS ACT.

Plaintiff sets out (PR-OBM, pp. 9-10, 31-37) why he meets traditional concepts of a "present" or threatened controversy within the meaning of the Declaratory Judgments Act (DJA). He cites record facts showing practical effects upon his actual and potential employment (PR-OBM, pp. 32-39), relying,

inter alia, on ***Pendleton School Dist. 16R v. State***, 345 Or 596, 606 (2009) ("***Pendleton***").

Defendant (pp. 21-22) argues that the present facts differ from ***Pendleton***, because there the defendant Legislature was required to fund schools each biennium. But that is precisely why Plaintiff cites ***Pendleton***, where the challenge was to the allegedly unconstitutional conduct of the state actor which, if unchecked by the judiciary, would inevitably continue. Plaintiff's similar point is that the unconstitutional conduct of Defendant (implementing an unconstitutional law) does and will persist in each election cycle. Thus, the challenge here, as in ***Pendleton***, is to the constitutionality of that state conduct, regardless of any artifact of timing that the state action commences anew in predicable cycles of relatively short duration.

Here, Defendant is required to apply the current version of *former* ORS 250.048(9) and has unequivocally announced her intention to do so. Defendant's Reply on Summary Judgment, pp. 19-20 (OJIN #47). So the current and future conduct of the state actor Defendant has as great a "present" and continuous impact on Plaintiff, circulators, Chief Petitioners, and campaigns as does the conduct of the Legislature have on the school districts it funds each cycle.

Similarly, the continued "existence" of the ***Pendleton*** School District plaintiff is likely but not absolutely guaranteed, since local governments can dissolve or merge. But the existence of some school district needing "adequate" funding from the state actor is neither "abstract" or merely "hypothetical," so a

challenge did not become "moot" for lack of an "actual" controversy merely by operation of the Legislature's calendar. Continuing controversy is virtually certain and can be remedied by Court action having "practical effects" on the litigants and the public interest.

The same reasoning applies to Plaintiff. The record facts show his intent to remain politically active, both as a Paid Circulator and as a concerned citizen offering initiative petitions as a volunteer. Merely because Plaintiff cannot state with certainty his future employers (or which future ballot measures he intends to circulate for pay or as a volunteer) does not make the need for a declaration of his rights "abstract." The issue is not that Plaintiff is prevented from discussing the specific 2010 initiatives but that he has demonstrated the likelihood that he will again be in the position that the state actor can chill him and others from discussing <u>any and all</u> measures during any election cycle by threat of sanctions upon him and others who wish to spread political messages by obtaining signatures on petitions.

B. OVERBREADTH.

1. PLAINTIFF'S OVERBREADTH ARGUMENT IS BASED ON *ROBERTSON*.

Defendant (p. 23) is correct: Plaintiff contends that Oregon constitutional overbreadth jurisprudence expands the scope of what are referred to as "practical effects" to include the practical effects of relieving unconstitutional infringements upon expressive rights of others, thereby maintaining a actual

controversy in this case. See also ACLU, pp. 36-52, which Plaintiff incorporates as an alternative theory.

Defendant (p. 23) repeats the formulaic that a case must involve "present facts" and a remedy which has an effect on Plaintiff "personally." Defendant does not offer citations to support her assertion that in overbreadth cases the remedy must be "personal" or specific to the particular 2010 initiatives Plaintiff wanted to support (an as-applied challenge). Defendant simply omits the ***Robertson*** framework, which established Oregon constitutional jurisprudence on overbreadth and recognized that the power of the Court to declare "public rights" arises from the original Oregon Constitution. ***Robertson,*** 293 Or at 412. That original Constitution includes both Article I, §§ 8 and 26, and the judicial powers sections.

Plaintiff sets out why *former* ORS 250.048(9) is a ***Robertson*** "Category I" law. It targets speech. PR-OBM, pp. 22-30. Defendant does not respond. That framework remains the law, as noted in ***Vannatta v. Oregon Government Ethics Com'n***, 347 Or 449, 222 P3d 1077 (2009); ***State v. Moyer***, 348 Or 220, 230 P3d 7 (2010), and ***State v. Babson***, 355 Or 383, 394-5 (2014):

> Analysis under the first category of ***Robertson*** is focused on the text of the law. The court in ***Robertson*** framed the inquiry as whether the statute was "written in terms" directed at speech. 293 Or at 412, 649 P2d 569. In subsequent cases, this court continued to emphasize the text of statutes when analyzing them under the first category. In ***City of Portland v. Tidyman***, 306 Or 174, 184, 759 P2d 242 (1988), for example, this court rejected the city's argument that an ordinance restricting the location of adult businesses was focused only on the effects of speech. * * *. " [I]t is the operative text of the legislation * * * that people must obey and that administrators and judges enforce. *Id*. at 184-85, 759 P2d 242.

Plaintiff argues that "Category I" overbreadth expands the scope the of "practical effects" aspects of justiciability to include the practical effects of relieving unconstitutional infringements upon expressive rights of anyone, thereby maintaining a live controversy. PR-OBM, pp. 14-23. Plaintiff adopts the discussion of ACLU, pp. 39-44, on this point.

Defendant (pp. 23-24) misstates ***State v. Rangel***, 328 Or 294, 307 n8, 977 P2d 379 (1999), asserting that "this court has noted that the function of overbreadth claims is ‘a limited one at the outset,’" citing a footnote from ***Rangel*** that is simply a quote from ***Broadrick v. Oklahoma***, 413 US 601 (1973), as if that reference addressed overbreadth claims under the Oregon Constitution. In fact, the footnote in ***Rangel*** appears only in reference to the First Amendment--distinct from and after this Court’s separate and lengthy discussion of Article I, § 8, of the Oregon Constitution. ***Rangel***’s reference to any overbreadth limits under First Amendment jurisprudence does not control Oregon Constitutional overbreadth.

Former ORS 250.048(9) targets the political speech of paid circulators without any reference to any harm caused by offering to a voter a volunteer petition (which is itself authorized for circulation) "at the same time" as any other political activity. The statute is violated by the very exercise of protected political speech, not when (if ever) someone else causes some sort of harm. PR-OBM, p. 30.

This prohibition on speaking about, displaying, or presenting volunteer petitions clearly targets expression without identifying any conceivable "harm"

from such citizen involvement. There is no logical nexus to any "harm" caused by the same individual obtaining a signature on a volunteer petition compared to obtaining a signature on a Paid Petition, nor any identified harm "caused" by proffering both or either. PR-OBM, pp. 17-29.

Given the expanded nature of the "practical effects" of a court's ruling to include the practical effect of checking legislative overreach in an overbreadth challenge, such challenge is not mooted by some technical or temporary disability of a particular plaintiff,[3] because the chill upon others (demonstrated by evidence in the record), remains. Contrary to Defendant's (p. 23) emphasis on the named plaintiff in as-applied challenges, overbreadth challenges are mooted only when the state actor's conduct irreversibly changes to eliminate the unconstitutional overbreadth on anyone. For example, an overbreadth challenge becomes moot only if the challenged statute or ordinance is repealed. ***Bigelow v. Virginia***, *supra*, 421 US at 817-88; ***Massachusetts v. Oakes***, *supra*, 491 US at 582, discussed immediately below.

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3. [Oregon Constitution, Article I, § 8] is a prohibition on the legislative branch. * * * If a law concerning free speech on its face violates this prohibition, it is unconstitutional; *it is not necessary to consider what the conduct is in the individual case*.

State v. Spencer, 289 Or 225, 228 (1980) (emphasis supplied). ***State v. Hirsch***, 338 Or 622, 628-629 (2005), summarized the many cases following this rule and repeated:

> [C]onsistently with the nature of overbreadth challenges, the court did not examine the particular facts of the cases before it. Rather, the court concluded in each case that the fact that the statute at issue, on its face, impinged on constitutionally protected conduct in certain circumstances compelled invalidation of the statute.

2. FEDERAL REASONING IS PERSUASIVE.

Distinct from this Court's ***Robertson*** analysis, ***Bigelow v. Virginia***, *supra*, offers a compelling rationale for applying a different rule of mootness to overbreadth claims than is applied to other claims. In ***Bigelow*** a doctor brought federal overbreadth and as-applied challenges against a statute (enforced against him) restricting advertisement of abortion services. ***Bigelow*** employed a separate and different mootness analysis for (1) the overbreadth challenge, distinct from its analysis of (2) the as-applied challenge, in which the doctor asserted only his own rights. For overbreadth, the Court considered whether the law had been effectively repealed; where it had been (and would not affect any other litigants), the overbreadth challenge was mooted. For the as-applied challenge, the Court did not dismiss it as moot but reached the merits and ruled in the doctor's favor. Therefore, ***Bigelow*** stands for the proposition that the test for whether an overbreadth challenge is moot is different than the test for whether an as-applied constitutional challenge is moot.

Surprisingly, Defendant does not address ***Bigelow***'s reasoning on the limited circumstances which can moot an overbreadth challenge but instead (p. 26) cites language concerning whether the doctor had the type of injury required for Article III standing (to "have standing,there must be a 'claim of specific present objective harm or a threat of present objective harm.'") While standing and mootness are related in federal as-applied claims, ***Bigelow***'s discussion of the doctor's standing is not relevant here, as no as-applied challenge is at issue in this Petition. Defendant (p. 14) agrees Plaintiff had standing to file his

challenge to the statute: "Here, when plaintiff filed his initial complaint, he had standing to seek a declaration that *former* ORS 250.048(9) was unconstitutional." Moreover, the issue here is not about standing abstractly; it is whether an overbreadth challenge brought by a person with standing must be dismissed as moot, regardless of harm to the expressive rights of others caused by the challenged statute. Defendant clouds that issue, warning against an "unlimited right of action," as if following overbreadth doctrine consistently would change "mootness" or negate standing requirements.

Because mootness, not standing, is the issue here, the instructive portion of ***Bigelow*** is the holding on the limited circumstances when an overbreadth challenge becomes moot by repeal of the offending enactment, not the discussion of standing (and, particularly, not the requirements of Article III). Yet, Defendant is silent on the relevant issue, failing to offer any reason why the ***Bigelow*** rule as to mootness should not be adopted by this Court, if it were not already implicit in ***Robertson***.

3. *BRUMNET, BROWN AND BARCIK* DO NOT SUPPORT DEFENDANT.

Because the question of what can render an overbreadth challenge nonjusticiable as "moot" appears to be one of first impression in Oregon, we would expect Defendant to explain the reasoning for the proposed rule of law. But Defendant (pp. 17-18) simply quotes and then repeats (pp. 25, 29) passages from non-overbreadth cases, where litigants asserted their own rights and raised no overbreadth challenges.

It is irrelevant that in non-overbreadth cases this Court holds that "the court's decision in the matter will have some practical effect on the rights of the parties to the controversy" [***Brumnett v. Psychiatric Sec. Rev. Bd***, 315 Or 402, 406 (1993)] or that there is similar *dicta* in ***Brown v. Oregon State Bar***, 293 Or 446, 449, 648 P2d 1289 (1982). Neither defines the scope of practical effects on public rights in overbreadth controversies. ***Brumnett*** and ***Brown*** considered only how mootness occurs in non-overbreadth situations. Reliance on ***Brown*** is further undermined by the fact this Court held the dispute was justiciable because it involved the state actor's "existing statutory duty." *Id.*, at 450. That is the case here. See also ***State v. Snyder***, 337 Or 410, 419, 97 P3d 1181 (2004) (defendant was no longer challenging his conviction, but judicial construction of DUII statutes would have practical effect on "trial courts, the state, and future defendants").

Defendant similarly overreaches in citing ***Barcik v. Kubiaczyk***, 321 Or 174, 188, 895 P2d 765 (1995), for the proposition that "a case is moot if it no longer affects the rights of *the parties* to the action." ***Barcik*** does not involve overbreadth. See ACLU, pp. 25-26. The graduating plaintiff did not argue overbreadth or any related public interest in challenging the sanctions imposed upon him for his speech.[4] The holding that Barcik's claim was mooted by his graduation (he would not benefit personally from prospective relief) is not

4. Undersigned counsel Williams has reviewed the briefs in the case and can confirm Barcik did not claim harms to others; this Court may take judicial notice. OEC 201.

dispositive as to who might have been a *jus tertii* (overbreadth) party in a properly pleaded action for overbreadth and prospective remedy.

Defendant offers no response to Plaintiff's numerous citations that adjudicative facts about a litigant are irrelevant to the Constitutional command to first examine the text of an allegedly overbroad statute.

Defendant (p. 26) misreads ***State v. Christian***, 354 Or 22, 39 (2013) ("***Christian***"), as holding that Oregon overbreadth doctrine "derives" from the federal doctrine. ***Christian*** relies on federal overbreadth decisions to emphasize the primacy of expressive rights and does not alter Oregon's own procedural and substantive overbreadth analysis announced in ***Robertson***. Oregon constitutional jurisprudence requires courts to examine the text of the challenged statute first, not some adjudicative fact about the extent of substantial chill (as does the federal analysis). We incorporate the different approaches to state and federal overbreadth set out in the Petition for Review, pp. 12-13; Opening Brief of Plaintiff-Appellant Marquis Couey (to Court of Appeals) [hereinafter "PAOB-CoA"], pp. 27-38 (similarities and important distinctions).

V. DEFENDANT DOES NOT ADDRESS ARGUMENTS RAISED THAT ORS 246.910 ASSURES AGAINST MOOTNESS.

We rely on PAOB-CoA, pp. 14-20; PR-OBM, pp. 36-40. Defendant does not respond.

VI. APPLICATION OF ORS 14.175 IS AVAILABLE AND WARRANTED.

Contrary to an unsupported assertion by Defendant, ACLU did not suggest to this Court that ORS 14.175 is unconstitutional. ORS 14.175 was enacted with the support of ACLU, after ***Yancy***. No party claims it is unconstitutional. Just as the Legislature can confer standing, it can provide a basis for avoiding mootness by identifying important policies which may be pursued by litigants to accomplish public practical effects.

Defendant argues that the mere potential for expedited review under ORS 246.910(4) "trumps" later-enacted ORS 14.175 providing for continued adjudication of public rights in this case. But there is no impediment to applying ORS 14.175 to the ORS 28.020 claim (for which the Circuit Court found Plaintiff to have standing), and this court should not "add" such disability. ORS 174.010.[5]

Even if the ORS 28.020 claim is disregarded, ORS 246.910(4) and ORS 14.175 can be read harmoniously to give full effect to each in election law challenges. ORS 246.910(5) affords the ORS 246.910 plaintiff <u>every</u> other potential remedy: the "remedy provided in this section is cumulative and does not exclude any other remedy." See, ***State ex rel Sajo v. Paulus***, 297 OR 646,

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5. As noted in PR-OBM, pp. 54-56, federal jurisprudence applies the "capable of repetition, yet avoiding review" doctrine to federal claims, such as Plaintiff's 42 USC § 1983 claim. Neither the Court of Appeals nor Defendant addresses Plaintiff's federal claim, apart from mentioning its existence.

649, 688 P2d 367 (1984). ORS 14.175 was clearly intended to be such an "other remedy." ***Kellas***, *supra*.

ORS 246.910(4) is potentially available (at court's discretion) in an elections challenge. It may be crucially important when resolution of the controversy will affect what appears on a ballot which must be printed promptly, a circumstance with no post-election remedy. Expedition does not assist a plaintiff who must engage in discovery. PR-OBM, p. 38. In that circumstance, "other remedies" are available. ORS 246.910(5). Plaintiffs should not be required to pursue suits without benefit of discovery and lose other remedies they are entitled to under ORS 246.910(5) in order to avoid mootness.

ORS 14.175 eliminates "mootness" as a barrier to resolving an elections law issue which will persist after each election cycle and where, as here, the Court's ruling will remedy the Legislature's overbreadth violation of enacting a law that violates Article I, §§ 8 and 26.

> It is, of course, an ancient maxim that remedial statutes are to be construed liberally to effectuate the purposes for which they were enacted. See, *e.g.*, ***Stanley v. Smith***, 15 Or 505, 510, 16 P 174 (1887) (remedial statutes "are to be liberally construed and applied for the purpose of giving full effect to the legislative intent").

Halperin v. Pitts, 352 Or 482, 495, 287 P3d 1069, 1076 (2012).

> [T]his court will look to later-enacted statutes as "strong evidence" that, "when the legislature intends to condition [the operation of a statute on a certain event or requirement], it knows how to express that intention." ***Gladhart v. Oregon Vineyard Supply Co***., 332 Or 226, 233, 26 P3d 817 (2001).

Con-Way, Inc. & Affiliates v. Department of Revenue, 353 Or 616, 626, 302 P3d 804, 809-10 (2013) (brackets in original).

With knowledge that ORS 246.910(4) already allowed potential expedited review of elections challenges, the Legislature in 2007 enacted ORS 14.175 to enable continued adjudication of cases which this Court had historically adjudicated when properly filed (pre-***Yancy***), were of public significance, were capable of recurring but were likely to evade review for reasons independent of the Plaintiff's continued interest in pursuing his own and public rights. See ACLU, pp. 22-24; PR-OBM, pp. 42-43. The Legislature did not require any party seek "expedition." It was amply informed how the "capable of repetition, yet evading review" standard operated in Oregon's pre-***Yancy*** cases. PR-OBM, p. 54.

The Court of Appeals found incompatibility between some inchoate Plaintiff "duty" to demand ORS 246.910(4) expedition (whether or not he wanted it), regardless of his absolute right to resort to any "other remedy." ORS 246.910(5); ORS 14.175. Even if ORS 246.910(4) were "susceptible" to such reading, ORS 174.030 instructs courts to adopt only an interpretation which favors "natural right." In this case, ORS 174.030 requires the interpretation of ORS 246.910(4) and (5) which promotes the "natural rights" of speech, particularly political speech, not the interpretation forcing upon plaintiffs an unwritten duty, which stifles it. Speech has been acknowledged a "natural right" of all persons by every strain of legal thought at the time of the adoption of the Oregon Constitution. ***State v. Ciancanelli***, 339 Or 282, 303-08, 121 P3d 613

(2005).

Dated: May 30, 2014

Respectfully Submitted,

/s/ Linda K. Williams

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CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATIONS AND TYPE SIZE REQUIREMENTS ORAP 5.05

Length of Reply Brief on Merits

I certify that (1) the foregoing Reply Brief on Merits complies with the word-count limitation of ORAP 5.05(2)(b)(i) and (2) the word count of this Reply Brief on Merits for elements of text described in ORAP 5.05(2)(a) is 3994 words as determined by the word-counting function of Wordperfect 5.1.

Type Size

I certify that the size of the type in this Reply Brief on Merits is not smaller than 14 point for both the text and footnotes, as required by ORAP 5.05(2)(d)(ii).

Dated: May 30, 2014

/s/ Linda K. Williams

Linda K. Williams

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I FILED this date by Efile the original of the foregoing REPLY BRIEF ON MERITS BY PLAINTIFF-APPELLANT, PETITIONER ON REVIEW MARQUIS COUEY. I also certify that I SERVED this document by Efile on the other parties in No. S061650, as listed below, except Robert M. Atkinson (whom I served by conventional email). I also SERVED this document by emailing a true copy to each email address listed below.

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