

Public records council wants independent advocate

By **Aubrey Wieber** and **Claire Withycombe**
Oregon Capital Bureau



Gov. Kate Brown

I don't think this can be an effective office or effective council if we don't act on it."

The office, in addition to providing education and training on public records, serves as a mediator in resolving disputes between requestors and public bodies.

Members of the public who were present at the meeting said they supported the notion of an independent advocate.

"Perception matters," Rory Bialostosky, a plaintiff in a public records case against a West Linn City Councilor who said he consulted the public records advocate in the early stages of his dispute, told the records advisory council.

Scott Winkels, a lobbyist for the League of Oregon Cities who sits on the council, advocated for a third party review of McCall's departure and the circumstances of her departure from an agency like the Department of Justice or the Oregon Law Commission.

McCall described back-channel attempts at influencing her work and urging from the governor to be a member of the "(Department of Administrative Services) team."

In a series of records released this week, McCall detailed her interactions with governor's staffers over the question of to whom she reported, how she sought an opinion from the Department of Justice on the matter and her efforts trying to get more money from the legislature for the office of the advocate.

"The question is, how much of this is conduct, and how much of it was structure?" Winkels said.

Oregonians value access to public records, according to figures that John Horvick, director of client relations and polit-



Ginger McCall

ical research at DHM Research in Portland, shared on Twitter this week. In January 2017, 55% of Oregon voters

said they strongly agreed that every citizen should have "complete access to information about their state government." Thirty percent somewhat agreed with the statement.

"The public has a right to know what is being done in their name," said Ramya Krishnan, a staff attorney with the Knight First Amendment Institute at Columbia University. "And public records laws are important because they recognize that right. Without public records laws, it would be that much harder for the public to find out about things like government misconduct and corruption, because governments generally don't want to turn that information over. It makes them look bad."

Oregonians need to be able to trust that the public records advocate will be objective in responding to their requests for help, advice or answers to questions, and in resolving disputes between requestors and public agencies over records, McCall said.

It also matters because the advocate is on the public records council, which is supposed to propose policies for improving access to public records.

"The advocate needs to be able to zealously advocate for proposals that will improve transparency," McCall said. "Regardless of whether or not those proposals forward the interests of an elected official."

And, generally speaking, the public should know where elected officials stand, McCall said.

"In order for the public to be able to decide whether or

not they want to support a particular elected official, they need to know what that elected official is for and against," she said. "If the elected official is instead asking other people to carry water for them so that they don't have to be accountable for what they're opposing or proposing, that's a problem."

"The purpose of public records laws is to promote transparency and meaningful participation in self-government," Krishnan said. "And any attempt to politicize the administration or oversight of those laws compromises that project."

"It's good to see states that do this," Daniel Bevarly, the executive director of the National Freedom of Information Coalition, said of creating public records advocates in state government. "But it's troubling, when you have a state that actually created an office of open government to be more transparent, to actually see people violating the spirit, if not the intent, of the law to make these things independent and let them operate independently."

'Truly independent'

The week's events have been a stress test for one of Brown's ostensible tenets: transparency.

Brown ascended to Mahonia Hall in 2015 after Gov. John Kitzhaber resigned amid an influence-peddling scandal. In her inaugural speech, Brown said, "we must restore the public's trust."

Yet public trust is shaky after McCall told a different story. And, despite Brown's pledge back in 2015 to rebuild Oregonians' confidence in state government, Brown has been largely quiet on the matter since Sept. 9.

She has not named specific reforms to the position to make it "truly independent," as she called for Sept. 9.

Spokespeople for Brown

did not respond by deadline to a list of written questions from the Oregon Capital Bureau Friday, instead providing a previous statement clarifying spokesman Chris Pair's claim that McCall's allegations were false. He said that claim was made before McCall's memos were released.

"It was in response to the general allegation made in the resignation letter to Governor Brown that the governor's office did not share the view that the Public Records Advocate should operate with a high degree of independence," Pair wrote in an email. "The governor's office does share that view."

Brown and McCall met on Sept. 11.

"It was a brief, but friendly meeting," McCall said. "She asked me for my thoughts on the independence issue and what could be done, and I proposed a couple of just initial reforms that I thought would be helpful, but that the council's going to be meeting and I hope that the council will come up with more robust ideas."

McCall said she thought it would be "great" if Brown committed to making changes to address the problem.

Trust issues

The scandal comes as Brown is facing trust issues with voters. Simultaneous recall efforts are nearing the finish line in their mission to gather roughly 300,000 signatures to give voters another shot at approving Brown.

The groups' organizers have said Brown has disregarded the will of Oregonians in pushing policies like new carbon emissions regulations, giving driver's licenses to undocumented immigrants and a new business tax used to fund public education.

Brown's dealings with McCall fit right into that, said Oregon Republican Chairman Bill Currier, who is leading one

of the recall efforts. Currier said he was at one of the recall booths Thursday night, Sept. 12, in Mt. Angel.

"There were a number of people there who mentioned the public records debacle," he said.

Currier said he has heard of an uptick in interest for signing the petition this week, following the news stories about the public records issues. How much of that is a response to the story is unclear, he said, as the effort has started to break more into urban areas.

Brown came into office after Gov. John Kitzhaber resigned due to a transparency scandal. She promised to be a transparent leader, but Currier said she's been anything but.

"She promised to make transparency a priority," he said. "Essentially what she's done is made blocking it and objecting to it every step of the way a priority."

Currier declined to say how many signatures the GOP effort has, but repeatedly said "we're where we need to be," and that he thinks the effort can be successful.

The incident has also raised questions about Brown's recent appointment of her general counsel, Misha Isaak, to the Oregon Court of Appeals. Two complaints about Isaak have been lodged with the Oregon State Bar. And the Oregon Territory chapter of the Society of Professional Journalists called on Brown to rescind Isaak's appeals court appointment.

The governor's office has looked into whether judicial appointments can be rescinded. But no announcement has been made.

"When the governor's chief counsel, who's responsible for lining up judicial appointments, then becomes a nominee for a judicial appointment they are really underqualified for, it's inappropriate," Currier said.

U.S. Supreme Court ruling could throw decades of Oregon convictions into question

By **Aubrey Wieber**
Oregon Capital Bureau

The U.S. Supreme Court could force Oregon into doing what every other state already does: requires every juror to vote to convict before a person is judged guilty.

Such a decision by the Supreme Court in a case now before it could make it more difficult for prosecutors to get convictions and could provide a new avenue of appeal for those already convicted.

The looming ruling pits some of Oregon's criminal justice reform champions against each other. Attorney General Ellen Rosenblum recently submitted a brief to the high court, urging the justices to find that split decisions are constitutional. A decision rejecting such verdicts would send the Oregon court system into disarray, she said.

Rosenblum is against split decisions, but said Oregon has been following previous Supreme Court rulings that unanimity is not required. Her role in submitting a legal filing to the court was "making sure the supreme court is aware of the impact on our state justice system," she said.

For the past 85 years, people in Oregon charged with most felonies can be convicted if at least 10 of the 12 jurors vote guilty. Oregon is the only state to allow split decisions. Recently, Louisiana moved away from split

decisions. Rosenblum is worried that overturning a 1972 U.S. Supreme Court ruling in *Apodaca v. Oregon*, which upheld split decisions, would impact past cases. The U.S. Supreme Court is considering a case from Louisiana to determine whether a split decision is constitutional.

Oregon's court system doesn't track how the jury votes in convictions. Rosenblum's spokeswoman, Kristina Edmunson, said state Justice Department lawyers are aware of about 300 cases where there was a split guilty verdict.

Rosenblum said the actual number could be much higher — potentially in the thousands.

Roughly 97% of criminal cases are resolved without a trial. But in two out of three cases that do get to a jury, convictions result from split verdicts, according to the Justice Department.

If the Supreme Court abolishes split verdicts, the state wouldn't take action to review convictions resulting from unconstitutional conduct. Instead, according to Rosenblum's staff, it would be up to defendants to challenge their convictions, and defense attorneys have been preparing for such appeals.

Aliza Kaplan, Lewis and Clark Law School professor, said she's puzzled why Rosenblum is trying to sink what

she considers crucial reform for Oregon's criminal justice system.

Rosenblum said, since the Supreme Court ruled in 1972 that split decisions were legal, she doesn't think past cases should be overturned. She wants voters to approve a change to unanimity going forward.

Rosenblum said either way defense attorneys will file appeals, but said her team has been preparing legal arguments for that.

Kaplan contended in her own brief filed with the Supreme Court that split decisions are unconstitutional. Her brief was joined by Gov. Kate Brown, former governors John Kitzhaber, Ted Kulongoski and Barbara Roberts, and several former state Supreme Court justices.

Commission taps Strickler to lead ODOT

By **Claire Withycombe**
Oregon Capital Bureau

Oregon's transportation commissioners have chosen Kris Strickler, head of the Oregon Department of Transportation's highway division, to be the agency's new leader.

The commissioners voted on the appointment Tuesday evening, chosen after a national search to replace longtime director Matt Garrett that took six months.

Before leading ODOT's highway division, Strickler was the Southwest Regional administrator at the Washington Department of Transportation. In an earlier role at ODOT, he led the Columbia River Crossing project for the department. That effort

to replace the Interstate 5 bridge across the Columbia River failed, largely because Washington lawmakers backed out of \$450 million they committed for the project.

Strickler's appointment five years later comes as Oregon lawmakers have renewed the charge to work with Washington to replace the bridge. Strickler must be confirmed by the Oregon Senate, and his pay and benefits will be negotiated in the coming weeks.

"I'm eager to lead the agency in this dramatic time of growth in our state and to work to modernize our transportation network, diversify the department's workforce, and bring innovative solutions to achieve Oregon's transportation,

environmental and economic goals," Strickler said in a statement shortly after the vote.

Garrett stepped down in June after nearly 14 years at the helm.

Strickler will manage an agency with an annual budget of about \$2 billion. He will continue carrying out projects funded by a major bill lawmakers passed in 2017 that raised \$5 billion for a decade's worth of transportation projects.

In a statement, Gov. Kate Brown called Strickler "the right person to help ODOT continue its transformation."

"He has driven the agency's vision for how to address the complex mobility needs of our region and brings strong interstate partnerships to bear," Brown said.

Your Rural Family Health Clinic



Grant County HEALTH Department
528 E. Main, St. E.
John Day

Monday - Thursday
7am - 6pm
Friday 8am - 5pm
Mendy Sharpe FNP

Appointments available

Call and schedule your appointment today!
TOLL FREE
888-443-9104
or 541-575-0429

Grant County Health Department does not discriminate against any person on the basis of race, color, national origin, disability, or age in admission, treatment, or participation in its programs, services and activities, or in employment.

Services Provided:

- Primary Care
- Acute Care
- Women's Health Exams
- Men and Children Exams
- Immunizations
- Family Planning
- Contraception
- Pregnancy Testing & Referrals
- HIV Testing & Referrals
- Cocoon
- WIC
- High Risk Infants
- Maternity Case Management

Raise a voice of Awareness

Join the Blue Mountain Eagle as we connect with local partners to campaign for Domestic Violence Prevention

October is Domestic Violence Awareness Month

We will be donating half of all the proceeds to the Heart of Grant County for Domestic Violence Awareness

Talk to Kim about pricing and supporting a great cause!



The Blue Mountain EAGLE

www.MyEagleNews.com

Call Kim Today
541-575-0710
kim@bmeagle.com

