IN THE SUPREME COURT OF THE STATE OF OREGON

MICHELLE ROSSOLO,
Plaintiff-Appellant Petitioner on Review.

v.

MULTNOMAH COUNTY ELECTIONS DIVISION and
TIM SCOTT, Director,
Defendant-Respondents Respondents on Review,

and

METRO,
Intervenor-Respondent Respondent on Review

Multnomah County Circuit Court
1401-00046

Court of Appeals
A156429

S063524

Appeal from the Judgment of the Circuit Court for Josephine County
Honorable Thomas Hull, Judge

Court of Appeals opinion of July 29, 2015
Opinion by Hon. Sercombe, P.J.. Hadlock, J., Tookey, J.

# BRIEF OF AMICUS CURIAE OREGON PROGRESSIVE PARTY ON THE MERITS ON REVIEW

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**MISCELLANEOUS**

The Oregon Progressive Party ("OPP"), an Oregon minor political party, on September 16, 2015, moved for leave to appear *Amicus Curiae* in support of the Petition for Review filed September 2, 2015, by Petitioner Michelle Rossolo in *Rossolo v. Multnomah County Elections Division*, CA A156429, 272 OrApp 572 (July 29, 2015), S063524; to file an *Amicus Curiae* brief in Support of said petition; and to file an *Amicus Curiae* Brief on the Merits, should the Petition for Review be granted. The Court granted the motion. The Party thus may file an *amicus curiae* brief on the merits. ORAP 8.15(5)(d).

The Petitioner's Brief on the Merits on Review does not challenge the conclusion of the lower courts in this case that "administrative" action by a local government is immune from the referendum power of the people. OPP's *Amicus Curiae* Brief in Support of Petition for Review (September 16, 2015) showed that there is no basis for that conclusion in the Oregon Constitution or the history of its formulation or adoption. OPP offers this additional question presented on review:

> Are local government actions labeled "administrative" exempt from the referendum powers of the people under the Oregon Constitution?

Our proposed rule of law would answer that question with a "no."

Our argument on this question is identical to that presented in the Brief of *Amicus Curiae* Oregon Progressive Party in Support of Petition for Review of Appellant Michelle Rossolo (except that the headings are different and some of the text of the earlier brief has been removed). Thus, all parties in this case have been apprised of that argument since September 16, 2015.

## I. LOCAL GOVERNMENT ACTIONS LABELED "ADMINISTRATIVE" ARE NOT EXEMPT FROM THE REFERENDUM POWERS OF THE PEOPLE UNDER THE OREGON CONSTITUTION.

The court-made doctrine that the initiative and referendum powers cannot reach local government actions deemed "administrative" serves to defeat the purpose of those powers and impair the constitutional rights of Oregonians to subject government decisions to popular plebiscite.

Further, the court-developed distinction between "administrative" and "legislative" action by a local government is not clear. The amorphous criteria developed by courts offer opportunity for local governments to shield virtually all of their actions and decisions from challenge by initiative or referendum and discourage the exercise of direct democracy.

Also, ***Rossolo v. Multnomah County Elections Division***, 272 OrApp 572 (2015) ("***Rossolo***"), appears to have interpreted the applicable provisions of the Oregon Constitution and law without liberal construction in favor of the electors.

> We unqualifiedly endorse the principle that election laws should be liberally construed. As was said in *Othus v. Kozer*, 119 Or 101 at 109, 248 P 146 at 149 [1926], 'The great constitutional privilege of a citizen should not be taken away by a narrow or technical construction of a law regulating the exercise of such right.' Where there is a doubtful construction, 'the doubt should be resolved in favor of the people to initiate a law if they see fit so to do.'

***Kays v. McCall***, 244 Or 361, 373, 418 P2d 511, 517 (1966).

Neither ***Rossolo*** nor any previous case involving the administrative v. legislative distinction applied this Court's methodology, most recently explained in ***Couey v. Atkins***, 357 Or 460, 490-91 (2015), for determining

what a provision of the Oregon Constitution means by examining its text and context at the time of its adoption. Yet, without scrutiny of voter intent in 1906, a court-made doctrine has expanded the meaning of "administrative" action beyond executive functions and ministerial obligations to bar initiative and referenda on many aspects of local government decisions and actions.

Nor did ***Rossolo*** correctly interpret or apply these provisions of the Oregon Constitution:

| | |
|---|---|
| Article IV, Section 1(5) | Article II, Section 23 |
| Article VI, Section 10 | Article II, Section 18(8) |

## II. VAGUE CASE LAW, ADOPTED BY COURTS AFTER THE INSTITUTION OF LOCAL REFERENDUM POWERS, ALLOWS THE ADMINISTRATIVE ACTION" EXEMPTION TO COUNTERMAND THE OREGON CONSTITUTION.

Allowing local governments to prevent use of the initiative and referendum powers by successfully deeming their actions or decisions to be "administrative" can eviscerate those powers. The Court of Appeals in ***Rossolo*** furthered a line of decisions that make fuzzy distinctions between administrative and legislative actions. That case law can be used to severely restrict use of the referendum power of all Oregon citizens.

The standards developed by courts for determining what actions or decisions are "administrative" are vague and offer opportunity for manipulation to negate the opportunities for referenda. As summarized in ***Rossolo***, 272 OrApp at 584-87, an action is administrative if it is:

> "'transient, sudden order to and concerning a particular person, but [not] something permanent, uniform, and universal'" *Id.* at 584

(quoting ***Long v. City of Portland***, 532 Or 92, 100-01, 98 P 149 (1908), *reh'g den*, 98 P 1111 (1909)).

> "'temporary and restrictive in their operation and effect'" *Id.* at 585 (quoting ***Long***, 532 Or at 100-01).

> "'daily administration of municipal affairs'" *Id.* at 585 (quoting ***Long***, 532 Or at 100-01).

> "'prescribes no rules of civil conduct; it is not permanent, uniform or universal in its application to the general public'" *Id.* at 585 (quoting ***Monahan v. Funk***, 137 Or 580, 586, 3 P2d 778 (1931)).

> "'implements prior policy'" *Id.* at 585 (quoting ***Yamhill County v. Dauenhauer***, 261 Or 154, 156, 492 P2d 766 (1972)).

> "'carrying out a business transaction'" *Id.* at 586 (quoting ***Whitbeck v. Funk***, 140 Or 70, 75, 12 P2d 1019 (1932)).

> "required to be made by a prescribed nonlegislative process" *Id.* at 586.

> "'the decision is bound to apply preexisting criteria to concrete facts'" *Id.* at 587 (quoting ***Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.***, 287 Or 591, 602-03, 601 P2d 769 (1979)).

> "'directed at a closely circumscribed factual situation or a relatively small number of persons'" *Id.* at 587 (quoting ***Strawberry Hill 4 Wheelers***, 287 Or at 602-03).

The vagueness of this long list of standards has been recognized.

> Unfortunately, the distinction between administrative and legislative action is vague and gives the courts considerable latitude to determine if direct legislation is proper. As a general rule, a matter is legislative if it sets government policies or purposes, but is administrative if it merely carries out policies and purposes already declared. The determination of this point is not easy. Consider this question: Is a measure to accept public housing aid from the federal government, pursuant to a federal act, a legislative or an administrative decision? In California, it was deemed to be administrative since the state government had to first enact enabling legislation to help cities take advantage of the federal act. However, Arkansas ruled that it was legislative since the action was permanent in character.

Thomas M. Carpenter, *In Whose Court Is the Ball? The Scope of the People's Power of Direct Legislation*, ARKANSAS LAWYER 35, 36 (1994) (footnotes omitted).

The vagueness of the court-developed standards allows local governments to restrict use of the initiative and referendum powers by adopting sweeping statements of purpose as "legislation" and then asserting that all subsequent legislation in the same field is merely "implementing a prior policy."

For example, say a county adopted an ordinance declaring the need for two additional bridges across the Willamette River and directing the county commission to develop a plan to build them. That would appear to be "legislation" under the judicial tests. Doing a referendum on that ordinance would be impaired by the lack of specifics. Then the county by a later ordinance appropriates 10% of the gasoline tax for a period of 20 years and issues no-bid contracts for construction of two bridges. According to some of the judicial standards noted above, that ordinance would be "administrative" and immune from referendum, as it would merely be implementing the earlier-adopted policy.[1]

That pattern can be used to shield virtually all county decisions from referendum. The local legislature could adopt "legislation" adopting a policy that all necessary actions shall be taken for the best interests of the populace

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1. If this example seems implausible, the facts are similar to ***Wennerstrom v. City of Mesa***, 821 P3d 146 (Az 1991).

or that the legislature would provide a fair, just and efficient system of government. Thereafter, all of its actions could be deemed "administrative," as they merely implement the prior policy.

The other court-developed standards are open to similar abuse. The local legislature can put a sunset clause on any legislation and then claim that it is transient, not "something permanent, uniform, and universal," and temporary, even if the sunset clause is 20 or more years into the future. Or the local legislature can adopt a tax that is not "uniform or universal in its application to the general public."

The vague standards also enable local governments to avoid referenda by running out the clock. Local government actions are often involve spending money. If the local government can spend the money in less time than it takes for the courts to complete adjudication of the rejection of a proposed referendum as "administrative," then the local government effectively avoids the referendum even if the action is "legislation." This sort of mootness by attrition could be negated by ORS 14.175 (capable of repetition yet likely to evade review), but such litigation may nevertheless prove to be pointless. The local government could argue that each spending decision is unique, so past litigation about whether a past decision was "administrative" or "legislative" would be inapplicable.

## III. THE "ADMINISTRATIVE ACTION" EXEMPTION IS NOT SUPPORTED BY THE LANGUAGE OR HISTORY OF THE OREGON CONSTITUTION.

Local governments, with court approval, have used these distinction to prevent voters from subjecting various local government actions to the referendum power, guaranteed to Oregon voters by Oregon Constitution, Article IV, Section 1(5).

Beyond the difficulty in applying these definitions in practice, there is a significant legal and historical problem with continuing their application at all. None of these distinctions between legislative and administrative action seems to have existed prior to Oregon's adoption of the initiative and referendum powers in 1902, despite the fact that those powers had been in place in Nebraska since 1897, South Dakota since 1898, and Utah since 1900. Nor is there evidence that the drafters of the 1902 amendment advocated or even understood that distinction.

Neither ***Rossolo*** nor any previous case involving the administrative v. legislative distinction applied this Court's methodology, most recently explained in ***Couey v. Atkins***, 357 Or 460, 490-91 (2015), for determining what a provision of the Oregon Constitution means by examining its text and context at the time of its adoption. See pages 7-9, *post*. ***Rossolo*** also misconceived the sources of voter authority to call referenda on county ordinances and disregarded other portions of the Oregon Constitution.

### A. *ROSSOLO* DID NOT APPLY THE CORRECT METHODOLOGY FOR DETERMINING THE MEANING OF "LEGISLATION" IN THE OREGON CONSTITUTION.

***Rossolo*** did not apply this Court's methodology for determining what a provision of the Oregon Constitution means by examining its text and context at the time of its adoption.

> In all cases, we examine the text, in its historical context and in light of relevant case law, to determine the meaning of the provision at issue most likely understood by those who adopted it, with the ultimate objective of identifying "'relevant underlying principles that may inform our application of the constitutional text to modern circumstances.'" ***State v. Sagdal***, 356 Or 639, 642, 343 P3d 226 (2015) (quoting ***State v. Davis***, 350 Or at 446, 256 P3d 1075).

***Couey v. Atkins***, 357 Or 460, 490-91 (2015).

Oregon voters in 1902 added the initiative and referendum provisions to Article IV of the Oregon Constitution. They added that those provisions would also apply to local governments by amendment adopted in 1906 (Article IV, Section 1(5)).

***Rossolo*** cited no pre-1902 or pre-1906 authority for the proposition that some actions taken by legislatures are "administrative" or somehow "non-legislative" (apart from the function of ratifying federal constitutional amendments). The first such authority cited is ***Long v. City of Portland***, 53 Or 92, 98 P 1111 (1908), which determined that the enactment of a license fee for operation of vehicles "used in the conduct of certain businesses" was legislative, not administrative.

The methodology of this Court for determining the meaning of provisions in the Oregon Constitution is to see what it meant to the drafters

of the provision at issue. There is no indication that the drafters of the 1902 initiative and referendum amendment to the Oregon Constitution conceived of a legislature undertaking action that would not be "legislation." Nor is there indication that they intended to exempt certain decisions of a legislature (state or local) that were labeled "administrative." That distinction appears to have arisen specifically due to attempts to use the initiative and referendum processes by Oregon voters.

The Webster's Dictionary of 1828 defined "legislation" as "The act of passing a law or laws; the enacting of laws." WEBSTER'S NEW INTERNATIONAL DICTIONARY (unabridged 2d ed 1961) similarly defines "legislation":

> 1: the action of legislating; specifically: the exercise of the power and function of making rules (as laws) that have the force of authority by virtue of their promulgation by an official organ of a state or other organization
>
> 2: the enactments of a legislator or a legislative body
>
> 3: a matter of business for or under consideration by a legislative body

Both the pre-1902 and current definitions embody the concept that what a legislature does is "legislation."

That the drafters of the initiative and referendum provisions did not envision an exception for "administrative" actions of government is further shown by the nature of the early measures adopted by Oregon voters. Many of those measures established (or abolished) taxes and specified the use of tax revenue, much like the Multnomah County ordinance at issue here. The

***Rossolo*** analysis would likely put them into the "administrative" category, but they were voted upon (and many enacted) in the early years under the Oregon initiative power. Such measures included:

| Year | Measure # | Subject |
|---|---|---|
| 1906 | 1 | appropriating money to insane asylum, colleges, etc. |
| 1906 | 4 | abolishing tolls on Mount Hood and Barlow Roads |
| 1906 | 10 | requiring sleeping car companies, refrigerator car companies, and oil companies to pay an annual license upon gross earnings |
| 1906 | 11 | requiring express companies, telegraph companies, and telephone companies to pay an annual license upon gross earnings |
| 1908 | 1 | increase compensation of legislators from $120 to $400 per session |
| 1908 | 7 | appropriating money for building armories |
| 1908 | 8 | appropriating money for University of Oregon |
| 1910 | 7 | authorizing collection of state and county taxes on separate classes of property |
| 1910 | 8 | requiring Baker County to pay $1,000 a year to Circuit Judge in addition to his state salary |

### B. *ROSSOLO* FAILED TO REALIZE THAT REFERENDA AGAINST COUNTY ORDINANCES HAVE BEEN AUTHORIZED BY THE OREGON CONSTITUTION SINCE 1906.

***Rossolo*** notes that the source of authority for referenda on county ordinances is Article VI, section 10, of the Oregon Constitution. That was adopted by voters in 1958. But Oregon voters had authority to call referenda on all county ordinances since 1906 under Article IV, Section 1(5). So that is the correct reference in time for determining whether the drafters of the 1906

amendment to the Oregon Constitution had in mind that it would not allow referenda on "administrative" ordinances of counties.

Article IV, Section 1(5), states:

> The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district. The manner of exercising those powers shall be provided by general laws, but cities may provide the manner of exercising those powers as to their municipal legislation. In a city, not more than 15 percent of the qualified voters may be required to propose legislation by the initiative, and not more than 10 percent of the qualified voters may be required to order a referendum on legislation.

Counties have been considered "municipalities" since the outset. ***Carman v. Woodruff***, 10 Or 133, 1882 WL 1416, at *1 (1882).

> For the origin of the provision for local self-government by direct legislation, we must look to article 4, § 1a, of the Constitution, wherein the people of this state declare as a fundamental law that "the initiative and referendum powers reserved to the people by this Constitution are hereby further reserved to the legal voters of every municipality and district." And a county is clearly a municipality or district, within the meaning of this section. ***Acme Dairy Co. v. Astoria***, [49 Or 520, 523, 90 P 153, 155 (1907)], *supra*; ***Cook v. Port of Portland***, [20 Or 580, 585, 27 P 263, 264 (1891)], *supra*.

***Schubel v. Olcott***, 60 Or 503, 514-15, 120 P 375, 379 (1912).

So the applicable context is what the drafters of the 1906 amendment thought, not what the drafters of the 1958 amendment thought.

### C. *ROSSOLO* FAILED TO ADDRESS THE "LOCAL, SPECIAL" PORTION OF ARTICLE IV, SECTION 1(5).

***Rossolo*** failed to address all of the matters of local legislation for which Article IV, Section 1(5), authorizes referenda. Those include "all local,

special and municipal legislation of every character in or for their municipality or district." Instead, it addresses only the term "municipal legislation."

At the time Article IV, Section 1(5), was adopted by the voters in 1906, the terms "local legislation" and "special legislation" had understood meanings. The fact that those terms were included in Article IV, Section 1(5), contradicts the later-developed notion that "administrative" ordinances are not subject to referendum.

> The qualifying words "local" and "special" are synonymous (***Smith v. Grayson County***, 18 Tex.Civ.App. 153, 44 S.W. 921), and, in the sense in which they are used, mean any enactment that is plainly intended to affect a particular person or thing or to be in effect in some specified locality only (***Ladd v. Holmes***, 40 Or 167, 66 Pac 714, 91 AmStRep 457).

***Acme Dairy Co. v. Astoria***, 49 Or 520, 90 P 153, 154-55 (1907); *accord*, ***Schubel v. Olcott***, *supra*, 60 Or at 513. This definition of "special legislation" appears to be squarely within the definition of "administrative" adopted by the courts ("concerning a particular person"; not "uniform or universal in its application to the general public"; "directed at a closely circumscribed factual situation or a relatively small number of persons"). See the list of standards at page 3, *ante*. Yet, Article IV, Section 1(5) expressly states that "special legislation" is subject to the referendum power. This contradicts the conclusion in ***Rossolo*** that "administrative" ordinances are not subject to referenda.

### D. *ROSSOLO* MISCONCEIVED THE INITIATIVE AND REFERENDUM POWERS IN OREGON.

Nor does ***Rossolo*** address the nature of the initiative and referendum powers in the Oregon Constitution, which recognizes that the people using those powers are equal to the sitting Legislature in having plenary governmental power. A plenary legislative power cannot be halted by a court deeming a local government action to be "administrative." A plenary legislative power can undertake to do, or undo, anything that can be done, or undone, by a legislature. Surely a legislature can do or undo administrative action. Carving out a "administrative" loophole in the powers of initiative and referendum is inconsistent with the structure and purpose of the Oregon Constitution, as amended.

The Oregon Constitution, Article II, Section 18(8), has since 1908 stipulated that, whenever the Oregon Constitution refers to the "Legislative Assembly," it means also the people using the initiative power.

> But the words, the legislative assembly shall provide, or any similar or equivalent words in this constitution or any amendment thereto, shall not be construed to grant to the legislative assembly any exclusive power of lawmaking nor in any way to limit the initiative and referendum powers reserved by the people.

Thus, in Oregon the "Legislature" is either the sitting Legislature or the people using the initiative power--on an equal basis. In Oregon law, reference to the "legislative assembly * * * or any similar or equivalent words" is deemed to <u>include</u> the people using the initiative power. Article IV, Section 1(5), then extends the same legislative power of initiative and referendum to the local level.

***Meyer v. Bradbury***, 341 Or 288, 299-300, 142 P3d 1031 (2006), even without reference to Article II, Section 18(8), concluded:

> Although two distinct entities may, indeed, enact laws in this state, the source of all legislative power is the people, and that power is exercised through a single legislative department. As this court put the matter long ago:
>
> > "By the adoption of the initiative and referendum into our constitution, the legislative department of the State is divided into two separate and distinct lawmaking bodies. There remains, however, as formerly, but one legislative department of the State. It operates, it is true, differently than before--one method by the enactment of laws directly, through that source of all legislative power, the people; and the other, as formerly, by their representatives [.]"
>
> ***Straw v. Harris***, 54 Or 424, 430-31, 103 P 777 (1909) (emphasis added). As a result, although two lawmaking bodies--the legislature and the people--exist, their "exercise of the legislative powers are coequal and co-ordinate." ***State ex rel. Carson v. Kozer***, 126 Or 641, 644, 270 P 513 (1928) * * *.

If the sitting Legislature or a sitting county commission or city council can perform a function under the Oregon Constitution, so can the people using the initiative and referendum powers. Both have plenary power.

***Towers v. Myers***, 341 Or 357, 142 P3d 1040 (2006), stated:

> In the absence of any identified limitation on the legislature's authority to enact ORS 254.555, petitioner's argument fails. See ***MacPherson v. DAS***, 340 Or 117, 127, 130 P3d 308 (2006) (state legislature has plenary power to enact statutes unless limited by the state constitution or federal law).

***MacPherson v. DAS***, 340 Or 117, 30 P3d 308 (2006), stated:

> In Oregon, the Legislative Assembly and the people, acting through the initiative or referendum processes, share in exercising legislative power. See Or Const., Art. IV, §§ 1(1), (2)(a), (3)(a) (vesting in both bodies the power to propose, enact, and reject laws).

Respecting the nature of that power, this court previously has explained that

> "[p]lenary power in the legislature, for all purposes of civil government, is the rule, and a prohibition to exercise a particular power is an exception. It, therefore, is competent for the legislature to enact any law not forbidden by the constitution or delegated to the federal government or prohibited by the constitution of the United States."

***Jory v. Martin***, 153 Or 278, 285, 56 P2d 1093 (1936). Thus, limitations on legislative power must be grounded in specific provisions of either the state or federal constitutions. See, e.g., ***State v. Hirsch/Friend***, 338 Or 622, 639, 114 P3d 1104 (2005) ("any constitutional limitations on the state's actions must be found within the language or history of the constitution itself" (internal quotation marks and citation omitted)).

Plaintiffs argue that constitutional limits on legislative power need not be express, but can be implied. We agree with that general proposition. As this court previously has stated:

> "Our constitution, like all other state constitutions, is not to be regarded as a grant of power, but rather a limitation upon the powers of the legislature. The people[,] in adopting it, committed to the legislature the whole law making power of the state, which they did not expressly or impliedly withhold."

***Wright v. Blue Mt. Hospital Dist.***, 214 Or 141, 144-45, 328 P2d 314 (1958) (emphasis added). However, even implied limitations must find their source in some constitutional provision. That is so because, "without such a conflict with a written constitutional provision, there is no basis for any general judicial power to invalidate a law if it is 'bad' enough." Hans Linde, *Without "Due Process: Unconstitutional Law in Oregon*," 49 OR L. REV. 125, 130 (1970).

* * *

Plaintiffs do mention Article IV, section 1, of the Oregon Constitution, but that section merely vests legislative power in the Legislative Assembly and the electorate. The section neither expressly nor impliedly limits the scope of the legislative power; it simply states where that constitutional power resides.

340 Or at 127-28.

### E. *ROSSOLO* FAILED TO ADDRESS ARTICLE II, SECTION 23.

Article II, Section 23, of the Oregon Constitution (adopted by initiative in 1998) refers to "measures" and indicates that the initiative process can be used to "approve any change in law or government action."

> **Approval by more than majority required for certain measures submitted to people.**
>
> (1) Any measure that includes any proposed requirement for more than a majority of votes cast by the electorate to approve any change in law or government action shall become effective only if approved by at least the same percentage of voters specified in the proposed voting requirement.
>
> (2) For the purposes of this section, "measure" includes all initiatives and all measures referred to the voters by the Legislative Assembly.

Thus, the Oregon Constitution's 1998 amendment provides that "any measure" can "approve any change in law or government action." That implies that measures can address not just laws but also "government action" that is not law.

## IV. CONCLUSION.

For the reasons stated above, this Court should reverse ***Rossolo*** and conclude that there is no "administrative action" exemption to the referendum

power of the people under the jurisdiction of local governments.

Dated: December 23, 2015

Respectfully Submitted,

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

Length of Brief

I certify that (1) the foregoing BRIEF OF AMICUS CURIAE OREGON PROGRESSIVE PARTY ON THE MERITS ON REVIEW complies with the word-count limitation of ORAP 5.05(2)(b), and (2) the word count of this brief for elements of text described in ORAP 5.05(2)(a) is 3914 words as determined by the word-counting function of Wordperfect 5.1.

Type Size

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

Dated: December 23, 2015

/s/ Daniel W. Meek

Daniel W. Meek

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that I FILED this date by Efile the original of this documents:

BRIEF OF AMICUS CURIAE OREGON PROGRESSIVE PARTY ON THE MERITS ON REVIEW

I further certify that I SERVED this document by Efile on all counsel listed in this case in the records of this Court.

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