IN THE SUPREME COURT OF THE STATE OF OREGON

TWIST ARCHITECTURE & DESIGN, INC.; DAVID HANSEN; and KIRK CALLISON,	)	Oregon Board of Architect Examiners
	)	No. 10035
Petitioners, Respondents on Review,	)	CA No. A152929
	)	SC No. S064048
v.	)	
OREGON BOARD OF ARCHITECT EXAMINERS,	)	
Respondent, Petitioner on Review.	)	

BRIEF ON THE MERITS OF RESPONDENT ON REVIEW DAVID HANSEN

On Review of the Decision of the Court of Appeals on Appeal from a Final Order of the Oregon Board of Architect Examiners

Opinion Filed: February 24, 2016
Before: Sercombe, P.J., Hadlock, C.J., and Tookey, J.

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INTRODUCTION

Appellants (respondents on review) created drawings of hypothetical buildings for an Oregon real estate development company client to help the client and potential lessees imagine the possibilities for a future development on its property. The Oregon Board of Architect Examiners (Board) contends that creating those marketing drawings constitutes the practice of "architecture," and requires an architect's license. The Board also contends that Appellants represented themselves as licensed architects when they wrote "Licensed in Oregon (pending)" on their website.

The court of appeals correctly rejected both arguments. The licensing statute only requires an architect's license for activity that bears a connection to construction. Because the marketing drawings were not intended to act as any actual building's design, and instead merely depicted the potential arrangements of a development that would ultimately be designed by a licensed architect, they do not qualify as "architecture." The court of appeals also correctly held that Appellants' use of the phrase "Licensed in Oregon (pending)" did not violate the statute because the phrase did not suggest that Appellants already had a license. David Hansen submits this brief separately, in addition to the brief submitted by

Twist Architecture and Kirk Callison, who are represented by other counsel,[1] urging this Court to affirm the decision below.

QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

First Question Presented

Oregon law defines the "practice of architecture" as "the planning, designing or supervising of the erection, enlargement or alteration of any building . . . other than an exempted building." ORS 671.010. Does the "practice of architecture" include the creation of feasibility studies or master plans that show the locations and sizes of proposed buildings and are used to determine whether construction is possible and to attract funding?

First Proposed Rule of Law

No. The court of appeals was correct that only those drawings that are made "for use in actual construction," qualify as architecture; "planning for a building in the abstract" does not qualify. The Board's interpretation is not supported by the statutory text or legislative history, and should be avoided because it would call the statute's constitutionality into question.

Second Question Presented

Oregon law prohibits unlicensed persons from "assum[ing] or us[ing] the title of 'Architect' or any title, sign, cards or device indicating, or tending to

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[1] Hansen represented himself *pro se* in the court of appeals.

indicate, that the person is practicing architecture or is an architect or represent[ing] in any manner that the person is an architect." ORS 671.020(1); *see also* ORS 671.020(4) (a person may not "use in connection with the business of the person any words, letters or figures indicating the title of 'Architect'"). Does the use of a logo featuring the term "architecture" on what appear to be architectural drawings and on the invoices for the creation of those drawings, or the use of the phrase "Licensed in the State of Oregon (Pending)" on a website biography, in conjunction with references to Oregon projects, violate that prohibition?

Second Proposed Rule of Law[2]

No. A straight-forward interpretation of the phrase "Licensed in the State or Oregon (Pending)" indicates that the speaker is not yet a licensed architect, and not yet practicing architecture in the state. The phrase is therefore not prohibited by statute, and a contrary interpretation would raise First Amendment concerns.

Summary of Material Facts

Beginning in 2008, Appellants Twist Architecture, David Hansen, and Kirk Callison, created marketing drawings for Gramor, a property development company. Respondents' SSER-4.[3] Gramor was considering developing properties in Oregon, and as a condition of securing funding, Gramor needed to get a certain

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[2] Appellant Hansen does not address the use of Twist's logo, because that charge was made only against Twist, and Twist is separately represented by counsel.

[3] Respondents' Second Supplementary Excerpt of Record is hereinafter referred to as "SSER," and Hansen's Excerpt of Record if referred to as "ER."

number of lessees to pre-commit to its projects. SSER-20. The drawings were intended to help attract lessees to the development by showing them different arrangements that might fit on the property. ER-7.

The drawings showed various hypothetical placements of buildings and parking areas for three projects. SSER-4. They were not sufficient to obtain building permits, *see Twist Architecture & Design, Inc. v. Oregon Bd. of Architect Examiners*, 276 Or App 557, 561, 369 P3d 409 (2016), and could not be used for construction. ER-4, ER-5, ER-6, ER-7. If the development moved forward, licensed architects would be hired to design and draw actual plans for the project. ER-2, ER-3, ER-7. Of the three projects Gramor considered, only one moved forward and it was not based on Appellants' drawings. SSER-17; SSER-18; SSER-19.

During this time, Twist built a website to advertise its services. SSER-8. Based on their intent to become licensed in Oregon, the webpages for David Hansen and Kirk Callison used the phrase "Licensed in Oregon (pending)." SSER-9. Callison was licensed in Washington, and Hansen was trained in architecture, but not yet licensed in any state. SSER-4. After the economy slowed, the two decided not to pursue licensure in Oregon, ER-7, although they have since resumed the process. SSER-10.

The Board issued a notice of intent to impose a civil penalty on Appellants for creating the marketing drawings and for making various statements on their

website deemed to violate Oregon's licensing statute. *Id.* After conducting a hearing, the ALJ determined that Callison and Hansen had violated the statute when they used the term "Licensed in Oregon (pending)," but that they did not violate the statute by creating the marketing drawings. ER-1.

The Board modified several of the ALJ's findings of fact, and ruled that the marketing drawings constituted the unlicensed practice of architecture because they were "undertaken in contemplation of erecting buildings." SSER-15. The Board further ruled that the phrase, "Licensed in Oregon (Pending)," violated the statute's prohibition on holding oneself out as an Oregon-licensed architect. SSER-24. The Board reasoned that "the word 'licensed' was in past tense," or, "the word 'pending' indicates that licensure was imminent." *Id.* It fined Twist, Callison, and Hansen $10,000 each.[4] *Id.*

The court of appeals reversed. *See Twist Architecture & Design, Inc.*, 276 Or App 557. It held that the creation of marketing drawings which depict hypothetical buildings do not qualify as architecture because they are not intended to be used for construction purposes. *Id.* at 567. It further held that Appellants' use of the term "Licensed in Oregon (pending)" did not violate the statute because it did not indicate that they were licensed in Oregon or that they were practicing

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[4] The Board also ruled that Twist violated the statute by using its logo on documents it exchanged with Gramor. SSER-23. Because the claim regarding Twist's logo was only made against Twist, and Twist is separately represented by counsel, that claim is not addressed here.

architecture in Oregon. *Id.* at 571. The Board petitioned for review and this Court granted the petition.

SUMMARY OF ARGUMENT

The court of appeals correctly held that Appellants' marketing drawings did not constitute the unlicensed practice of architecture. ORS 671.010(6) requires some nexus to construction. Where basic drawings are made for the purpose of attracting lessees or deciding whether to move forward with a project, and where those drawings will not be used for construction, there is no such nexus. This interpretation protects health and safety by ensuring that plans that actually guide the building of structures are created by licensed architects, and excludes those activities that do not present the same safety concerns.

The Board argues that the court of appeals erred because the statute encompasses any activity done "in contemplation" of constructing a building, but that broad reading is not supported by statute's text, legislative history, or common sense. Not all work done by architects is the practice of architecture; many activities that are part of a typical architects' practice may be legitimately performed by non-architects. The purpose of licensing architecture is to ensure public safety and other legitimate governmental interests related to the construction of buildings, not to insulate architects from competition by others for ancillary services that are not themselves the practice of architecture. The Board's interpretation vastly expands the scope of the licensing statute, subjecting activities

well outside a reasonable understanding of what constitutes the practice of architecture to burdensome licensure. That interpretation should be avoided because it throws the statute's constitutionality into question.

The court of appeals was also correct that the term "Licensed in Oregon (pending)" does not indicate that the speaker is already licensed, and thus does not violate ORS 671.020(1). The phrase truthfully communicates that the speaker is not yet licensed, and the Board's attempt to censor Appellants implicates the constitutional right to free speech.

For these reasons, the court of appeals' opinion should be affirmed.

ARGUMENT

I

THE COURT OF APPEALS CORRECTLY HELD THAT MARKETING DRAWINGS ARE NOT "ARCHITECTURE"

A. *The Court of Appeals' Opinion Is Supported by the Statutory Text*

The licensing statute defines "architecture" as "the planning, designing, or supervising of the erection, enlargement or alteration of any building." ORS 671.010(6). Board regulations provide that "architecture" includes "all analysis, calculations, research, graphic presentation, literary expression, and advice essential to the preparation of necessary documents *for the design and construction of buildings*." OAR 806-010-0075 (emphasis added). The plain meaning of both

the statute and the regulation is that, to be considered "architecture," activity must be undertaken for the purpose of constructing a building. *Twist Architecture & Design, Inc.*, 276 Or App at 567 ("[T]he practice of architecture necessitates the planning or preparing of work for use in actual construction, rather than planning for a building in the abstract."); *see also Davis v. Bd. of Architect Exam'rs*, 222 Or App 370, 375, 193 P3d 1019 (2008) ("The violation of ORS 671.020 . . . occurs at the time of planning or designing, *if the plans or designs are executed for the purpose of erecting a building*.") (emphasis added). In its brief, the Board itself cites the dictionary definition of "design" as "[a] preliminary sketch; an outline or pattern of the main features of *something to be executed*." Respondents' Opening Brief at 13-14 (emphasis added).

Marketing drawings that are not intended to be used as part of the plans for a building, or to be used during the construction process, do not qualify as "architecture" because they lack the necessary nexus to construction. Appellants' drawings pictured various possibilities for a future development that would ultimately be designed by a licensed architect. The purpose was to attract tenants and make general decisions about whether to move forward with development. SSER-19. But they provided "no building design, *i.e.*, specifications to facilitate the construction of any particular building." *Twist Architecture & Design*, 276 Or App at 568. They did not indicate the final layout of any building. They were not permit-ready. *Id.* at 561. If or when any development moved forward, a licensed

architect would use his independent judgment to draw the plans. Because they were not made "for the design and construction" of any building, the drawings do not qualify as "architecture" under the licensing statute.

Other courts faced with the same question agree. *See Hecht v. Commuter's Cafe*, 193 Misc 170, 171, 80 NYS2d 861 (NY Sup Ct 1948) (a design becomes an architectural design only when it is drawn for the purpose of construction); *see also Walter M. Ballard Corp. v. Dougherty*, 106 Cal App 2d 35, 234 P2d 745 (1951) (preliminary sketches including a survey of existing conditions, and recommendations with preliminary sketches and layouts do not constitute the practice of architecture). It makes sense to limit the statute to activities that have a nexus to construction, because only those activities connected to a real, not imagined, structure implicate public health and safety, and necessitate the type of training that architects receive. As the Board concedes, drawings that will not be used for construction—or drawings of hypothetical buildings—"do[] not involve the same risk of waste, loss, and danger posed by designing for the purpose of actually erecting buildings." Respondents' Opening Brief at 20. The fact that, here, a licensed architect would create the actual plans for the project sufficiently ensured that public safety was protected. *See Friedman v. Mt. Village, Inc.*, 55 Or App 1018, 1023, 640 P2d 1037 (1982) (the fact that a licensee would review and complete plans that were partially drawn by person that was not licensed provided a sufficient guarantee that the plans would be safe).

The Board characterizes the opinion below as restricting "architecture" to the production of permit-ready drawings. But the court of appeals did no such thing. It simply noted that the drawings here were *not* permit-ready, and therefore stand in contrast to activity considered "architecture" in previous cases like *Davis*, 222 Or App 370. The opinion below did not "restrict" the practice of architecture to any one definition; rather, it excluded the drawings made here from the definition of architecture on the basis that they were not related to construction. By contrast, the Board's expansive interpretation of the licensing statute would include "*any* activity undertaken in contemplation of the erection of a building, no matter how removed that activity might be from the actual construction of a building." *Twist Architecture*, 276 Or App at 567. Under this theory, drawings on a napkin, or artistic illustrations qualify as architecture if made for a paying client who wants to build. That broad interpretation, not the court of appeals', is unsupported by the statute's text,[5] and would contradict the legislature's intent. *Id.*

[5] The Board's interpretation is also contradicted by caselaw. In *Friedman*, 55 Or App at 1023, the plaintiffs sued to recover for unpaid architectural services. The defendants argued that the contract was void because the plaintiffs had entered into the contract before they were licensed. But the court noted that the statute did not prohibit the "making of a contract for architectural services," it only prohibited "the performance of a contract while unlicensed." *Id.* at 1023. This holding contradicts the Board's interpretation of the statute, as making a contract for architectural services is plainly done in "contemplation of erecting a building." Yet the court ruled that forming the contract, alone, was not the practice of architecture under the statute.

(The Board's interpretation would "proscribe activities surely not contemplated by the legislature to be prohibited.")

Even if the Board is correct that "any activity undertaken in contemplation of erecting a building" constitutes architecture, that still would not encompass the drawings here, which were explicitly *not* made for the purpose of erecting a building. *Id*. at 568 ("[T]he only evidence in the record was that petitioners did *not* prepare the schemes in contemplation of obtaining permits and constructing the buildings."). While Gramor may have ultimately intended to develop its property (pursuant to plans designed by a licensee), it hired Appellants only to help it market the property and provide drawings that would allow it to decide whether to move forward with some development. *See* SSER-19. Even under the Board's expansive interpretation, Appellants did not practice "architecture."

B. *The Court of Appeals' Opinion Furthers the Licensing Statute's Purposes*

The purpose of the licensing statute is to protect "life, health and property and to eliminate unnecessary loss and waste" by ensuring that buildings are structurally sound, can withstand environmental factors, are functional, comply with building codes, and are otherwise safely designed and constructed. *See* Legislative Research Staff, *Staff Review of the State Bd. of Architect Exam'rs* (Dec

1979)[6] at 16 (noting that the four-part architecture multiple-choice exam tests matters relating to environmental analysis, architectural programming, design and technology, and construction); *see also id.* at 10 (noting that the first Board suggested that the state enact a licensing statute "to protect the state from the construction of unsafe buildings"). Public safety is not served by requiring someone who draws the hypothetical placement of a building to undergo the time and expense of obtaining an architect's license. If anything, such a requirement *encourages* waste, because it demands that a person learn skills wholly unrelated to their work.[7]

The Board hyperbolically claims that if the decision below is not reversed, "unqualified persons [will be allowed] to plan and design large-scale commercial projects," and those designs will "be used to attract lessees and investors, right up until the point that finished, permit- and construction-ready drawings are produced." Respondents' Opening Brief at 18. But the decision below presents no such danger. The court of appeals' opinion does not say that an architect is only needed once permit- and construction-ready drawings are produced. It says

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[6] The Board cites the same report as "Legislative Report" in its opening brief.

[7] Obtaining an architect's license is an expensive and time-consuming practice. It requires applicants to undergo a combined eight years of education and work experience, pay a fee, pass two exams, and complete an oral interview, among other requirements. *See* OAR 806-010-0020.

that an architect is *not* needed to create drawings for marketing purposes that cannot be used to build anything.

Having an architect involved earlier in the process of developing properties may help to avoid waste. But the statute does not demand that people become licensed regardless of how tangential their role is to construction, merely because it may help avoid waste. Under that reasoning, real estate agents should have an architect's license so that they can help developers decide whether to purchase a vacant lot. Instead, the statute only requires that one obtain an architect's license when they engage in "planning," "supervising," or "designing" that has a nexus to actual construction. There is no such nexus here.

C. *The Board's Interpretation Raises Constitutional Concerns*

Courts should avoid interpretations of statutes that would cast doubt on a law's constitutionality. *See State v. Stoneman*, 323 Or 536, 540, 920 P2d 535 (1996) ("a court will give a statute such an interpretation as will avoid constitutional invalidity"); *Salem Coll. & Acad., Inc. v. Employment Div.*, 298 Or 471, 481, 695 P2d 25 (1985) (courts should not "attribut[e] a policy of doubtful constitutionality to the political policymakers, unless their expressed intentions leave no room for doubt"). By requiring Appellants to undergo training and learn skills wholly unrelated to their trade, the Board's interpretation of ORS 671.010(6) raises serious due process concerns. That interpretation should be rejected to avoid calling the statute's constitutionality into question.

The Fourteenth Amendment protects every person's constitutional right to earn a living without unreasonable government interference. *Greene v. McElroy*, 360 US 474, 492, 79 S Ct 1400, 3 L Ed 2d 1377 (1959). States have broad discretion to require people to obtain licenses before entering a trade, but any licensing and testing requirements they impose must rationally relate to a person's "fitness and capacity to practice" the profession. *Schware v. Bd. of Bar Exam'rs of the State of N.M.*, 353 US 232, 239, 77 S Ct 752, 1 L Ed 2d 796 (1957). Laws that lack such a rational relationship violate the Due Process Clause. Thus the state may not impose a licensing requirement on activities that have nothing to do with a legitimately licensed trade, or are only trivially connected to it. *Craigmiles v. Giles*, 312 F3d 220, 228 (6th Cir 2002), *St. Joseph Abbey v. Castille*, 712 F3d 215, 223-27 (5th Cir 2013); *Cornwell v. Hamilton*, 80 F Supp 2d 1101, 1118 (SD Cal 1999). A licensing requirement also violates the rational basis test if it arbitrarily treats individuals or businesses that are different as though they are the same, *Cornwell*, 80 F Supp 2d at 1103. Where licensing bodies broadly interpret the scope of licensing statutes to encompass activities that are plainly not the practice of the trade in question, it has the effect of prohibiting many persons from competing for the provision of honest, professional activities—including the creation of marketing drawings, as here. Such economic protectionism is not a constitutionally valid reason for government action under the Due Process Clause. *See Craigmiles*, 312 F3d at 229; *Castille*, 712 F3d at 222; *Merrifield v. Lockyer*,

547 F3d 978, 991 n 15 (9th Cir 2008). The Board's interpretation fails these requirements, and therefore should be avoided.

The Board's interpretation implicates the Due Process Clause because it would require people like Appellants to undergo training and satisfy licensing requirements unrelated to their profession. In *Craigmiles*, 312 F3d at 228, the Sixth Circuit held that it was irrational and unconstitutional to require people engaged in selling coffins to obtain funeral director licenses—which required two years of extensive training in skills that were not germane to selling caskets. For example, the licensing statute required applicants to undergo training in embalming, and proper disposal of dead bodies. *Id.* Yet casket sellers do not handle bodies, nor engage in embalming services. The court held that there was no rational reason to require casket sellers to undergo the same training as funeral directors. *Id.*

Similarly, *Cornwell,* 80 F Supp 2d 1101, involved a California law that required hair braiders to undergo hundreds of hours of education and testing to obtain a cosmetologist's license, when the cosmetology curriculum devoted only "a small number of overall hours" to subjects relevant to hair braiders. *Id.* at 1110. Only about six percent of the curriculum related to what braiders actually do. *Id.* at 1111. Moreover, the education and testing requirements did not teach information that was relevant to hair braiding. *See id.* at 1110 ("braiding is minimally taught in this course"). Thus "requiring [hairbraiders] to participate in

this curriculum in order to be able to practice their profession" was irrational and unconstitutional. *Id.* at 1115. *Accord, Clayton v. Steinagel*, 885 F Supp 2d 1212, 1214-16 (D Utah 2012).

Here, the Board's interpretation would require people like Appellants, who are engaged in activities unrelated to construction, to undergo training and learn skills dedicated to the ultimate goal of construction. *See* OAR 806-010-0070 (in order to be licensed, applicants must prove competence in "applications of codes and laws related to a building," "aesthetics," "the analysis, planning, design, and the inspection of construction of buildings," and "site development, structural, sanitary, mechanical, electrical, and other component parts thereto"). But Appellants' drawings were not plans, nor were they intended to be used for the design or the construction of the project. Instead, they were intended to get tenants to the table. Gramor understood that Appellants' work on the project was limited, and that actual plans would have to be drawn by licensed architects. Appellants did not design a building, nor did they dispense advice related to the structural aspects of a building—as would be tested on an architect's exam.

The Board notes that licensed architects make similar drawings during the course of their work, and that "master planning services" are tested for on the architectural exam. *See* Respondents' Opening Brief at 19. But as in *Cornwell*, requiring a professional to obtain a license in another profession merely because there is some minute overlap does not satisfy due process. Though architects

might make these drawings, they also do all sorts of tasks that Appellants did not engage in. As the ALJ stated in its opinion on this case, "[f]ully qualified architects may do some tasks, in the development of their business, that do not fall within the statutory definition of the practice of architecture. Just because architects may do those tasks does not make those tasks the practice of architecture." ER-1. Just as the fact that a cosmetologist may engage in hair braiding does not make hair braiding "cosmetology," the fact that an architect may make similar drawings to architects does not make the drawings, alone, "architecture."[8] The licensing requirements for architects are so attenuated to the marketing drawings so as to make licensure, in Appellants' case, irrational, and unconstitutional.

II

HANSEN'S USE OF THE TERM "LICENSED IN OREGON (PENDING)" DID NOT VIOLATE THE LICENSING STATUTE

Oregon law prohibits anyone from "assum[ing] or us[ing] the title of Architect," or "indicat[ing] that the person is practicing architecture" without a license. ORS 671.020(1). The Board contends that Appellants' reference to their

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[8] The Board admits as much elsewhere, when it states: "There is a grey area where the architect's practice may overlap the engineer's practice," yet it does not necessarily require engineers to obtain an architect's license or vice versa. The Oregon Bd. of Architect Exam'rs & Oregon State Bd. of Exam'rs for Eng'g & Land Surveying, *Reference Manual for Building Officials: The Architects' Law and the Engineers' Law* 7 (8th ed 2014).

work on Oregon projects, in conjunction with the phrase "Licensed in Oregon (pending)," indicates that they were practicing architecture, and therefore violates that prohibition. But the most straight-forward reading of the term "Licensed in Oregon (pending)" is that the speaker is *not yet* licensed. Appellants were entitled to truthfully communicate that they were not yet licensed in Oregon.

The Board argues that, because the word "licensed" is used in the past-tense, it suggests that Appellants had been licensed in the past. But that reading takes one word out of context, and ignores the modifier "(pending)," which immediately follows. The word "pending" eliminates any notion that Callison and Hansen were licensed. Under the Board's reasoning, disclaimers would have no value, because they come *after* the initial statement.

Oregon's robust free speech jurisprudence, *see State v. Robertson*, 293 Or 402, 649 P2d 569 (1982), as well as First Amendment cases, counsel in favor of avoiding the Board's interpretation. Appellants' references to their licensure status qualifies as commercial speech, because it is a self-descriptive business term like "CPA," *see Miller v. Stuart*, 117 F3d 1376 (11th Cir 1997), or "certified trial specialist." *See Peel v. Attorney Registration & Disciplinary Comm. of Illinois*, 496 US 91, 102, 110 S Ct 2281, 110 L Ed 2d 83 (1990). Under the First Amendment, the Board may not prohibit commercial speech that is not actually or inherently misleading. If commercial speech is truthful or only potentially misleading, the Board may not prohibit it—though it may regulate it by requiring

additional disclosures. The Board bears the burden of proving that any restriction directly advances a substantial government interest, and is no more extensive than necessary. It must demonstrate that the "harms it recites are real," and may not satisfy this burden by relying on "speculation or conjecture." *Edenfield v. Fane*, 507 US 761, 770-71, 113 S Ct 1792, 123 L Ed 2d 543 (1993). Because there is no reason to think that anyone was misled into thinking that Appellants were licensed in Oregon, and because the Board must require some sort of disclaimer rather than banning speech outright, the Board cannot satisfy this burden. Its interpretation should therefore be avoided to prevent calling the statute's constitutionality into question.

For the foregoing reasons, the court of appeals' decision should be affirmed.

DATED: December 6, 2016.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND
TYPE SIZE REQUIREMENTS

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a) is 4,471 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I filed the foregoing BRIEF ON THE MERITS OF RESPONDENT ON REVIEW DAVID HANSEN by causing it to be electronically filed with the Appellate Court Administrator on December 6, 2016, through the appellate eFiling system.

I further certify that, through the use of the electronic service function of the appellate eFiling system on December 6, 2016, I served the foregoing document on the following persons:

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