

Steve Trout

Oregon Elections Division

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Salem OR 97310

Sent via Email to [elections.sos@oregon.gov](mailto:elections.sos@oregon.gov)

December 1, 2017

Dear Mr. Trout:

I submit this complaint against Secretary of State Dennis Richardson regarding his newsletter issued November 29, 2017. This complaint alleges that the Secretary was acting in violation by using public resources to instruct voters to vote “No” on Ballot Measure 101 in violation of ORS 260.432.

On Nov. 29, the Oregon Secretary of State’s office released an audit of the Oregon Health Authority. That same day, Secretary of State Dennis Richardson e-mailed an online newsletter trumpeting that audit with the subject “OHA Audit Report — Agency of Wasteful Spending.” That newsletter was also made available on the Secretary of State’s government website.

The content and production of that newsletter are the substance of this complaint. In the newsletter, Richardson goes to great lengths to tie the findings of his audit to Ballot Measure 101 — effectively urging a “no” vote. In doing so, Richardson turned this government function into a political advocacy email. From the letter:

*“Soon Oregon voters will be considering whether or not to approve tax increases intended to provide additional funding to the OHA. With such abysmal examples of OHA misfeasance and obfuscation, OHA faces tough questions about its credibility and its ability to appropriately spend the money it is provided.”*

As an elected official, it is permissible for Richardson to electioneer, but it is not permissible for him to use public resources to advocate elections decisions. By using his official Secretary of State newsletter and his website to selectively present facts and effectively encourage a “no” vote, the Secretary is in violation of ORS 260.432, and the accompanying rules which clearly prohibit the use of public employee work time to advocate for or against measures or produce any materials that are not impartial.

The newsletter begs questions that can only be answered with a formal investigation:

- Did public employees use work time to help prepare or produce Richardson’s Nov. 29 newsletter?
- Has Secretary Richardson taken other actions that require public employees to use work time and resources?

- Have there been improper communications about Measure 101 with Richardson's paid political consultant and Chief Petitioner Julie Parrish?
- Has Secretary Richardson discussed Measure 101 in a biased and partial way with public employee staff?
- Has the Secretary of State violated any other rule to advance the opposition campaign to Measure 101?

As it would be a clear conflict of interest for Secretary of State Richardson or Elections Director Steve Trout to investigate their own conduct or that of their employees, we ask that the matter instead be referred directly to the Oregon Attorney General for investigation. Under ORS 260.995, the Attorney General may impose civil penalties "for each violation of any provision of Oregon Revised Statutes relating to the conduct of any election ... or any other matter preliminary to or relating to an election ...".

For reference, a series of guidelines and rules are included at the end of this complaint to show the variety of additional ways the Secretary may have violated election law.

As a former Secretary of State, I understand better than most the importance of staying and appearing neutral and above all reproach when it comes to the Secretary's management of elections. At a time when national politics aim to undermine voters' confidence in elections overall, it's more important than ever that our local elections can be trusted to be run in a fair, non-partisan and transparent manner. Secretary Richardson's apparent illegal activity here undermines that confidence.

The Secretary's actions here are even more troubling because he has a complicated and conflict-ridden relationship with Measure 101. It is well known that Richardson has financial ties to State Rep. Julie Parrish, one of the chief petitioners on Referendum 301 (now Ballot Measure 101). Previous calls for Richardson to recuse himself from overseeing this special election have gone unheeded. The newsletter quoted above raises additional questions about Richardson's ability to fairly and, critically, impartially oversee the January 23 election.

These conflicts, as well as the inherent conflict of the Secretary of State investigating himself for elections violations, mean the Secretary's office should refer this complaint to the Attorney General for investigation.

Thank you for your time.

Sincerely,



Jeanne Atkins  
Chair, Democratic Party of Oregon

CC: Secretary of State Dennis Richardson, via email [oregon.sos@oregon.gov](mailto:oregon.sos@oregon.gov)

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*The state manual on which complaints about "public employees" are grounded is [here](#): [Restrictions on Political Campaigning by Public Employees - ORS 260.432](#). This manual has been adopted as rule. OAR 165-013-0030.*

*ORS 260.432(1) states that a person - including public employers and elected officials - may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate. (p.4)*

*An elected official or any other employer of a public employee may not require or direct public employees to prepare or distribute advocacy materials. (p.4)*

*Oregon election law does not specify any amount of work time that may be used before a violation occurs, so a public employee may be found in violation even though they used a minimal amount of work time. (p.4)*

*All non-elected public employees are covered by 260.432. Elected officials are covered insofar as they direct other public employees to engage in political activities. (p.4)*

*An elected official may engage in political activity during work time. Elected officials are not considered public employees for the purposes of ORS 260.432. (p.10)*

*Elected officials cannot request public employees who are on the job or acting in an official capacity to engage in political advocacy. A request made by an elected official is considered a command. (p.10)*

*An elected official's quote, opinion piece, letter or speech advocating a political position may not be published in a jurisdiction's newsletter or other publication produced or distributed by public employees. (See Material Produced by Governing Bodies, page 12.)(p.10)*

*Public employees may not prepare the text for a speech, a press release, constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, file contribution and expenditure (C&E) transactions online, etc. during their work time. (p.10)*

*An elected official may only solicit volunteer help from public employees during employee breaks or other personal time. (p.10)*

*ORS 260.432 applies for initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer. (p.15)*

*Public Presentations and Speeches: An elected official may give political presentations and speeches, so long as no public employee work time is utilized. (p.8)*

*A public employer may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. They may not encourage (implicitly or explicitly) public employees to support or oppose the measure. (p.17)*

