

RECEIVED

AUG 01 2018



CIVIL RIGHTS DIVISION
PORTLAND OFFICE

BUREAU OF LABOR AND INDUSTRIES

Civil Rights Division Complaint of Unlawful Practice

COMPLAINANT:

Case #: **STEMSH180801-11138**

Commissioner Brad Avakian
800 NE Oregon St, #1045
Portland, OR 97232

RESPONDENTS:

State of Oregon, Legislative Assembly
900 Court St. NE
Salem, OR 97301

State of Oregon, Legislative Administration Committee
900 Court St. NE, Rm. 140A
Salem, OR 97301

AIDER/ABETTOR:

Jeff Kruse
377 Burkhart Rapids Lane
Roseburg, OR 97471

County: Marion

of Employees: 15+

ORS 659A.030 (1)(b), (g); ORS 659A.403 (1), (3); and ORS 659A.406

I, Brad Avakian, under penalty of perjury, based on the information available and a reasonable belief, do depose and say as follows:

Allegations: Pursuant to ORS 659A.825 and in order to protect the interests of individuals in proximity to others who hold unique positions of power, and to ensure that the public's interest in this and similar matters is protected, the Commissioner of the Bureau of Labor and Industries alleges the following:

Jurisdiction

1. Respondents are employers as defined by ORS 659A.001 (4)(a), and are subject to ORS 659A.030, which prohibits sexual harassment as defined by OAR 839-005-0030. ORS 659A.030 (1)(g) provides that it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under ORS chapter 659A or to attempt to do so.

Continued on reverse side

PORTLAND

800 NE Oregon St., Suite 1045
Portland, Oregon 97232-2180

SALEM

3865 Wolverine Ave. NE; E-1
Salem, Oregon 97305-1268

EUGENE

1400 Executive Parkway, Suite 200
Eugene, Oregon 97401-2158

2. Respondents operate the Oregon State Capitol ("Capitol"), a place of public accommodation as defined by ORS 659A.400, and are subject to ORS 659A.403, which provides in relevant part that all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of sex. ORS 659A.406 provides that it is an unlawful practice for any person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any employee or person acting on behalf of the place of public accommodation to make any distinction, discrimination or restriction on account of sex.
3. At all times relevant to this complaint, Senate President Peter Courtney and House Speaker Tina Kotek have been co-chairs of the Legislative Administration Committee, which controls all space and facilities within the Capitol and performs administrative service functions for the Legislative Assembly, including but not limited to personnel administration.
4. At all times relevant to this complaint, Lore Christopher has been employed in Legislative Administration as Employee Services Manager. Her duties include processing reports and complaints of discrimination.
5. At all times relevant to this complaint, Dexter Johnson has been Legislative Counsel, selected by and serving at the pleasure of the Legislative Counsel Committee, which is co-chaired by President Courtney and Speaker Kotek. Pursuant to ORS 173.135, the Legislative Counsel Committee may direct the Legislative Counsel to defend any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States when deemed necessary or advisable to protect the official interests of the Legislative Assembly, one or more legislative committees, or one or more members of the Legislative Assembly.
6. At times relevant to this complaint, Dian Rubanoff has been retained as an agent of Respondents to investigate reports of discrimination in the Capitol.

I hereby declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief, and that I understand it is made for use as evidence in an official proceeding.

I understand that the above statement is a public record and that the information herein may be disclosed to any person, at any time.

Your signature: _____

LEGISLATIVE COUNCIL
CLERK'S OFFICE

7/10/13

RECEIVED



BUREAU OF LABOR AND INDUSTRIES

Civil Rights Division Complaint of Unlawful Practice

7. The Bureau of Labor and Industries ("BOLI") has jurisdiction over persons who commit acts prohibited under ORS chapter 659A, including elected officials and public bodies. Pursuant to ORS 659A.825, the Commissioner of the Bureau of Labor and Industries has the authority to file a Commissioner's Complaint on behalf of the people of Oregon to protect the interests of individuals who have been subjected to harassing or discriminatory conduct.

Alleged Facts

8. Over a period of years, Respondents have permitted a generally hostile environment based upon sex, including but not limited to subjecting multiple individuals in the Capitol to unwelcome conduct of a sexual nature. Individuals subjected to the hostile environment and discriminatory conduct included legislators, employees, lobbyists, and student interns. The conduct included, but was not limited to:

- A. Jeff Kruse, a member of Oregon's Legislative Assembly from 1996 until his resignation at the end of the 2018 legislative session, engaged in alleged conduct including, but not limited to:

- wrapping his arms around and standing too close to females, despite being told to stop;
- giving females side hugs with his arm down around their waists and pulling them in close;
- kissing a female's cheek and whispering in her ear, leaving it wet;
- wrapping his arms around a female and sliding his arms cross-wise down the front of her body across her breasts;
- "cupping" a female's buttocks;
- calling a student intern "little girl," and "sexy," and saying her husband was really lucky;
- placing his hands on females' thighs;
- brushing his hand across females' breasts;
- asking females about their sex life; and,
- regularly subjecting student interns working in his office to sexual banter, and participating in these exchanges with others. When Senator Kruse was not present, his chief of staff and two lobbyists would engage in sexually charged conversation, describing their recent sexual encounters, and frustrations with unsuccessful attempts at other sexual encounters.

- B. In 2015, a female legislative employee ("Employee A") reported to Respondents that she had recently learned that a male legislative intern at the capitol who, prior to their time in the Capitol, had sexually assaulted her, had also sexually assaulted one of her acquaintances. Employee A further reported that, while in the Capitol, the alleged harasser had asked her to

Continued on reverse side

PORTLAND

800 NE Oregon St., Suite 1045
Portland, Oregon 97232-2180

SALEM

3865 Wolverine Ave. NE; E-1
Salem, Oregon 97305-1268

EUGENE

1400 Executive Parkway, Suite 200
Eugene, Oregon 97401-2158

describe her current sexual relationship with another person. On or about April 17, 2015, Dexter Johnson met with Employee A and presented her with findings and recommendations from an investigation by Lore Christopher. The recommendations were that the alleged harasser not have contact with Employee A and that Employee A "should be cautioned about talking with anyone regarding this complaint... as additional conversation or actions outside of the investigation could be construed as retaliatory." Dexter Johnson also stated to Employee A that if she talked about her claims, it could be seen as defamation. At this time, the alleged harasser's placement at the Capitol was naturally ending. Lore Christopher told Employee A that Employee A would be informed if the alleged harasser were ever hired in the Capitol again. On or about May 10, 2017, Employee A discovered that the alleged harasser had become employed in the Capitol though she had not been told of his return.

- C. In 2015, a female legislative employee ("Employee B") made a report to Dexter Johnson and Betsy Imholt (President Courtney's Chief of Staff) about the conduct of President Courtney's Communications Director ("Director"). Employee B reported that the Director had offered to buy her a beer at an event, and had stood so close as to be touching the side of his body with hers; that she declined his offer for a beer and moved across the bar, but the Director followed her and repeated the same unwelcome conduct, which Employee B continued to decline. Employee B reported that in the following days, the Director sent Employee B the lyrics to a song that she considered to be sexually lewd via Facebook message. Employee B made her report out of concern that the conduct might escalate. Dexter Johnson told Employee B that he was brokering an informal settlement between Employee B and the Director, that she was not allowed to have contact with him, and that she should not talk about her complaint to anyone.
- D. On or about March 3, 2016, Senator Sara Gelser and Senator Elizabeth Steiner Hayward reported to Dexter Johnson and Lore Christopher that they had experienced unwelcome sexual conduct, including inappropriate closeness and touching by Senator Kruse.

I hereby declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief, and that I understand it is made for use as evidence in an official proceeding.

I understand that the above statement is a public record and that the information herein may be disclosed to any person, at any time.

Your signature: _____



BUREAU OF LABOR AND INDUSTRIES

Civil Rights Division Complaint of Unlawful Practice

- E. In November 2016, a student intern ("Student A") was working in Senator Kruse's office and was subjected to unwelcome conduct of a sexual nature by Senator Kruse, including but not limited to calling her "little girl," and "sexy," and saying her husband was really lucky; placing his hands on her thighs despite her telling him to stop, and subjecting her to sexual banter. After five to six weeks, Student A sought reassignment to work out of another senator's office to escape the unwelcome conduct.
- F. From January through April 2017, a second student intern working in Senator Kruse's office ("Student B") was subjected to unwelcome conduct of a sexual nature by Senator Kruse, including but not limited to asking about her sex life, wrapping his arms around her and sliding his arms cross-wise down the front of her body across her breasts, touching her hips, hugging her and squeezing tightly, putting his hands on her shoulders and talking to her nose-to-nose, and subjecting her to sexual banter. When Student B described the unwelcome conduct to staff members of other legislators, they did not take it seriously and said they had heard it before. Legislative Counsel's office subsequently called Student B to inform her of the possibility that her identity might be made public in response to a records request, because of the statements she had given in the course of the investigation into Senator Kruse's conduct. In that call, the Legislative Counsel's office told Student B that her career would be over.
- G. Employee A and Employee B were encouraged or directly told by Respondents through Dexter Johnson to not discuss their complaints with anyone else.
- H. On September 15, 2017, Respondents concluded an inquiry requested by State Representative Diego Hernandez in response to allegations that he "maintained a list of female lobbyists that ranked certain physical attributes." Respondents determined that because the inquiry did not yield evidence supporting the allegations, they were "false." Dexter Johnson stated it appeared the allegation of a list was "invented" by a disgruntled lobbyist.
- I. Two informal complaints were made to Speaker Kotek against State Representative David Gomberg. The reports were of incidents of inappropriate conduct during 2013 and 2015, involving telling off-color jokes, and grabbing a female staff person to dance with her on the House floor. Dexter Johnson stated that the dancing incident was "a very minor matter," and that the report involving off-color jokes was a "low level" complaint.
9. At all times relevant to this complaint, Senator Kruse's inappropriate conduct was well-known by fellow legislators and legislative leadership.

Continued on reverse side

PORTLAND

800 NE Oregon St., Suite 1045
Portland, Oregon 97232-2180

SALEM

3865 Wolverine Ave. NE; E-1
Salem, Oregon 97305-1268

EUGENE

1400 Executive Parkway, Suite 200
Eugene, Oregon 97401-2158

10. At all times relevant to this complaint, the allegations against Representatives Hernandez and Gomberg were well-known by fellow legislators and legislative leadership.
11. On or about October 16, 2017, Senator Gelser again reported Senator Kruse's continuing unwelcome sexual conduct to Dexter Johnson and Lore Christopher and, this time, also to President Courtney's Chief of Staff, Betsy Imholt.
12. On October 20, 2017, President Courtney sent a letter to Senator Kruse, which indicated President Courtney had prior knowledge of Senator Kruse's conduct and that he had been warned to stop. The letter included the following:

"This week I was made aware that your behavior toward women in the workplace has also gone *unchanged*. Two *new* incidents were brought to my attention. . . . You were instructed *in March* of this year by Lore Christopher, Employee Services Manager, and Dexter Johnson, Legislative Counsel, that you were not to touch women at work. Period. Continuing to touch women at work is inappropriate workplace conduct of which you have *already been warned*." (Emphases added.)

13. On November 14, 2017, Senator Steiner Hayward submitted a formal complaint to Respondents through Lore Christopher and Dexter Johnson to report continuing sexual harassment by Senator Kruse. In that complaint, Senator Steiner Hayward wrote that in early 2016, Senator Kruse's behavior escalated to the point where several women registered informal complaints with President Courtney, and that Senator Steiner Hayward participated in an interview with Dexter Johnson and Lore Christopher, explaining her concerns about the physical interactions. Senator Steiner Hayward further wrote that on October 19, 2017, she disclosed to President Courtney an encounter she had earlier that day with Senator Kruse in which she attempted to explain to Senator Kruse that his conduct was inappropriate and that Senator Kruse responded "a lot of women cry wolf," and "I really don't see why this is such a big deal."

I hereby declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief, and that I understand it is made for use as evidence in an official proceeding.

I understand that the above statement is a public record and that the information herein may be disclosed to any person, at any time.

Your signature: _____



BUREAU OF LABOR AND INDUSTRIES

Civil Rights Division Complaint of Unlawful Practice

14. On November 15, 2017, Senator Gelser submitted a formal complaint to Respondents through Lore Christopher and Dexter Johnson citing Legislative Branch Personnel Rule 27(6), alleging continuing unwelcome conduct of a sexual nature by Senator Kruse, citing incidents dating to 2011, noting that no corrective action had been taken to stop Senator Kruse's conduct, and expressing concern that Respondents' investigation of her previous informal complaint led her to conclude that "at least 15 women have disclosed unwanted touching or other behaviors from Senator Kruse that violate the harassment-free workplace rule," and that "young staff members and interns are especially susceptible to this problem . . ."
15. By at least as early as March 2016, Respondents knew or should have known of Senator Kruse's conduct and the broader sexually hostile environment in the Capitol, but did not take immediate and appropriate action to correct his conduct or otherwise protect individuals from the hostile environment. In fact, after Respondents knew of Senator Kruse's conduct, Respondents allowed the placement of Student A and Student B in his office.
16. Prior to February, 2018, Dian Rubanoff interviewed Student A and Student B in the course of conducting investigative interviews on behalf of Respondents. Unprompted by Student A or Student B, Rubanoff told them that there was no legal definition for their status and there was no way for them to file a suit against Respondents. Relying in part on this opinion, neither Student A nor Student B pursued a claim. Rubanoff's opinion was offered despite the 2013 Legislature passing HB 2669 into law, explicitly extending protection against sexual harassment to student interns. That legislation was signed by both President Courtney and Speaker Kotek.
17. On May 15, 2018, the Commissioner's office asked Respondents to forward a letter from Commissioner Avakian to Student A, Student B and an unidentified lobbyist fully informing them of their legal rights and the processes available for exercising those rights. Respondents initially agreed to do so, but later refused to forward the letter. The Commissioner ultimately had to seek the assistance of the students' educational institution to convey his letter to the students.
18. Instead of forwarding Commissioner Avakian's letter, Respondents through Dian Rubanoff sent their own June 8, 2018 letter, now stating that Student A and Student B could contact BOLI or the Equal Employment Opportunity Commission ("EEOC") for information regarding their rights. The letter also explained the statutes of limitation for filing complaints with those agencies but provided no information about the shorter timeline for filing a Tort Claim Notice to preserve claims against public bodies. Respondents' June 8, 2018, letter was sent after the statutes of limitation for filing a claim with BOLI, the EEOC and a Tort Claim Notice had all expired for the student interns.

Continued on reverse side

PORTLAND

800 NE Oregon St., Suite 1045
Portland, Oregon 97232-2180

SALEM

3865 Wolverine Ave. NE; E-1
Salem, Oregon 97305-1268

EUGENE

1400 Executive Parkway, Suite 200
Eugene, Oregon 97401-2158

19. Within days of receiving Commissioner Avakian's letter, both Student A and Student B contacted him. Both confirmed that they had been subjected to unwelcome sexual conduct by Senator Kruse and a sexually hostile environment at the Capitol. Both Student A and Student B expressed their distress at being misled by Respondent through Dian Rubanoff that as student interns they did not have legal rights. They expressed anger and fear over the prospect that their careers in public service would be over if they came forward.
20. Respondents denied full and equal accommodations, advantages, facilities and privileges to individuals, including, but not limited to, legislators, legislative employees, lobbyists and student interns working in or visiting the Capitol.
21. Student A, Student B, Employee A and Employee B have requested that this Commissioner's Complaint be filed in order to redress the harm they suffered and to remedy the intolerable conditions that Respondents failed to correct.

Based on the foregoing, the Commissioner believes that Respondents have subjected legislators, employees, lobbyists and student interns to a hostile work environment based on sex, including but not limited to unlawful sexual harassment by Jeff Kruse, that Respondents have denied multiple individuals full and equal accommodations, advantages, facilities and privileges of the Capitol based on their sex, and that Jeff Kruse aided and abetted Respondents in these unlawful practices.

18-04156\ 7.13.2018

I hereby declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief, and that I understand it is made for use as evidence in an official proceeding.

I understand that the above statement is a public record and that the information herein may be disclosed to any person, at any time.

Your signature: _____

