



Sept. 12, 2019

Governor Brown,

State public records law is the foundation of how Oregonians receive timely, accurate information about their government, one that has repeatedly led to the exposure and deterrence of fraud, waste and public corruption. Given the importance of transparency in our democratic society, the Oregon Territory Chapter of the Society of Professional Journalists encourages you to uphold your long-held stance on good government and rescind the appointment of Misha Isaak to the Oregon Court of Appeals. We also would respectfully ask that you work with the Legislature to advance reforms to ensure the independence of the Oregon Public Records Advocate.

Our concerns regarding Isaak are as follows:

- The Court of Appeals plays a critical role in resolving disputes over the Oregon Public Records Law, including *Cylvia Hayes vs. Oregonian* and *ACLU vs. City of Eugene* in recent years. Once his tenure begins, Isaak would be in a position to rule on similarly important cases, including the closely-watched pending matter in which West Linn city officials have claimed that they are not subject to records law.
- Outgoing Oregon Public Records Advocate Ginger McCall has stated that she was instructed by Isaak to maintain a façade of independence while advocating for his vision of transparency, and to pursue reforms destined to fail, rather than crafted for consensus. Due to his lack of judicial experience, he has no demonstrated public record of commitment to the public trust. Therefore, we are profoundly concerned by the appearance that Isaak is willing to employ subterfuge.
- Isaak's stance on transparency has provoked concern in the past. Last spring the Legislature considered HB 3399, which would have changed the

efficient pre-court appeal system that allows Oregonians to appeal to district attorneys or the Oregon Attorney General to obtain records from recalcitrant agencies. Some members of the transparency community and district attorneys raised strong concerns about likely unintended but major consequences, such as that the bill would cripple the appeals system and promote secrecy. Isaak's testimony dismissed opponents' concerns in a manner suggesting that either a) he was unaware of how the law and district attorneys' offices work, or b) was knowingly advancing a disingenuous argument. Either interpretation is concerning.

Given the allegations now being made about Isaak as well as his lack of judicial record, his tenure would likely be plagued by a perception that his rulings pertaining to state government, government transparency in general, or partisan politics won't be impartially rendered, contrary to the requirements of the Oregon Code of Judicial Conduct.

Regarding the independence of the Advocate, we believe more needs to be done to achieve the vision of the Attorney General's Public Records Reform Task Force, which in 2016 recommended the Advocate be an independent office to ensure fairness. We ask that you work with the Legislature to immediately craft reforms ensuring that office's independence, including budget protections similar to those of the Oregon Government Ethics Commission.

Sincerely,

Amanda
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On behalf of the SPJ Oregon Territory Board