IN THE SUPREME COURT
OF THE STATE OF OREGON

CITY OF PORTLAND, an Oregon municipal corporation, Plaintiff-Respondent, Petitioner on Review, v. MARK BARTLETT, Defendant-Appellant, Respondent on Review.	Multnomah County Circuit Court Case No. 16CV01529 CA No. A164469 No. S067940

BRIEF ON THE MERITS OF PETITIONER ON REVIEW CITY OF PORTLAND

On review of the decision of the Court of Appeals on an appeal from the Judgment of the Circuit Court for Multnomah County, the Honorable Eric J. Neiman, Judge.

Opinion Filed June 10, 2020
Majority opinion by Shorr. J., joined by Egan, C.J., and Armstrong, Ortega, Tookey, DeHoog, Aoyagi, Mooney, and Kamins, JJ.
Dissenting opinion by Powers, J., joined by DeVore and James, JJ.

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STATEMENT OF THE CASE

Nature of the Action & Relief Sought

This case is on review from a decision of the Court of Appeals that reversed a circuit court judgment granting declaratory relief to the City of Portland ("the City") in a public-records matter. *City of Portland v. Bartlett*, 304 Or App 580, 468 P3d 980 (2020) (*en banc*). Defendant had sought disclosure under the Public Records Law, ORS Chapter 192, of several City Attorney advice documents older than 25 years. The City denied that request, citing the attorney-client privilege; defendant petitioned the Multnomah County District Attorney, who ordered disclosure notwithstanding the privileged nature of the communications. The City challenged that order in the Multnomah County District Court, which entered a declaratory judgment in the City's favor. Defendant appealed, and the Court of Appeals reversed.

Nature of Judgment of the Circuit Court

On cross-motions for summary judgment, the Circuit Court for the County of Multnomah held that ORS 192.390 does not require the disclosure of "attorney-client privileged documents that are more than

25 years old," and that "the documents [defendant requested] remain privileged." (ER 3-8). On March 8, 2017, the Circuit Court entered a "General Judgment Granting Declaratory Relief" stating in relevant part, "[t]he documents ordered produced by the District Attorney are attorney-client materials exempt from disclosure" under the Public Records Law. (ER 1-2).

Nature of the Judgment of the Court of Appeals

The Court of Appeals, sitting *en banc*, reversed the judgment of the Circuit Court in a split decision. The majority held that "ORS 192.390 requires the disclosure of * * * attorney-client privileged records that are older than 25 years old" and, therefore, that "[t]he trial court erred in granting summary judgment to the city and * * * denying summary judgment to defendant." *Bartlett*, 304 Or App at 597. The dissent would have held otherwise and affirmed the judgment of the Circuit Court. *Id*. at 597-606 (Powers, J., dissenting, joined by DeVore and James, JJ.)

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Legal Questions Presented

1. ORS 192.390 provides that, notwithstanding ORS 192.355, "public records that are more than 25 years old shall be available for inspection." ORS 192.355 codifies numerous exemptions from disclosure under the Public Records Law, and it also includes catchalls for records "the disclosure of which is prohibited by federal law or regulations" or "made confidential or privileged under Oregon law." Does the attorney-client privilege override the application of ORS 192.390?
2. The ability to consult freely with counsel and obtain candid legal advice is integral to the operations and autonomy of local government. As a general matter, only a client may decide whether to disclose information protected by the attorney-client privilege. Would construing ORS 192.390 to require disclosing privileged information over the City's objection run afoul of the Home Rule amendments of the Oregon Constitution?

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Proposed Rules of Law

1. The attorney-client privilege is neither codified in, nor is it a creature of, the Public Records Law, ORS Chapter 192. By enacting ORS 192.390, a general provision that does not refer to the attorney-client privilege, the legislature did not intend to abrogate, limit, or waive that privilege on behalf of public bodies, their officers, and employees after 25 years. The attorney-client privilege accordingly controls over the more-general provisions of ORS 192.390.

2. A city' ability to consult freely with counsel and obtain candid legal advice is integral to the autonomy guaranteed by the Home Rule amendments of the Oregon Constitution. Those amendments therefore prevent the legislature from abrogating, limiting, or waiving the attorney-client privilege of home-rule cities. ORS 192.390 should be construed to operate consistently with the Constitution and not command home-rule cities, over their objection, to disclose information protected by the attorney-client privilege.

Summary of Argument

Defendant submitted a public-records request for four City Attorney documents that are protected by the attorney-client privilege. The City, citing the privilege, declined to disclose those documents, and this case ensued.

The parties do not dispute that the documents defendant seeks are protected by the attorney-client privilege. Rather, this appeal centers around the meaning of a specific provision of the Public Records Law, ORS 192.390. Defendant argues that this statute, which generally imposes a 25-year sunset on exemptions from disclosure under the Public Records Law, also applies to attorney-client privileged documents. Because, here, the documents that defendant seeks are older than 25 years, defendant argues that they must be disclosed despite being privileged. Defendant is incorrect.

The text of ORS 192.390 refers only to exemptions listed in other parts of the Public Records Law, and the attorney-client privilege is not codified in any of the statutes referred to. While ORS 192.390 does refer to ORS 192.355, that latter statute does not codify the attorney-client

privilege either. Instead, it codifies numerous exemptions from disclosure solely for the purposes of the Public Records Law itself. And while ORS 192.355 does also contain catchall exemptions for materials "the disclosure of which is prohibited by federal law or regulations" or "made confidential or privileged under Oregon law," nothing in the text and context of ORS 192.390 suggests that the legislature intended thereby to place a 25-year sunset on the attorney-client privilege.

That conclusion is supported by the legislative history of ORS 192.390. This shows that the legislature's intent in adopting that provision was to set a 25-year sunset on exemptions codified in the Public Records Law itself—especially those codified exemptions that required custodians of records to balance competing interests in privacy and disclosure. Nothing in the legislative history suggests that the relatively narrow language of ORS 192.390, which states that the 25-year sunset applies "notwithstanding" three specific statutes in the Public Records Law, was intended to sunset essentially all confidentiality laws and privileges, state or federal, after 25 years.

Furthermore, construing ORS 192.390 to trump the attorney-

client privilege would create numerous textual and constitutional problems. That construction would render the "notwithstanding" clause of ORS 192.390 mere surplusage, because the 25-year sunset would now apply to essentially all confidentiality laws and privileges, state and federal, regardless of where they are codified. It would also, on its face, require the disclosure of materials "the disclosure of which is prohibited by federal law or regulations," which would violate the Supremacy Clause of the United States Constitution. That construction would also effectively create a lesser class of attorney-client privilege for public officials or employees represented in their personal capacities, which would be problematic under the Equal Protection and Due Process clauses of the Fourteenth Amendment.

Furthermore, the Home Rule amendments of the Oregon Constitution—Article IV, section 1(5), and Article XI, section 2—bar the legislature from interfering with the "structure and procedures" of home-rule cities. The ability to consult freely with counsel and obtain candid legal advice is integral to those structures and procedures, and the Home Rule amendments therefore prevent the legislature from

abrogating, limiting, or waiving the attorney-client privilege of home-rule cities even if it wished to do so. This Court should construe ORS 192.390 to operate consistently with the Oregon Constitution and not require home-rule cities, over their objection, to disclose information protected by the attorney-client privilege.

In sum, text, context, legislative history, and the rule that this Court should, whenever possible, construe and interpret statutes in a manner as to avoid any serious constitutional problems, each weigh in favor of the conclusion that ORS 192.390 does not trump the attorney-client privilege. For those reasons, as explained below, this Court should reverse the judgment of the Court of Appeals.

Statement of Facts

Defendant submitted a public-records request for "City Attorney opinions 81-44, 82-150, 88-165 and a memorandum dated March 9, 1990 from City Attorney Jeffrey Rogers to Mayor Bud Clark and commissioners Lindberg and Bogle." (ER-75). The City denied that request, "citing attorney-client privilege." (ER-75).

Defendant challenged that denial in a petition to the Multnomah

County District Attorney, in accordance with ORS 192.411 and ORS 192.415. (ER-75-80). The District Attorney confirmed that the requested records were indeed privileged: "Having reviewed the documents at issue, they clearly qualify as attorney-client privileged advice * * *." (ER-75). But he went on to hold that, as a matter of law, ORS 192.390 (*former* ORS 192.495) requires the disclosure of information covered by the attorney-client privilege if it is older than 25 years. (ER-75-79). Here, because the requested records were "all over 25 years [old]," the District Attorney ordered the City to disclose them even though they "clearly qualify as attorney-client privileged advice * * *." (ER-75).

The City challenged that decision in the trial court, praying for a judgment "declaring that the documents ordered produced by the District Attorney are exempt from disclosure and therefore protected from disclosure to defendant, its agents, employees or other third parties." (ER-73). The City subsequently moved for summary judgment, arguing, *inter alia*, that "[t]he attorney-client privilege exists independently of the Oregon Public Records Law" and that ORS 192.390 does not abrogate, limit, or waive the attorney-client privilege

after 25 years. (ER-35). The City also argued that construing ORS 192.390 to require the disclosure of information protected by the attorney-client privilege would violate the Home Rule provisions of the Oregon Constitution. (ER-36). Plaintiff cross-moved for summary judgment, also seeking declaratory relief.

The trial court granted the City's motion for summary judgment and denied defendant's cross-motion. (ER-3-8). Specifically, the trial court concluded that ORS 192.390 does "not impose a time limit on the [attorney-client] privilege in the government setting" and that "the documents [requested by defendant] remain privileged." (ER-8). The trial court subsequently entered a General Judgment Granting Declaratory Relief stating, *inter alia*, "The documents ordered produced by the District Attorney are attorney-client privileged material exempt from disclosure to [defendant], its agents, employees, or other third parties." (ER-2).

Defendant appealed, and the Court of Appeals reversed in a split *en banc* decision. The majority "acknowledge[d] that the issue is close" but ultimately "conclude[d] that ORS 192.390 requires the disclosure of

* * * attorney-client privileged records that are older than 25 years old." *Bartlett*, 304 Or App at 591, 597. The majority further held that its construction of ORS 192.390 "does not violate the city's home-rule authority under the Oregon Constitution." *Id.* at 596.

The dissent, by contrast, found "no textual or contextual reason to interpret the sunset provision in ORS 192.390" to "place a 25-year time limit on lawyer-client privileged records for public bodies." *Id*. at 602 (Powers, J., dissenting, joined by DeVore and James, JJ.) The dissent pointed out that the majority's reading of ORS 192.390 "creates an avoidable interpretive conflict" with OEC 503 and "creates a disparity between lawyer-client communications involving public bodies and private parties." *Id*. Furthermore, "the logic of the majority applies the 25-year sunset to all public records exemptions in Oregon law," despite many exemptions being codified outside the Public Records Law and the "policy interest embodied in such exceptions not necessarily being diminished by the passage of time"—such as "information on voter's disability in voter registration records" under ORS 247.973(5), or the "identity of individuals receiving HIV-related tests" under ORS

433.045(4)(a). *Id*. at 604-06. The dissent accordingly would have affirmed the judgment of the trial court.

ARGUMENT

The 25-year sunset on exemptions from disclosure under the Public Records Law does not apply to material protected by the attorney-client privilege.

The facts of this case are undisputed: "the records in question are subject to the attorney-client privilege and * * * they are older than 25 years." *Bartlett*, 304 Or App at 584. The questions before this Court are purely legal ones, centering on whether "ORS 192.390 requires the disclosure of * * * attorney-client privileged records that are older than 25 years." *Id*. at 597. As explained below, ORS 192.390 does not trump the attorney-client privilege, and this Court should expressly hold as much.

I. The attorney-client privilege was neither created by, nor is it codified in, the Public Records Law, and the Public Records Law does not abrogate, limit, or waive that privilege for public bodies, their officers, and employees after 25 years.

This case involves the meaning and application of ORS 192.390, which states the following in full: "Notwithstanding ORS 192.338,

192.345 and 192.355 and except as otherwise provided in ORS 192.398, public records that are more than 25 years old shall be available for inspection."[1] Whether that provision trumps the attorney-client privilege is a matter of statutory interpretation.

This Court interprets statutes by following the approach laid out in *PGE v. Bureau of Labor & Indus.,* 317 Or 606, 859 P2d 1143 (1993) (superseded in part by statute), and *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009). The "paramount goal" of that approach is "discerning the legislature's intent." *Gaines*, 346 Or 160 at 171. Because "there is no more persuasive evidence of the intent of the legislature than the words by which [it] undertook to give expression to its wishes," the analysis looks primarily to statutory text and context. *Id.* (internal quotation marks and citations omitted). This Court also may consider legislative history "where that legislative history appears useful to the court's analysis." *Id.* at 172. While legislative history cannot be used to "rewrite" a statute, it may be used either "to identify or resolve

[1] Until recently, that provision was codified at *former* ORS 192.495. It was renumbered ORS 192.390 by legislative counsel in 2017.

ambiguity in legislation." *Halperin v. Pitts*, 352 Or 482, 495, 287 P3d 1069 (2012) (citing *U.S. West Communications v. City of Eugene*, 336 Or 181, 188, 81 P3d 702 (2003)). Finally, "If the legislature's intent remains unclear after examining text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty." *Gaines*, 346 Or 160 at 172.

1. The text and context of ORS 192.390 do not reflect any legislative intent to abrogate, limit, or waive the attorney-client privilege of public bodies, their officers, and employees after 25 years.

On its face, ORS 192.390 does not refer to the attorney-client privilege at all. Rather, it states generally that, "[n]otwithstanding ORS 192.338, 192.345 and 192.355 and except as otherwise provided in ORS 192.398"—in other words, notwithstanding enumerated provisions *of the Public Records Law*—"public records that are more than 25 years old shall be available for inspection." ORS 192.390. The attorney-client privilege is not a creation of, and it is not codified in, any of the statutes enumerated in ORS 192.390 or elsewhere in the Public Records Law. Thus, as a textual matter, ORS 192.390 does not evidence any legislative intent to abrogate, limit, or waive privileges that are codified

outside the specific statutes identified in its "notwithstanding clause."

The use of the word "notwithstanding" in ORS 192.390 is significant because it limits that statute's application to the provisions enumerated therein. The word "notwithstanding" is defined in relevant part as, "without prevention or obstruction from or by **:** in spite of * * *." *Webster's Third New Int'l Dictionary* 1545 (unabridged ed 2002). As this Court has explained, the "function of [a] notwithstanding clause" in a statute "[is] to make the statute an exception to the provisions of law referenced in the clause." *Severy v. Bd. of Parole*, 318 Or 172, 178, 864 P2d 368 (1993).

Here, by using the word "notwithstanding" followed by enumerated statutes, the legislature expressed the intent to make ORS 192.390 an exception to those enumerated statutes only. The text of ORS 192.390 does not evince a broader intent to create a general 25-year sunset for all privileges and confidentiality laws, state and federal, wherever codified. Otherwise, as the dissent below correctly pointed out, the "notwithstanding" clause would have been superfluous, and the legislature could have stated simply, "public records that are more than

25 years old shall be available for inspection." *Bartlett*, 304 Or App at 601 (Powers, J., dissenting). Or it could have stated, as it has in several other statutes, "notwithstanding any other provision of law." *See Id*. (citing ORS 197.772(1), ORS 475B.968(7), and OEC 412(2)). Significantly, the legislature did not do so here.

Quite simply, the legislature knows how to draft broad provisions of general applicability when it wishes to do so. *See, e.g.,* ORS 197.772(1) (stating in part, "[n]otwithstanding any other provision of law, a local government shall allow a property owner to refuse to consent to any form of historic property designation"). That it chose not to do so here—and instead expressly identified only three statutes in a "notwithstanding" clause—demonstrates a narrower intent. This Court should interpret ORS 192.390 in accordance with its plain language and decline to construe it in a way that would render its "notwithstanding" clause meaningless. *See Arken v. City of Portland,* 351 Or 113, 156, 263 P3d 975 (2011) (noting "cardinal rule of statutory construction to give significance and effect to every part of a statute" and "well-established principle to avoid interpretations of statutes that render portions of

them redundant."); *Baker v. City of Lakeside*, 343 Or 70, 76, 164 P3d 259 (2007) ("[W]e are hesitant to conclude that * * * the legislature intended that the notwithstanding clause would address a completely different issue * * * and, in doing so, depart from a procedural rule that had been an accepted part of Oregon practice for more than 100 years.")

Here, the only statute cited in the "notwithstanding" clause of ORS 192.390 that has any arguable bearing on the attorney-client privilege is ORS 192.355. That statute creates and codifies numerous exemptions from the disclosure requirements of the Public Records Law. Those codified exemptions are too numerous to list here, but include "[i]nformation of a personal nature such as but not limited to that kept in a personal or medical file," "[i]nformation submitted to a public body in confidence," and "[i]nformation or records of the Corrections Division," among many others. *See* ORS 192.355(2), (4), (5). Those enumerated exemptions were created by, and are codified in, the Public Records Law, ORS Chapter 192, itself.

In addition to those exemptions codified in the Public Records Law, ORS 192.355 also contains two catchall exemptions. The first

provides that the Public Records Law does not require the disclosure of "public records or information the disclosure of which is prohibited by federal law or regulations." ORS 192.355(8). The second states the same with respect to "records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 192.355(9)(a).

Notably, those two catchalls are substantially different from every other exemption listed in ORS 192.355. Unlike, for example, the codified exemptions for "[i]nformation of a personal nature such as that kept in a personal or medical file," or "[i]nformation or records of the Corrections Division" mentioned above, the unspecified state or federal laws referred to in the catchalls exist independently of the Public Records Law. Put differently, the catchalls did not create and do not codify the attorney-client privilege (or countless other state or federal privileges and confidentiality laws). Indeed, the catchalls do not even refer explicitly to the attorney-client privilege or to any of the unspecified state or federal laws to which they apply. Nor were the catchalls necessary to give effect to the attorney-client privilege (or to

any of those other, unspecified, state or federal laws).

For those reasons, one could argue that the catchalls were unnecessary additions to the Public Records Law, because many privileges and confidentiality laws already existed (and would continue to exist) regardless of its enactment. But that argument would be mistaken. Text, context, and legislative history show that the catchalls were adopted in an attempt to avoid ambiguity and to confirm that, by adopting the Public Records Law, the legislature did not intend to create conflicts with federal law or to impliedly repeal privileges and confidentiality laws that exist outside the confines of ORS Chapter 192.

To understand this, it is necessary to review the separate histories of the attorney-client privilege and the Public Records Law.

2. The attorney-client privilege long predates the Public Records Law.

The attorney-client privilege "is the oldest of all the evidentiary privileges and is recognized in every American jurisdiction." *State v. Jancsek*, 302 Or 270, 274, 730 P2d 14 (1986) (citing Laird C. Kirkpatrick, *Oregon evidence* 146 (1982)). Like their counterparts across the nation and the ages, Oregon courts have long recognized that the

ability to consult with counsel would mean little if it did not include a concomitant right to confidentiality: "Lawyers can act effectively only when fully advised of the facts by the parties whom they represent"—and this requires that a client "know that 'what he tells his lawyer in confidence cannot, over his objection, be extorted in court from the lawyer's lips.'"[2] *Jancsek*, 302 Or at 274 (quoting *McCormick on Evidence* § 205 (3d ed 1984) (internal brackets omitted)). By "encourag[ing] full and frank communication between attorneys and their clients," the attorney-client privilege "promote[s] broader public interests in the observance of law and administration of justice." *State ex rel. OHSU v. Haas*, 325 Or 492, 500, 942 P2d 261 (1997) (quoting *Upjohn Co. v. United States*, 449 US 383, 389 (1981)).

The attorney-client privilege is a fundamental aspect of Anglo-American law that long predates—and is not a creation of—Oregon law. References to the privilege can be found in authorities going as far back

[2] For that reason, in the criminal context, confidentiality is a key element of the constitutional right to counsel. *See State v. Durbin*, 335 Or 183, 190, 63 P3d 576 (2003) (holding, "confidentiality is 'inherent' in the right to counsel.")

as the 17th Century. *See., e.g., Waldron v. Ward*, 82 Eng Rep 853 (KB 1654) ("a counceller at the Bar * * * is not bound to make answer for things which may disclose the secrets of his clients cause, and thereupon he was forborn to be examined."); *Bulstrod v. Letchmere*, 22 Eng Rep 1019 (Ch 1676) ("a counsellor at law, shall not be bound to answer concerning any writings which he hath seen, nor for any thing which he knoweth in the cause as counsellor.")

Courts, including Oregon courts, have long recognized that the attorney-client privilege promotes the administration of justice by ensuring full and frank communication between client and lawyer. *Baker et al. v. Arnold*, 1 Cai R 258, 272, 1803 WL 655 (NY Sup Ct 1803) (opinion of Livingston, J.) ("The right which clients have to the secrecy of their counsel, produces confidence and a full disclosure of every fact necessary to the latter's forming a just estimate of their several cases"); *Upjohn*, 449 U.S. at 389 ("The privilege recognizes that sound legal advice or advocacy serves public ends"); *Vela v. Sup Ct*, 208 Cal App 3d 141, 147, 255 Cal Rptr 921, 924 (1989) (the privilege "encourage[s] a client to disclose all relevant facts to his attorney by removing any

apprehension that the confidential communications will later be disclosed to others."); *Jancsek*, 302 Or at 274 (the privilege "promot[es] the full disclosure of information by clients," in recognition that "[l]awyers can act effectively only when fully advised of the facts by the parties whom they represent"). As this Court has explained, "When one seeks legal advice, the protections of the lawyer-client privilege are implicated, because appropriate legal advice requires frank communication between the client and the lawyer." *Durbin*, 335 Or at 189.

Furthermore, "the purpose of the lawyer-client privilege cannot be fulfilled unless the communications between a client and a lawyer are confidential." *Id*. And if "the purpose of the attorney-client privilege is to be served," attorneys and their clients must know "with some degree of certainty whether particular discussions will be protected." *Upjohn*, 449 US at 393. "An uncertain privilege"—or, as defendant would have it, a time-limited one—"is little better than no privilege at all." *Id*.

Significantly, this means that the attorney-client privilege is more than a mere evidentiary right to keep privileged information from being

introduced as evidence at a trial. Under the common law, the attorney-client privilege is a privilege against *compelled disclosure*,[3] not just use as evidence:

> (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) *from disclosure* by himself or by the legal adviser, (8) except the protection be waived.

John H. Wigmore, 8 *Evidence* § 2292, 554 (rev'd ed 1961) (emphasis added); *Bergsvik v. Bergsvik*, 205 Or 670, 684, 291 P2d 724 (1955) (citing Wigmore for the proposition that the privilege "forbids disclosure" whether or not clients are parties to a case). That rule reflects the commonsense notion that the attorney-client privilege would be meaningless if it were a mere rule of admissibility at trial, with confidential communications between lawyer and client otherwise freely discoverable.

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[3] As explained further below, that is still the case today under Oregon law. *See* OEC 503(2) (stating in relevant part that a client "has a privilege to *refuse to disclose and to prevent any other person from disclosing* confidential communications" protected by the privilege) (emphasis added).

Finally, the attorney-client privilege belongs to the client and to no other. Only the client can waive the privilege. Wigmore, 8 *Evidence* § 2292, 554; *Ex parte Bryant*, 106 Or 359, 363, 210 P 454 (1922) (holding, "Without the consent of the client, the attorney will not be permitted to disclose what such communications are, nor can the client himself be compelled to disclose the same."); OEC 503(2), (3) (providing that the client holds the privilege, and that only the client or an agent of the client may waive it).

Oregon took a first, partial step toward codifying the attorney-client privilege in 1862. Under that statute, a lawyer was prohibited from disclosing, without the client's consent, "any communication made by the client to [the attorney] or [the] advice given [by the attorney] thereon, in the course of professional employment." General Laws of Oregon, Civ Code, ch VIII, title III, § 702(2), p 325 (Deady 1845-64). As this Court subsequently explained, that statute "introduce[d] no new principle into the law" and was "simply declaratory of the common law." *State ex rel. Hardy v. Gleason*, 19 Or 159, 23 P 817 (1890). The contours of the privilege, and any exceptions to it, therefore remained a matter of

common law. *See, e.g., State ex rel. N. Pac. Lumber Co. v. Unis,* 282 Or 457, 462-63, 579 P2d 1291 (1978) (adopting, as a matter of common law, "future wrongdoing" exception to the privilege). That was still the case when the Oregon legislature adopted the Public Records Law in 1973.[4]

3. The enactment of the Public Records Law did not affect the continued existence of the attorney-client privilege.

Oregon public-records laws developed separately from the attorney-client privilege. As this Court has noted, "Oregon has a long-standing policy in favor of access to public records," and a "1862 law originally granted Oregon citizens the statutory right to 'inspect any public writing of this state, except as otherwise expressly provided by this code or some other statute." *Oregonian Pub. Co. v. Portland Sch. Dist. No. 1J*, 329 Or 393, 398, 987 P2d 480 (1999) (quoting General Laws of Oregon, ch 8, § 707, p 326 (Deady 1845-64)). In 1909, the legislature "limited that right to persons having a 'lawful purpose,'" but

[4] Today, federal courts continue to construe the attorney-client privilege "guided by 'the principles of the common law * * * as interpreted by the courts * * * in the light of reason and experience.'" *Swidler & Berlin v. United States*, 524 US 399, 403 (1998) (citing Fed Rule Evid 501; *Funk v. United States*, 290 US 371 (1933)).

it later deleted that requirement and restored the general right to inspect public records "unless otherwise expressly provided by statute." *Id.*, 329 Or at 398-99 (citing Or Laws 1909, ch 98); Or Laws 1961, ch 160, § 4. Statutory confidentiality laws at the time included the attorney-client privilege, *former* ORS 44.040(b), which this Court had held applied to public bodies as well as private clients. *Brink v. Multnomah County*, 224 Or 507, 517, 356 P2d 536 (1960) (holding, "The fact that the District Attorney and his staff are, in effect, 'house counsel' for the county does not preclude the assertion of the privilege.")

In 1973, the legislature "made a structural revision of public records law * * *, gathering records statutes into ORS Chapter 192 and organizing the basic structure of the public records law as it is today." *Oregonian Pub. Co.*, 329 Or at 399; Or Laws 1973, ch 794. Since then, the Public Records Law has stated, "Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by [enumerated provisions of ORS Chapter 192]." ORS 192.420 (1975), ORS 192.314(1). A public record "includes any writing that contains information relating to the conduct of the public's

business * * * prepared, owned, used or retained by a public body regardless of physical form or characteristics." ORS 192.311(5)(a).

From its adoption, the Public Records Law has included codified exemptions from its disclosure requirement. ORS 192.500 (1975). Those exemptions, many of them currently found in ORS 192.355, included those for "[i]nformation of a personal nature such as that kept in a personal or medical file," "[i]nformation submitted to a public body in confidence," and "[i]nformation or records of the Corrections Division" previously noted, among others. ORS 192.500 (1975).

Also among those enumerated exemptions in 1973 were the two catchalls discussed previously: one for "records or information the disclosure of which is prohibited by federal law or regulations," and another for "records or information the disclosure of which is restricted or otherwise made confidential or privileged under [confidentiality statutes outside the Public Records Law]." ORS 192.500(g), (h) (1975). Unlike the current version of the state-law catchall, ORS 192.355(9)(a), the original "attempted to list every statute outside the public records law that in any way prohibited or restricted disclosure of public

records."[5] *Oregonian Pub. Co.*, 329 Or at 399 (observing as much about 1987 version of catchall). Legislative history shows that the catchalls were inserted to confirm that the Public Records Law was not intended to conflict with federal law or to impliedly repeal privileges and confidentiality laws that existed outside the confines of ORS Chapter 192.

Thus, in February 1973, Attorney General Lee Johnson testified before the Joint Special Committee of Professional Responsibility about House Bill 2157—the bill that eventually became the Public Records Law. (App-16). He began by stating that the bill was drafted and introduced "at his request" to "provide better governmental policy toward public access" to government records. (App-16). He noted, however, that a "broad prescription" providing "that all public records are subject to inspection by any citizen unless expressly exempted" created a "problem with ambiguity," using "a testimonial privilege"

[5] One of those statutes was *former* ORS 44.040, the attorney-client privilege statute. ORS 1952.500(h) (1975).

codified outside the bill as an example.[6] (App-17). Attorney General Johnson explained that "HB 2157 clears up the ambiguity in Section 3"—the section of the bill providing broad access to public records—by "mak[ing] every record public unless a specific exemption in Section 11 states it." (App-17). Section 11 of the bill contained the two proposed catchalls. (*See* App-24).

The ACLU of Oregon similarly testified in favor of the catchalls, expressly referring to the attorney-client privilege. In April 1973 testimony to the Joint Committee on Professional Responsibility, the ACLU explained that "the attorney-client testimonial privilege * * * [in *former* ORS 44.044] for example makes communications between a public body and its attorney confidential." (App-20). The ACLU also referred to "a number of [other] statutes where the legislature previously as a matter of policy has declared certain records to be confidential and not available for disclosure to the public * * *." (App-20). The ACLU urged the legislature to "retain the limitations on public

[6] Attorney General Johnson used "executive privilege" as an example, although he also "pointed out that the executive privilege was repealed." (App-19).

access created in those specific contexts and not open a pandora's box by subjecting each such special context" to balancing under the Public Records Law. (App-20). It accordingly asked that the attorney-client privilege and other confidentiality statutes outside the Public Records Law "be expressly declared exemptions" from the Public Records Law. (App-20).

In sum, the legislative history confirms that, by adopting the catchalls, the legislature intended to "clear[] up * * * ambiguity," (App-19), and confirm that the Public Records Law was not intended to conflict with federal law or otherwise limit or repeal privileges that existed outside the confines of ORS Chapter 192. This included the attorney-client privilege.

4. In 1979, the legislature adopted the 25-year sunset now codified at ORS 192.390 and did not indicate any intent that it apply to laws codified outside the Public Records Law.

Six years after adopting the Public Records Law, the legislature adopted the 25-year sunset at issue in this case. *See* Or Laws 1979, ch 301, § 2. That amendment came into being in 1979, when it was introduced as House Bill 2011 at the request of State Archivist James

Porter. (*See* App-14, ER-63).

As State Archivist Porter testified before the House and Senate committees on the judiciary, he asked for the bill "to simplify use of certain case file type records for longitudinal research, genealogical research." (ER-63). Records pertinent to such research include old adoption records, birth certificates, psychological case files, penal records, and state hospital records—records that often contained the names, addresses, parentage, and diagnoses of persons of interest to researchers. (*See* ER-63-64). However, nearly all the exemptions codified at *former* ORS 192.500 required records custodians to assess the "reasonableness" of a request for such records, or to determine whether the request would constitute an "unreasonable invasion of privacy," before deciding whether to grant it.[7] (ER-40, 43, 70). This, Porter argued, placed a "considerable burden" on custodians. (ER-39).

Furthermore, "officious records custodian[s]" could be guilty of

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[7] Specifically, all but two of the exemptions codified in *former* ORS 192.500 required some balancing of interests by custodians of records. *See generally former* ORS 192.500 (1977). This does not include the two catchalls, which, as explained above, refer to privileges or confidentiality laws not codified in *former* ORS 192.500 itself.

"over-zealous application" of the discretionary exemptions codified in *former* ORS 192.500. (ER-70). Applying "the language of [*former*] ORS 192.500 religiously" could result in denials of requests for "a whole series of records * * * which have historically been open for access * * *." (ER-64). Because of this, "access to some records was actually decreased by some" of the exemptions codified in the Public Records Law. (ER-63). State Archivist Porter explained that setting a 25-year sunset on those exemptions would mean that, after that period, "custodians of records will not be permitted, or faced with the problem of deciding whether access is reasonable or not," or "be put in the position of deciding who a 'qualified' researcher was," under the discretionary exemptions codified in *former* ORS 192.500. (ER-41, 63).

The Staff Measure Analysis prepared by Legislative Counsel for House Bill 2011 was consistent with that testimony. It stated that the exemptions codified in former ORS 192.500(2) "mean[] that longitudinal research into the effects of state programs on individuals, biological studies, and genealogical research cannot be done." (App-15). To address that problem, "[t]he bill will shorten the period during which

the records custodian can apply the 'unreasonable invasion' doctrine of [*former*] ORS 192.500." *Id*.

Finally, legislators' questions and interactions confirm that the focus of House Bill 2011 was the enumerated exemptions codified in *former* ORS 192.500 itself—and specifically those codified exemptions that required record custodians to assess the reasonableness of a request or weigh the risk to privacy attendant to disclosure when processing a request.

Thus, the Senate Committee on the Judiciary quizzed State Archivist Porter at length about how House Bill 2011 would interact with the exemption for "[i]nformation or records of the Corrections Division* * * if the public interest in confidentiality clearly outweighs the public interest in disclosure" codified at *former* ORS 192.500(2)(d) (now codified at ORS 192.355(5)). (*See* ER-64-65). Legislators similarly discussed the impact of the 25-year sunset of House Bill 2011 on "physical and mental health and psychiatric records," on student records, on adoption records, and on records of persons on parole or probation. (*See generally* ER-39-59, 63-68). In short, legislators'

questions and debates revolved around records potentially exempt from disclosure under the exemptions expressly codified in *former* ORS 192.500 itself.

The City could not locate any part of the legislative record referencing or discussing any impact of HB 2011 on the confidentiality of records made privileged by provisions of state or federal law codified outside *former* ORS 192.500. More to the point, the record does not show that any discussion of the attorney-client privilege occurred, let alone any expressed intent to waive, limit, or abrogate the attorney-client privilege after 25 years.

5. In 1981, the legislature adopted OEC 503, which codified the attorney-client privilege more fully and does not evidence any intent to create a time-limited privilege for public bodies, their officers, and employees.

Two years after adopting the 25-year sunset in the Public Records Law, the legislature adopted the Oregon Evidence Code, which codified the attorney-client privilege more fully. *See* Or Laws 1981, ch 892, § 32. The Code provides in pertinent part:

> A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating

the rendition of professional legal services to the client:

(a) Between the client or the client's representative and the client's lawyer or a representative of the lawyer;

(b) Between the client's lawyer and the lawyer's representative;

(c) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;

(d) Between representatives of the client or between the client and a representative of the client; or

(e) Between lawyers representing the client.

OEC 503(2). As the 1981 Conference Committee commentary to this rule states, "[t]he privilege stated in this subsection agrees with the privilege in [*former*] ORS 44.040(1)(b), which is repealed, although the latter statute did not set forth specific types of communications to be protected." OEC 503 Commentary (1981).[8]

In other words, the commentary confirms what the text of OEC

[8] At the same time as it adopted the Oregon Evidence Code, the legislature also amended the state-law catchall exemption of the Public Records Law to substitute reference to OEC 503 for the previous reference to *former* ORS 44.040. Or Laws 1981, ch 892, § 92.

503 suggests on its face: by adopting OEC 503, the legislature did not intend to change the substance of the attorney-client privilege as it had existed up till that time—let alone shrink its scope. On the contrary, as this Court has explained, OEC 503 "was adopted to further codify the common-law lawyer-client privilege *as it had existed* in Oregon and to *extend coverage* to 'areas in which current law is silent or unclear.'" *Longo v. Premo*, 355 Or 525, 534, 326 P3d 1152 (2014) (quoting OEC 503 Commentary (1981); emphases added).

OEC 503(1)(a) thus made explicit that the "client" to whom the privilege applies can be "a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer." OEC 503(1)(a). The privilege covers confidential communications between government attorneys and the public agencies they advise or represent. *Haas*, 325 Or at 500. Those attorney-client communications are privileged to the same extent as communications between private individuals and their attorneys. *Id.*

Moreover, as under previous law, only the client may waive the privilege: "The lawyer-client privilege is a privilege of the client, not the lawyer." *In re Skagen*, 342 Or 183, 213, 149 P3d 1171 (2006). The client has the authority "to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client[.]" OEC 503(2).

Finally, unlike *former* ORS 44.040, OEC 503 codified the full list of exceptions to the privilege. Again, the Commentary expressly stated that those "exceptions to the lawyer-client privilege are well established," and that OEC 503 was not intended to create new exceptions or abolish existing ones. OEC 503 (commentary (1981)). Those exceptions are, in full, as follows:

> There is no privilege under the section:
>
> (a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
>
> (b) As to a communication relevant to an issue between parties who claim to have the same

deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(c) As to a communication relevant to an issue of breach or duty by the lawyer to the client or by the client to the lawyer;

(d) As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

ORS 40.225(4).

As this Court has held, the exceptions codified in OEC 503(4) were "intended [by the legislature] as a complete enumeration of the exceptions to the attorney-client privilege." *Crimson Trace Corp. v. Davis Wright Tremaine, LLP*, 355 Or 476, 501, 326 P3d 1181 (2014). Significantly, those exceptions do not include any sunset or expiration date. Also, unlike the bulk of the Evidence Code, which applies only to "civil actions, criminal actions and proceedings and contempt proceedings except those in which the court may act summarily," the

privilege codified at OEC 503 "appl[ies] at all stages of all actions, suits and proceedings."[9] OEC 101(2), (3). This necessarily includes actions or proceedings under the Public Records Law.

In sum, nothing in the text, context, or history of OEC 503 suggests that the legislature intended to subject the privilege to the 25-year sunset of ORS 192.390, or in any way to create a second-class privilege for public bodies, their officers, and employees. On the contrary, the text, context, and history of OEC 503 demonstrate that the legislature intended to create a comprehensive codification of the attorney-client privilege that applied equally regardless of whether the client was "a person, public officer, corporation, association or other organization or entity, either public or private * * *." OEC 503(1)(a).

6. In 1987, the legislature amended the wording of the state-law catchall without altering its substantive scope.

In 1987, the legislature adopted a new, shorter catchall as a replacement for *former* ORS 192.500(2)(h). Whereas the previous

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[9] The same is true of the other privileges codified at OEC 503 through OEC 514. OEC 101(3). Those privileges include the doctor-patient privilege, spousal privilege, clergy-penitent privilege, and the identity of an informer, among others. *See* OEC 503-514.

catchall had "attempted to list every statute outside the public records law that in any way prohibited or restricted disclosure of public records," *Oregonian Pub. Co.*, 329 Or at 399, the new catchall referred simply to "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." Or Laws 1987, ch 765, § 3.

By adopting that new language, the legislature did not intend to change the substantive scope of the catchall. Rather, it adopted replacement language because the previous provision was "a pain to amend," and "too cluttered with references to other statutes." (*See* App-13) (staff measure analysis). *Former* ORS 192.500(2)(h) "listed more than 60 individual statutes and chapters" and "was difficult to maintain as a comprehensive list because the legislature amended, added, and repealed laws affecting the disclosure of public records during each legislative session." *Oregonian Pub. Co.*, 329 Or at 399. As Assistant Chief Counsel Larry D. Thompson testified before the Senate Judiciary Committee about these amendments, "delet[ing] the specific listing of individual Oregon Revised Statute provisions outside of ORS 192 which

prohibit, restrict or otherwise protect public records and substituting * * * just the phrase 'Oregon law'" would be "a simpler approach" than annual revisions to the list. (App-12).

7. The text, context, and legislative history of ORS 192.390 and surrounding statutes do not reflect any legislative intent to abrogate, limit, or waive the attorney-client privilege of public bodies, their officers, and employees after 25 years.

Legislative history and context confirm what the text of ORS 192.390 suggests: the legislature did not intend that provision to apply to confidentiality laws or privileges beyond those codified in the enumerated statutes referred to in its "notwithstanding" clause. The exchanges and debates surrounding the adoption of ORS 192.390 show that the legislature's focus was on the discretionary exemptions codified in the Public Records Law itself. And the legislative record does not show any discussion of—let alone an intent to abrogate or curtail—state and federal privileges codified outside the Public Records Law.

Indeed, the current Oregon statute codifying the state attorney-client privilege—OEC 503—was adopted several years *after* the 25-year sunset for exemptions under the Public Records Law. And nothing in the text, context, or history of OEC 503 suggests that the legislature

intended the attorney-client privilege codified therein to be subject to exceptions under the Public Records Law.

The text of OEC 503(2) provides that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services." "Client" is defined to include public bodies and their officers. OEC 503(1)(a). OEC 503 makes no distinction between the privilege as it applies to public bodies and private persons, nor does it provide any limitation on the privilege based on time or the Public Records Law. In any event, to the extent there were any inconsistency between the unlimited privilege codified in OEC 503 and the sunset previously created by the Public Records Law, it is well established that a later, specific statute controls over an earlier, general one. *See* ORS 174.020(2) ("When a general and particular provision are inconsistent, the latter is paramount so that a particular intent controls a general intent that is inconsistent with the particular intent."); *State v. Langdon*, 330 Or 72, 84, 999 P2d 1127 (2000) (holding that a "statute enacted later in time * * * impliedly

amend[s]" an earlier inconsistent one).

The relevant context further supports what the plain text demonstrates. As explained above, OEC 503 was intended to retain *and extend* the common-law privilege. *Longo*, 355 Or at 534. Moreover, this Court has recognized that "OEC 503(4) was intended as a complete enumeration of the exceptions to the attorney-client privilege." *Crimson Trace Corp*, 355 Or at 501. Conspicuously absent from that enumeration is any exception based on time or public-records status.

The legislature has made the importance of attorney-client confidentiality clear in other contexts as well. Oregon law has long imposed a duty of confidentiality on attorneys separate from the attorney-client privilege. Until 1991, *former* ORS 9.460 provided in relevant part, "An attorney shall * * * [m]aintain inviolate the confidence, and at every peril to the attorney, preserve the secrets of the clients of the attorney[.]"[10] In 1991, that language was replaced with, "An attorney shall * * * [m]aintain the confidences and secrets of the

[10] That statute originally used the masculine "his," which was changed to "the attorney" in 1985. *Compare* ORS 9.490(5) (1983) *with* ORS 9.490(5) (1985).

attorney's clients consistent with the rules of professional conduct established pursuant to ORS 9.490[.]" Or Laws 119, ch 726, § 1. The Oregon Rules of Professional Conduct provide in relevant part, "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." ORPC 1.6(a). Those provisions would be rendered nearly meaningless in the public context if ORS 192.390 were construed to trump the attorney-client privilege.

In sum, the text, context, and legislative history of OEC 503 are clear: clients with an attorney-client relationship enjoy a time-unlimited privilege to refuse to disclose confidential legal advice, and OEC 503 makes no distinction between public and private clients in the scope of the privilege. The detailed exemptions codified at OEC 503(4) demonstrate that the legislature considered the full set of circumstances in which a client would not be able to assert its privilege to refuse to disclose confidential legal advice. In the absence of strong evidence to the contrary, this Court should not add to that list by

reading a 25-year sunset into the legislature's "complete enumeration." *Crimson Trace Corp*, 355 Or at 501. *See Baker*, 343 Or at 76 (stating that this court is "hesitant" to interpret a statute to "depart from a procedural rule that had been an accepted part of Oregon practice for more than 100 years."); *State v. Miller*, 309 Or 362, 368, 788 P2d 974 (1990) (declining to infer that legislature intended to depart from well-established rule to not require proof of a culpable mental state in DUII cases).

II. Construing ORS 192.390 to trump the attorney-client privilege would be inconsistent with text, context, and legislative history, and would create avoidable practical and constitutional problems.

In addition to the above, construing ORS 192.390 to override a client's assertion of the attorney-client privilege would give rise to numerous textual, practical, and constitutional problems.

1. Construing ORS 192.390 to trump the attorney-client privilege would render the "notwithstanding" clause of that statute mere surplusage and create conflicts with federal law.

First, as the dissent below pointed out, doing so would amount to reading the "notwithstanding" clause of ORS 192.390 out of existence.

Bartlett, 304 Or App at 598-601. This is so because, if ORS 192.390 were read to apply to the catchalls mentioned in ORS 192.355, it would require the disclosure after 25 years of "public records or information the disclosure of which is prohibited by federal law or regulations," ORS 192.355(8), and "records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 192.355(9)(a). In other words, ORS 192.390 would require the disclosure after 25 years of essentially all records, regardless of any state or federal law to the contrary.

Under those circumstances, the "notwithstanding" clause of ORS 192.390 would have been superfluous: the legislature could simply have stated, "public records older than 25 years shall be available for inspection." Or it could have stated, as it has in other statutes, "notwithstanding any other provision of law." *See, e.g.,* ORS 197.772(1) (stating in part, "[n]otwithstanding any other provision of law, a local government shall allow a property owner to refuse to consent to any form of historic property designation"). There would have been no need to draft a "notwithstanding" clause that refers to three specific statutes

only.

As previously discussed, the legislature knows how to draft broad provisions of general applicability when it wishes to do so. That it chose not to do so here is significant and demonstrates a narrower intent when it adopted ORS 192.390. This Court should therefore interpret ORS 192.390 according to it plain language and decline to construe it in a way that would render its "notwithstanding" clause meaningless surplusage. *See Arken,* 351 Or at 156 (noting "cardinal rule of statutory construction to give significance and effect to every part of a statute" and "well-established principle to avoid interpretations of statutes that render portions of them redundant.")

Relatedly, construing ORS 192.390 to extend to the catchalls mentioned in ORS 192.355 would mean that, on its face, ORS 192.390 would require the disclosure after 25 years of "public records or information the disclosure of which is prohibited by federal law or regulations." ORS 192.355(8). That is something that the legislature, as a general matter, is not empowered to order: under the Supremacy Clause of the United States Constitution, a state legislature cannot

command a violation of federal law. *Mutual Pharm. Co. v. Bartlett*, 570 US 472, 479-80 (2013) (holding, "The Supremacy Clause provides that the laws and treaties of the United States 'shall be the supreme Law of the Land'" and that "state laws that conflict with federal law are 'without effect.'") (citations omitted). The Oregon legislature was no doubt aware of this when it adopted ORS 192.390, and this Court should not construe ORS 192.390 to create such a nonsensical reading or to conflict with federal confidentiality laws—especially when a plausible reading of the statute would avoid those effects.

Finally, because construing ORS 192.390 to extend to the catchalls mentioned in ORS 192.355 would make the 25-year sunset apply to essentially all records, "a wide range of exemptions w[ould] no longer be viable" despite being codified outside the Public Records Law and "the underlying policy interests embodied in those exceptions not necessarily being diminished by the passage of time * * *." *Bartlett*, 304 Or App at 605 (Powers, J., dissenting). Such other confidential information includes crime-victim information, ORS 18.048(2)(b), the identity of an informant, ORS 40.275(2), and the "identity of individuals

receiving HIV-related tests by any license health care provider," ORS 433.045(4)(a), among many others.

Yet the legislative record is devoid of any evidence of intent to sunset *all* such confidentiality laws after 25 years—a fairly short period of time, during which a person who received HIV tests might still be interested in her privacy, or during which an informant could still be subject to reprisals if his identity were disclosed, to use just those two examples. In the absence of such evidence, this Court should construe ORS 192.390 consistently with the scope of its "notwithstanding" clause and hold that the 25-sunset provision does not trump confidentiality laws codified outside the three statutes enumerated in that clause. *Baker*, 343 Or at 76 (explaining that this Court is "hesitant" to construe a limited "notwithstanding clause" to "depart from a procedural rule that had been an accepted part of Oregon practice for more than 100 years.")

2. Construing ORS 192.390 to trump the attorney-client privilege would create a conflict with OEC 503.

Furthermore, construing ORS 192.390 to extend to the catchalls mentioned in ORS 192.355 would also create a conflict with OEC 503.

The present case illustrates this: here, defendant sought to inspect the City's confidential legal communications, arguing that ORS 192.390 empowers him to do so. In response, the City asserted its right to refuse to disclose those communications under OEC 503(2). In those circumstances, a deciding court must choose between ordering disclosure under ORS 192.390 or allowing the City to assert its privilege under OEC 503(2). That conflict can be avoided through a correct interpretation of ORS 192.390, but not by artful construction of OEC 503 and ORS 192.355.

Therefore, the Court of Appeals' majority incorrectly concluded that construing ORS 192.390 to extend to the catchalls mentioned in ORS 192.355 would still allow the statute to operate "in harmony" with OEC 503. *See Bartlett*, 304 Or App at 587 (so concluding). It appears that this incorrect conclusion was due to a misunderstanding of ORS 192.355(9) and OEC 503(7). *See id.* at 586-87 (relying on those provisions).

First, ORS 192.355(9) demonstrates that the legislature did *not* intend ORS 192.390 to impose a 25-year sunset on a public body's

assertion of the attorney-client privilege. That provision consists of two parts: **(1)** the state-law catchall in paragraph (9)(a), which has been discussed at length herein, and which generally exempts from disclosure under the Public Records Law "records or information * * * made confidential or privileged under Oregon law"; and **(2)** paragraph (9)(b), which provides that the (9)(a) exemption does not apply to certain factual information compiled by a public body as part of an internal investigation when the holder of the OEC 503 privilege has publicly characterized or partially disclosed that factual information.

That second paragraph was enacted in 2007, at the same time as section 7 of OEC 503, in response to the decision of the Court of Appeals in *Klamath County School Dist. v. Teamey*, 207 Or App 250, 140 P3d 1152, *rev den*, 342 Or 46 (2006). (*See* App-2, 9-10); Or Laws 2007, ch 513, § 5(9). In that case, the Court of Appeals had held that factual information compiled in investigative reports was privileged and therefore exempt from disclosure under the Public Records Law. *Id.*, 207 Or App at 259-262. The legislature enacted ORS 192.355(9)(b) and OEC 503(7) to address the effect of that decision. Far from

demonstrating that the 25-year sunset of ORS 192.390 was intended to apply to all state and federal privileges codified outside the Public Records Law, those 2007 enactments actually show that the legislature knows how to expressly override the attorney-client privilege in the context of the Public Records Law when it wishes to do so.

Moreover, the legislature's enactment of OEC 503(7) and ORS 192.355(9)(b) in 2007 cannot be used as context for determining what the legislature intended when it enacted the 25-year sunset for exemptions codified in the Public Records Law *decades earlier*. As noted above, the legislature added subsection (7) to OEC 503 in the same 2007 legislation that added paragraph (b) to ORS 192.355(9). Or Laws 2007, ch 513, § 3(7). The 25-year sunset provision of ORS 192.390 was adopted in 1979, and the legislature's actions nearly 30 years later cannot inform this Court's determination of what it intended in 1979.

In any event, OEC 503(7) simply provides, "Notwithstanding [OEC 511], a privilege is maintained under this section for a communication ordered to be disclosed under ORS 192.311 to 192.478." OEC 503(7). Nothing in that plain text prevents a public body from

asserting the attorney-client privilege. Instead, it merely specifies that any disclosure ordered under the Public Records Law—like a limited disclosure of factual information compiled by a public body as part of an internal investigation when the holder of the privilege has publicly characterized or partially disclosed that factual information under ORS 192.355(9)(b)—will not result in a waiver of the ability to claim the privilege in future proceedings. *See* OEC 511 ("Waiver of privilege by voluntary disclosure.")

The legislative history confirms that this provision was "inserted at the request of DOJ" to ensure that the privilege would survive a limited disclosure ordered under new paragraph ORS 192.355(9)(b). (*See* App-6 n 5). A related concern was to "remove the incentive a public body would otherwise have to litigate and even appeal an order from the DA to disclose a record." (*See* App-7 n 7). In other words, without OEC 503(7), a public body might have had to litigate every order of disclosure under ORS 192.355(9)(b) that arguably affected privileged information, or risk having waived the privilege for all future proceedings. OEC 503(7) addressed those two negative consequences of

the legislature's adoption of ORS 192.355(9)(b).[11]

Thus, OEC 503(7) was a specific solution to a specific concern: it ensured that a limited disclosure of privileged information under ORS 192.355(9)(b), or a failure to appeal an order to disclose such information, would not be construed as waiver of the attorney-client privilege in future proceedings. None of those concerns are present here, and the legislature's adoption of OEC 503(7) in 2007 is irrelevant to the legal question in this case: namely, whether the 25-year sunset of ORS 192.390 was intended to apply to information protected by the attorney-client privilege.

In sum, contrary to the Court of Appeals' conclusion that construing ORS 192.390 to trump the attorney-client privilege would still allow that statute to operate "in harmony" with OEC 503, *Bartlett*, 304 Or App at 587, the rule and statute unavoidably conflict if ORS 192.390 is given that interpretation. This Court should avoid that conflict by construing ORS 192.390 to give effect to its "notwithstanding

[11] Relatedly, OEC 503(7) also guards against waiver of the privilege through an inadvertent disclosure.

clause" and hold that its 25-year sunset does not extend to material protected by the attorney-client privilege.

3. Construing ORS 192.390 to trump the attorney-client privilege would create a second-class privilege for public bodies and for public officials and employees represented in their personal capacity.

Finally, construing ORS 192.390 to extend to the catchalls mentioned in ORS 192.355 would create significant problems and disparities—some of potential constitutional magnitude—with the attorney-client privilege itself.

First, as the dissent below noted, construing ORS 192.390 to trump the attorney-client privilege would create "a disparity between lawyer-client communications involving public bodies and private parties." *Bartlett*, 304 Or App at 602 (Powers, J., dissenting). It would mean that public bodies would have only a time-limited privilege, while private clients have a perpetual privilege. *See Swindler & Berlin v. United States*, 524 US 399, 410 (1998) ("It has been generally, if not universally, accepted, for well over a century, that the attorney-client privilege survives the death of the client"). As a practical matter, such a disparity would have a very real, harmful impact, on public bodies'

access to counsel. *See Durbin*, 335 Or at 189 (Holding, "appropriate legal advice requires frank communication between the client and the lawyer."); *Upjohn*, 449 US at 393 ("An uncertain privilege * * * is little better than no privilege at all.")

Furthermore, 25 years is a fairly short period of time in the legal world and limiting public bodies' ability to assert their privilege to 25 years would have harmful consequences on ongoing legal matters. For example, the City is currently engaged in long-term environmental CERCLA[12] litigation that will soon be 25 years old.[13] Similarly, the City

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[12] Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §§ 9601–9628, also known as "Superfund."

[13] In 2000, the EPA listed the Portland Harbor on the National Priorities List under CERCLA section 107(a). 65 Fed Reg 75179, 75182 (Dec 1, 2000); *see also Port of Portland v. Oregon Center for Environmental Health*, 238 Or App 404, 406, 243 P3d 102 (2010). On December 8, 2000, the EPA issued a "General Notice Letter" to the city under CERCLA section 104(e); such a letter constitutes a "suit," requiring insurers to provide a defense under the Oregon Environmental Cleanup Assistance Act (ORS 465.475-480). *Anderson Bros. v. St. Paul Fire & Marine Ins. Co.*, 729 F3d 923, 935 (9th Cir 2013). The Portland Harbor Superfund Site cleanup process is ongoing and is not expected to be completed for many years. *See Confederated*

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recently prevailed in the Court of Appeals in a condemnation matter that began 23 years ago, in 1998, and that case is not yet over as of the date of filing of the present brief. *See Courter et ux. v. City of Portland*, 308 Or App 175, __ P3d __ (2020) (aff'd without opinion). If ORS 192.300 were construed to extend to material protected by the attorney-client privilege, adverse parties could use ORS 192.390 to seek public-records disclosure of the City's previous confidential legal advice in these types of cases. This is so because ORS 192.390 expressly operates notwithstanding ORS 192.345(1), the Public Records Law exemption for information related to ongoing litigation. This Court should not construe ORS 192.390 to create such an inequitable and unusual result in the absence of clear legislative intent to that effect.

Even more problematic, construing ORS 192.390 to extend to material protected by the attorney-client privilege would mean that

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Tribes and Bands of Yakama Nation v. Airgas USA, LLC, 435 F Supp 3d 1103, 1113 (D Or 2019). ("The EPA estimates that preliminary planning to determine baseline sampling, and then developing remedial design plans, will take 3 to 5 years. * * * The subsequent remedial action, including constructing and implementing site cleanup, is expected to take about 13 years.")

individual City officials or employees represented by the City Attorney's Office *in their personal capacity* would have a second-class privilege compared to their privately employed counterparts. This is because public lawyers do not just represent entities—they frequently represent individual officials or employees, who expect to be able to share their confidences freely with their counsel.

For example, counsel in this very matter recently represented a City employee, in her personal capacity, in a stalking case.[14] *See D. O. v. Richey*, 301 Or App 18, 19, 456 P3d 348 (2019). This same attorney also recently defended several City officials who had been sued in their personal capacities in an alleged discrimination case. *See DeWalt Prods., Inc., et al. v. City of Portland et al.*, 829 F App'x 226 (9th Cir 2020). Those types of matters are a regular part of the work of public lawyers. *See Lumbreras v. Roberts,* 319 F Supp 2d 1191, 1202 (D Or 2004) (recognizing that "[s]uits against state officials come within

[14] Such representation is expressly contemplated and authorized by the Portland City Code. *See* PCC 3.10.030 (authorizing City Attorney to "[r]epresent City employees in their personal capacity in legal proceedings that have a connection to their City employment and are related to their personal safety").

Section 1983's scope only when they are sued in their personal capacities.") (citing *Will v. Michigan Dep't of State Police,* 491 US 58, 70-71 (1989)). And like their private counterparts, publicly employed lawyers representing individuals become privy to a great deal of confidential information—be it information about family status, sexual history, or prior uncharged unlawful conduct, to name just a few examples. Indeed, as this Court has recognized, access to such confidential information is key to effective representation. *See Jancsek*, 302 Or at 274 (the privilege "promot[es] the full disclosure of information by clients," in recognition that "[l]awyers can act effectively only when fully advised of the facts by the parties whom they represent").

Yet, if ORS 192.390 were construed to trump the attorney-client privilege, it would mean that this type of highly private information would be subject to public release after 25 years. This is so because the records of a public law department fall under the definition of "public records" under ORS 192.311(5)(a). The result of that construction would be dramatic. It would create a second-class privilege for public officials

and employees sued in their personal capacities, without any evidence that the legislature intended to create that inequity.

That inequity would, moreover, be highly problematic from a Due Process and Equal Protection standpoint. As noted previously, both this Court and the United States Supreme Court have recognized that the attorney-client privilege is essential to effective representation. *See Jancsek*, 302 Or at 274 (holding that the privilege "promot[es] the full disclosure of information by clients"); *Durbin*, 335 Or at 189 (holding that "appropriate legal advice requires frank communication between the client and the lawyer," and that purpose "cannot be fulfilled unless the communications between a client and a lawyer are confidential); *Upjohn*, 449 US at 389 ("The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.")

Creating two radically different varieties of attorney-client privilege—an unlimited one for private individuals, and a time-limited one for public officials or employees represented by a government lawyer—would harm the legal representation of some individuals based

solely on their class without a constitutionally reasonable justification.[15] This, in turn, would arguably contravene the Equal Protection and Due Process clauses of the Fourteenth Amendment. *See United States v. Carolene Products Co.*, 304 US 144, 152 (1938) (holding, "a statute would deny due process" if it deprived a person of a life, liberty, or property interest without "a rational basis."); *Armour v. City of Indianapolis, Ind.*, 566 US 673, 680 (2012) (holding that the Equal Protection Clause requires that a "distinction ha[ve] a rational basis").

This court should construe ORS 192.390 to avoid those serious constitutional problems. *See Bernstein Bros. v. Dept. of Rev.*, 294 Or 614, 621, 661 P2d 537 (1983) (holding, "It is axiomatic that we should construe and interpret statutes 'in such a manner as to avoid any serious constitutional problems.'") (quoting *Easton v. Hurita*, 290 Or

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[15] Although, under OEC 503(7), public officials or employees represented in their personal capacity technically would not "waive" the privilege after a compelled public disclosure of their confidences, this would not cure those constitutional defects. As noted above, the attorney-client privilege is a privilege against compelled disclosure, not mere evidentiary use at trial. OEC 503(2).

689, 694, 625 P2d 1290 (1981)); *Westwood Homeowners Ass'n v. Lane County*, 318 Or 146, 160, 864 P2d 350 (1993) (rejecting proposed interpretation that "arguably would infringe on the constitutional rights" of parties).

III. Construing ORS 192.390 to trump the attorney-client privilege would violate the Home Rule amendments of the Oregon Constitution.

In addition, the records that defendant requests in this case are also privileged under the Portland City Code. As this Court has previously held, the Home Rule amendments of the Oregon Constitution—Article IV, section 1(5), and Article XI, section 2—prevent the legislature from "imping[ing] on the powers reserved by the amendments" by interfering with "the structures and procedures" of local governments. *LaGrande/Astoria v. PERB*, 281 Or 137, 156, 576 P2d 1204, *adh'd to on recons*, 284 Or 173 (1978). Local governments' ability to confer freely with their counsel is integral to their capacity to function as independent legal entities, and construing ORS 192.390 to trump the City's assertion of the attorney-client privilege would run afoul of that constitutional prohibition.

The home-rule powers of Oregon cities derive from two 1906 amendments to the Oregon Constitution, which state the following in full:

> Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon.

Or Const, Art XI, § 2.

> 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.

Or Const, Art IV, § 1(5).

As this Court has held, those amendments altered the relationship between cities and the state by "allow[ing] the people of the locality to decide upon the organization of their government and the scope of its powers under its charter without having to obtain statutory authorization from the legislature, as was the case before the amendments." *LaGrande/Astoria*, 281 Or at 142. Cities thereby became separate legal entities from the state, and the legislature lost the power to legislate with respect to "the structure and procedures" of local governments:

> When a statute is addressed to a concern of the state with the structure and procedures of local agencies, the statute impinges on the powers reserved by the amendments to the citizens of local communities. Such a state concern must be justified by a need to safeguard the interests of persons or entities affected by the procedures of local government.
>
> Conversely, a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form. In that case, such a state law must yield in those particulars necessary to preserve that freedom of local organization.

Id.

In *LaGrande/Astoria*, this Court discussed with approval its prior holdings in *Branch v. Albee*, 71 Or 188, 142 P 598 (1914), and *State ex rel. Heinig v. City of Milwaukie*, 231 Or 473, 373 P2d 680 (1962), to illustrate some of the "structure and procedures" of local governments that the state legislature cannot impinge upon. *LaGrande/Astoria*, 281 Or at 151; *see also* 284 Or at 182 (noting that, in LaGrand/Astoria, this Court "reaffirmed" the holding of *Heinig*) (on rehearing). Those examples show that "structures and procedures" includes more than such matters as the allocation of power between a mayor and council, or the procedures by which they operate, but extends to matters that are integral to a city's ability to operate independently of the state.

Thus, in *Branch*, the legislature had adopted a statute requiring cities "having more than 50,000 inhabitants" to establish a "'board of police pension and relief'" and designated "the precise license fees and fines to be used for the fund." *LaGrande/Astoria*, 284 Or at 151 (citing *Branch*). The City of Portland had previously adopted "charter provisions [that] provide[d] a complete scheme for pensioning members of the police department, but the amounts to be paid [were] much less

than the amounts provided for by the [statute]." *Branch*, 71 Or at 192. As this Court explained in *LaGrande/Astoria*, the statute impermissibly attempted "the prescription of precise municipal organization" and was therefore, "not surprisingly," struck down as a violation of the Home Rule amendments. 281 Or at 151-52 (citing *Branch*, 71 Or at 201).

Similarly, in *Heinig*, a statute purported to require cities "to create municipal civil service commissions, to be composed of three members selected in the manner prescribed by the act, which would be charged with supervising civil service systems, for firemen." *LaGrande/Astoria*, 281 Or at 252. Such a statute, this Court explained, "would have displaced the authority of the politically accountable local officials over the selection, assignment, discipline, and replacement of the employees for whose performance they were responsible" and would have done so "by direction of the state." *Id*. It was therefore an "interference with local self-government" guaranteed by the Home Rule amendments, as well as being inconsistent with the "powers of appointment, transfer, and discharge of personnel specified in the

Milwaukie city charter * * *." *Id*. The statute was accordingly struck down as unconstitutional.[16] *Id*.

Since *LaGrande/Astoria*, this court has not had the opportunity to further clarify what constitutes unconstitutional interference with the "structures of procedures" of local governments under the Home Rule amendments. At minimum, however, those amendments would prevent the legislature from abrogating, limiting, or waiving the attorney-client privilege of a home-rule City, and this Court should construe ORS 192.390 to operate consistently with that constitutional limitation.

Local governments' ability to consult freely with counsel and obtain candid legal advice is integral to their continued capacity to function as autonomous legal entities, as guaranteed by the Home Rule amendments. As this Court has recognized, in the public context, the attorney-client privilege "promote[s] broader public interests in the

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[16] By contrast, this Court held that the retirement system at issue in *LaGrande/Astoria* was distinguishable from the statute at issue in *Heinig* because it did not purport to "create any agencies of local government" or "direct local communities to do so," and it gave local governments the "option to provide equal or better benefits by other means of the local government's choice." *LaGrande/Astoria*, 281 Or at 152-53.

observance of law and administration of justice." *Haas*, 325 Or at 500 (quoting *Upjohn*, 449 US at 389). A public body's ability to receive "sound legal advice serves public ends," and this in turn "depends upon the lawyer's being fully informed by the client." *Id.* (quoting *Upjohn*, 449 US at 389). Indeed, as another court has noted, the attorney-client privilege is "crucial" and "indispensable" to the operation of government:

> [I]f anything, the traditional rationale for the privilege applies with special force in the government context. It is crucial that government officials, who are expected to uphold and execute the law and who may face criminal prosecution for failing to do so, be encouraged to seek out and receive fully informed legal advice. Upholding the privilege furthers a culture in which consultation with government lawyers is accepted as a normal, desirable, and even indispensable part of conducting public business. Abrogating the privilege undermines that culture and thereby impairs the public interest.

In re Grand Jury Investigation, 399 F3d 527, 534 (2d Cir 2005).

As *amicus curiae* League of Oregon Cities notes in its brief, cities routinely perform functions that entail huge legal risks—risks that no private entity would be willing to assume—and "government employees are expected to understand, uphold, and execute the law in a variety of

contexts." (Brief of *Amicus Curiae* League of Oregon Cities in Support of Petitioner on Review, p 11). For cities to be able to assume those risks and perform those tasks, they must, along with their officers and employees, be able to consult freely with counsel. *See Jancsek*, 302 Or at 274 ("Lawyers can act effectively only when fully advised of the facts by the parties whom they represent"); *Durbin*, 335 Or at 189 ("When one seeks legal advice, the protections of the lawyer-client privilege are implicated, because appropriate legal advice requires frank communication between the client and the lawyer.") This, in turn, requires that cities, their officers, and employees know that their privileged communications with counsel will not later be disclosed to third parties. *Upjohn*, 449 US at 393 ("An uncertain privilege * * * is little better than no privilege at all."); *see also Ex parte Bryant*, 106 Or 359, 363, 210 P 454 (1922) (holding, "[the] privilege is essential to public justice, for did it not exist no [one] would dare to consult a professional adviser"). In sum, the attorney-client privilege is integral to the "structures and procedures" of local governments.

Moreover, in this case, the City has explicitly made the privilege

part of its governmental structures and procedures. The Portland City Charter, as adopted by the citizens of Portland, confers on the City "all governmental powers" permissible under state law. Portland City Charter, § 1-102. The Charter further provides that all such governmental power "is vested in a Council" consisting of a Mayor and four commissioners, "subject to the initiative and referendum and other powers reserved to the people by the constitution of the State of Oregon * * * and by the provisions of this Charter." Portland City Charter, §§ 2-101, 2-102.

The Portland City Code, adopted pursuant to those powers conferred by the citizens of Portland through the City Charter, states in relevant part, "The relationship between the Office of City Attorney and the City shall be an attorney-client relationship, with the City being entitled to all benefits thereof." Portland City Code (PCC) 3.10.060(A). The Code further provides, "Correspondence between the City Attorney and others in the City, and the opinions and advice provided by the City Attorney to the City or to any City department, official, or employee are privileged attorney-client communications." PCC 3.10.060(B). Those

provisions contain no temporal limit.

As explained above, when the people adopted the Home Rule amendments in 1906, cities became separate legal entities from the state. Indeed, home-rule cities occasionally engage in litigation against the state. *See, e.g., Heinig*, 231 Or 473*; State ex rel. Haley v. City of Troutdale*, 281 Or 203, 576 P2d 1238 (1978); *State v. City of Portland et al.*, 210 Or App 467, 151 P3d 961 (2007) (aff'd without opinion); *State ex rel. Stewart v. City of Salem*, 268 Or App 717, 344 P3d 567 (2015) (aff'd without opinion). The Home Rule amendments protect cities from state interference with their "structures and procedures." *LaGrande/Astoria*, 281 Or at 142. For the reasons explained above, those "structures and procedures" necessarily involve the ability of local governments, officials, and employees to consult with counsel free from interference from the state. The Home Rule amendments therefore bar the state legislature from abrogating, limiting, or waiving the attorney-client privilege of the City, its officials, and employees, even if it wished to do so.

As this Court has repeatedly stated, "It is axiomatic that we

should construe and interpret statutes in such a manner as to avoid any serious constitutional problems." *State v. Alvarado*, 257 Or App 612, 621, 307 P3d 540 (2013) (citing *Bernstein Bros.,* 294 Or at 621; *Easton v. Hurita,* 290 Or 689, 694, 625 P2d 1290 (1981); internal quotation marks omitted). Indeed, "When confronted with competing, reasonable constructions of a statute, and there is even a tenable argument that one of them would render the statute unconstitutional, we generally favor the other construction." *Alvarado*, 257 Or App at 621 (quoting *Pete's Mountain Homeowners v. Oregon Water Resources,* 236 Or App 507, 522, 238 P3d 395 (2010)).

Here, construing ORS 192.390 to trump the attorney-client privilege would render that statute unconstitutional as applied to home-rule cities under the Oregon Constitution. By contrast, the City's proposed construction, in addition to being consistent with text, context, and legislative history, does not run afoul of the Constitution's home-rule provisions. For yet that additional reason, this Court should hold that ORS 192.390 does not override the attorney-client privilege.

CONCLUSION

For the foregoing reasons, this Court should hold that ORS 192.390 does not trump the attorney-client privilege and does not require the City to disclose privileged documents to defendant. That conclusion comports with the text of ORS 192.390, which does not expressly refer to the attorney-client privilege. It comports with the context and legislative history of ORS 192.390, which do not show any intent to affect the attorney-client privilege. And it avoids constitutional problems that would arise if defendant's arguments were adopted. This should therefore reverse the judgment of the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to ORAP 5.05 and ORAP 9.05(3), I certify that the word count of the present brief on the merits is 13,769 words and the size of the type is not smaller than 14 point for both the text of the brief and the footnotes.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing BRIEF ON THE MERITS OF PETITIONER ON REVIEW CITY OF PORTLAND with the State Court Administrator, Appellate Court Records Section, 1163 State Street, Salem OR 97301, by electronic filing on January 21, 2020.

I further certify that the foregoing BRIEF ON THE MERITS OF PETITIONER ON REVIEW CITY OF PORTLAND will be served electronically and/or by First Class Mail on January 21, 2020, on the following individuals:

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