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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**EUGENE DIVISION**

**NATIONAL LABOR RELATIONS  
BOARD,**

**Case No.:**

**Plaintiff,**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**v.**

**STATE OF OREGON,**

**Defendant.**

1. Plaintiff, the National Labor Relations Board (“NLRB” or the “Agency”), seeks a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 declaring that Oregon Laws 2009, chapter 659, subchapters 780 and 785, (“the Oregon statute”), attached as Exhibit 1, is invalid as to employers subject to the jurisdiction of the National Labor Relations Act (“NLRA”), as amended, 29 U.S.C. §§ 151-169, because the Oregon statute is preempted by the NLRA.

## JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337. This action arises under the Supremacy Clause of the United States Constitution (Article VI, Clause 2) and the NLRA. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred in this judicial district.

## PARTIES

3. The NLRB is an independent agency of the United States, created by Congress in 1935 and charged with exclusive administration of the NLRA. 29 U.S.C. § 153.

4. Defendant State of Oregon is one of the fifty states of the United States.

## FACTS AND CLAIMS FOR RELIEF

5. The Oregon statute, entitled “Discrimination for nonparticipation in employer-sponsored meetings about religious or political matters,” was enacted in January 2010. It provides in relevant part that:

An employer . . . may not discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize or take any adverse employment action against an employee:

- (a) Because the employee declines to attend or participate in an employer-sponsored meeting or communication with the employer . . . if the primary purpose of the meeting or communication is to communicate the opinion of the employer about religious or political matters;
- (b) As a means of requiring an employee to attend a meeting or participate in communications described in paragraph (a) . . .; or
- (c) Because the employee . . . makes a good faith report, orally or in writing, of a violation or suspected violation of this section.

ORS 659.785(1).

6. ORS 659.780(5) defines “political matters” to include “the decision to join, not join, support or not support any lawful political or constituent group,” and ORS 659.780(1) defines

“constituent group” to include a labor organization.

7. ORS 659.785(2) provides that a successful claimant may be awarded reinstatement, backpay, and reestablishment of employee benefits, including seniority. ORS 659.785(2) also provides that the claimant shall be awarded treble damages, attorney’s fees, and costs. These provisions apply to private employees and employers also subject to the NLRA.

8. The preemption doctrine articulated by the United States Supreme Court in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), prohibits states from regulating any “activity that the [Act] protects, prohibits or arguably protects or prohibits,” *Wisconsin Dept. of Industry and Gould, Inc.*, 475 U.S. 282, 286 (1986), *i.e.*, activity that is subject to the regulatory jurisdiction of the NLRB.

9. Congress has entrusted the NLRB with exclusive control over union election proceedings and the determination of the steps required for a fairly-conducted election proceeding. *NLRB v. Waterman S.S. Corp.*, 309 U.S. 206, 226 (1940).

10. Compulsory attendance at meetings held by employers to discuss their views about unions has long been permitted by the NLRB, provided the meeting is not held within 24 hours before a union election. *Peerless Plywood Co.*, 107 NLRB 427, 429-30 (1953).

11. The Oregon statute is thus preempted by *Garmon*, because it conflicts with the NLRB’s regulation of employer conduct during a union election campaign and the NLRB’s ability to regulate unfair labor practices, with respect to employers under the jurisdiction of the NLRA.

12. The preemption doctrine articulated by the Supreme Court in *Lodge 76, Int’l Ass’n of Machinists v. Wis. Emp’t Relations Comm’n*, 427 U.S. 132 (1976), prohibits states from regulating conduct that “Congress intended... ‘to be controlled by’ the free play of economic forces.” *Id.* at 140.

13. Section 8(c) of the NLRA, enacted in 1947, provides:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

14. Congress's enactment of Section 8(c) of the NLRA reflects its decision to leave non-coercive employer speech about unions unregulated by any governmental entity.

15. The Oregon statute is thus also preempted by *Machinists*, because it purports to regulate non-coercive employer speech about unions, with respect to employers under the jurisdiction of the NLRA.

16. Separately, the Oregon statute is preempted by direct operation of the Supremacy Clause of the United States Constitution (Article VI, Clause 2) because the statute forbids conduct both permitted and protected by the NLRA. Moreover, the statute frustrates the purpose of the NLRA and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

17. On June 14, 2019, the International Brotherhood of Teamsters Local 206 ("Local 206") filed a Representation Petition with the NLRB's Region 19 seeking to represent a unit of the employer's workforce in Portland, Oregon. *DS Services of America, Inc. and IBT, Local 206*, Case No. 19-RC-243327. [Exhibit 2]. The employer filed a Motion for Stay of Election asserting that absent a stay, it must comply with the Oregon statute and refrain from making captive audience speeches during the election campaign. The employer asserted, among other things, that the state law is preempted by the NLRA. [Exhibit 3].

18. On July 26, 2019, the NLRB issued an Order denying the employer's request to stay the election proceedings. The NLRB's Order noted it did not preclude the employer from raising issues related to the impact of the Oregon statute in any post-election proceedings. [Exhibit

4].

19. The election conducted in Case No. 19-RC-243327 resulted in Local 206 not being selected as the unit employees' bargaining representative. [Exhibit 5].

20. Nevertheless, there have been other petitions filed with NLRB's Region 19, seeking to determine who represents employees of private employers in Oregon covered by the NLRA. (NLRB Case Nos. 19-RC-252363, 19-RC-253012, 19-RC- 254203, 19-RC-255017, 19-RC-231425 and 19-RM-242193). In those cases, as in any future election proceedings filed in Oregon, the employers may be forced to choose between exercising their rights under the NLRA to hold captive audience speeches with their employees, or complying with the Oregon statute.

21. By letter dated November 1, 2019, the NLRB's General Counsel notified the Attorney General of the State of Oregon of the Agency's concern that the Oregon statute is preempted by the NLRA, and expressly sought the state Attorney General's assistance in determining whether the Agency's preemption concern could be addressed by the Government of the State of Oregon. By letter dated December 10, 2019, Oregon's Deputy Attorney General expressed his disagreement with the NLRB's finding, and notified the NLRB that his office will take all steps to defend the Oregon statute.

WHEREFORE, the NLRB respectfully requests that this Court:

1. Issue a declaration that Oregon Revised Statutes 659.780 and 659.785 are invalid as to employers subject to the NLRA, because these provisions are preempted:

a. by the NLRA as the provisions:

i. conflict with the NLRB's regulation of employer conduct during a union election campaign and the NLRB's ability to regulate unfair labor practices, and

- ii. purport to regulate non-coercive employer speech about unions that no entity is permitted to regulate, and
  - b. by direct operation of the Supremacy Clause of the United States Constitution (Article VI, Clause 2), because the Oregon statute forbids conduct protected and permitted by the NLRA.
2. Assess costs against the State of Oregon and grant such other and further relief as the Court may deem proper.

DATED: February 7, 2020

Respectfully submitted,

WILLIAM MASCIOLI  
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DAWN L. GOLDSTEIN  
Deputy Assistant General Counsel

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s/ Pia Winston  
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**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

NATIONAL LABOR RELATIONS BOARD

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Pia Winston, 1015 Half St SE, Washington, DC 20003 (202) 273-0111  
Helene Lerner, 1015 Half St SE, Washington, DC 20003 (202) 273-3738

**DEFENDANTS**

STATE OF OREGON

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
The National Labor Relations Act, 29 U.S.C. §§ 151-169 and the U.S. Constitution

Brief description of cause:

Request for Declaratory Judgment that state statute is preempted by the NLRA and the Supremacy Clause

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



## UNITED STATES DISTRICT COURT

for the

District of Oregon

NATIONAL LABOR RELATIONS BOARD

*Plaintiff(s)*

v.

STATE OF OREGON

*Defendant(s)*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* State of Oregon  
 Office of the Attorney General  
 Oregon Department of Justice  
 1161 Court Street NE  
 Salem, OR 97301-4096

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pia Winston  
 National Labor Relations Board  
 1015 Half St SE, 4th Floor  
 Washington, DC 20003  
 Pia.Winston@nrlrb.gov

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# EXHIBIT 1

West's Oregon Revised Statutes Annotated Title 51. Labor and Employment; Unlawful Discrimination Chapter 659. Miscellaneous Prohibitions Relating to Employment and Discrimination (Refs & Annos) Prohibitions Relating to Employment (Employment Action Related to Communication of Employer About Religious or Political Matters) (Refs & Annos)

O.R.S. § 659.780

659.780. Definitions

Currentness

As used in this section and [ORS 659.785](#):

- (1) “Constituent group” includes, but is not limited to, civic associations, community groups, social clubs and mutual benefit alliances, including labor organizations.
- (2) “Employee” means an individual engaged in service to an employer in a business of the employer.
- (3) “Employer” includes:
  - (a) A person engaged in business that has employees; and
  - (b) A public body, as defined in [ORS 174.109](#).
- (4) “Labor organization” means an organization that exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment.
- (5) “Political matters” includes activity related to political party affiliation, campaigns for measures, as defined in [ORS 260.005](#), or candidates for political office and the decision to join, not join, support or not support any lawful political or constituent group.
- (6) “Religious matters” includes activity related to religious affiliation or the decision to join, not join, support or not support a bona fide religious organization.

**Credits**

Added by [Laws 2009, c. 658, § 1](#), eff. Jan. 1, 2010. Amended by [Laws 2009, c. 890, § 1](#), eff. Jan. 1, 2010.

O. R. S. § 659.780, OR ST § 659.780

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day legislation, and general

effective legislation effective Jan. 1, 2020, enacted during the 2019 Regular Session of the of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumbers, and other non-legislative revisions, have been incorporated.

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End of Document

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West's Oregon Revised Statutes Annotated Title 51. Labor and Employment; Unlawful Discrimination Chapter 659. Miscellaneous Prohibitions Relating to Employment and Discrimination (Refs & Annos) Prohibitions Relating to Employment (Employment Action Related to Communication of Employer About Religious or Political Matters) (Refs & Annos)

O.R.S. § 659.785

659.785. Discrimination for nonparticipation in employer-sponsored meetings about religious or political matters

Currentness

(1) An employer or the employer's agent, representative or designee may not discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize or take any adverse employment action against an employee:

(a) Because the employee declines to attend or participate in an employer-sponsored meeting or communication with the employer or the agent, representative or designee of the employer if the primary purpose of the meeting or communication is to communicate the opinion of the employer about religious or political matters;

(b) As a means of requiring an employee to attend a meeting or participate in communications described in paragraph (a) of this subsection; or

(c) Because the employee, or a person acting on behalf of the employee, makes a good faith report, orally or in writing, of a violation or a suspected violation of this section. This paragraph does not apply if the employee knows that the report is false.

(2) An aggrieved employee may bring a civil action to enforce this section no later than 90 days after the date of the alleged violation in the circuit court of the judicial district where the violation is alleged to have occurred or where the principal office of the employer is located. The court may award a prevailing employee all appropriate relief, including injunctive relief, rehiring or reinstatement of the employee to the employee's former position or an equivalent position, back pay and reestablishment of any employee benefits, including seniority, to which the employee would otherwise have been eligible if the violation had not occurred and any other appropriate relief as deemed necessary by the court to make the employee whole. The court shall award a prevailing employee treble damages, together with reasonable attorney fees and costs.

(3) An employer subject to this section shall post a notice of employee rights under this section in a place normally reserved for employment-related notices and in a place commonly frequented by employees.

(4) This section does not:

(a) Limit an employee's right to bring a common law cause of action against an employer for wrongful termination;

(b) Diminish or impair the rights of a person under a collective bargaining agreement;

(c) Limit the application of [ORS 260.432](#);

(d) Prohibit a religious organization from requiring its employees to attend an employer-sponsored meeting or participate in any communication with the employer or the employer's agent, representative or designee for the primary purpose of communicating the employer's religious beliefs, practices or tenets;

(e) Prohibit a political organization, including a political party or other organization that engages, in substantial part, in political matters, from requiring the political organization's employees to attend an employer-sponsored meeting or participate in any communication with the employer or the employer's agent, representative or designee for the primary purpose of communicating the employer's political tenets or purposes;

(f) Prohibit communications of information about religious or political matters that the employer is required by law to communicate, but only to the extent of the lawful requirement;

(g) Prohibit mandatory meetings of an employer's executive or administrative personnel to discuss issues related to the employer's business, including those issues addressed in this section; or

(h) Limit the rights of an employer to offer meetings, forums or other communications about religious or political matters for which attendance or participation is strictly voluntary.

#### **Credits**

Added by [Laws 2009, c. 658, § 2](#), eff. Jan. 1, 2010. Amended by [Laws 2009, c. 890, § 2](#), eff. Jan. 1, 2010.

O. R. S. § 659.785, OR ST § 659.785

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day legislation, and general effective legislation effective Jan. 1, 2020, enacted during the 2019 Regular Session of the of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumbers, and other non-legislative revisions, have been incorporated.

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End of Document

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# EXHIBIT 2



FORM NLRB-502 (RC)  
(4-15)UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

19-RC-243327

Date Filed

6-14-19

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer**

Sierra Springs

**2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)**

13233 N.E. Jarrett Street, Portland, OR 97230

**3a. Employer Representative - Name and Title**

Roger Wehmeier, Manager

**3b. Address (If same as 2b - state same)**

Same

**3c. Tel. No.**

503-262-1000

**3d. Cell No.**

N/A

**3e. Fax No.**

N/A

**3f. E-Mail Address**

rwehmeier@dsservices.com

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**

Water Production Plant

**4b. Principal product or service**

Water

**5a. City and State where unit is located:**

Portland, OR

**5b. Description of Unit Involved****Included:** All warehouse, loaders, production, cooler employees**Excluded:** Drivers, Route Sales, Inside Sales, Supervisors under The Act**6a. No. of Employees in Unit:**

12

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** Yes ☒ No ☐**Check One:**7a. Request for recognition as Bargaining Representative was made on (Date) 6/11/2019 and Employer declined recognition on or about \_\_\_\_\_ (Date) (If no reply received, so state).

7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (If none, so state).****8b. Address****8c. Tel No.****8d. Cell No.****8e. Fax No.****8f. E-Mail Address****8g. Affiliation, if any****8h. Date of Recognition or Certification****8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** \_\_\_\_\_ If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**

**10a. Name****10b. Address****10c. Tel. No.****10d. Cell No.****10e. Fax No.****10f. E-Mail Address**

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

**11a. Election Type:** ☒ Manual ☐ Mail ☐ Mixed Manual/Mail**11b. Election Date(s):**

June 25, 2019

**11c. Election Time(s):**

1:00 pm - 2:00 pm

**11d. Election Location(s):**

Sierra Springs, Portland, OR

**12a. Full Name of Petitioner (including local name and number)**

Teamsters Union Local No. 206

**12b. Address (street and number, city, state, and ZIP code)**

1860 N.E. 162nd AVE, Portland, OR 97230

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**

International Brotherhood of Teamsters

**12d. Tel No.**

503-251-2344

**12e. Cell No.**

971-219-7321

**12f. Fax No.**

503-251-2354

**12g. E-Mail Address**

geoff.stewart@teamsterslocal206.org

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.****13a. Name and Title**

Geoff Stewart Union Representative

**13b. Address (street and number, city, state, and ZIP code)**

1860 N.E. 162nd AVE, Portland, OR 97230

**13c. Tel No.**

503-251-2344

**13d. Cell No.**

971-219-7321

**13e. Fax No.**

503-251-2354

**13f. E-Mail Address**

geoff.stewart@teamsterslocal206.org

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

**Name (Print)**

Geoff Stewart

**Signature****Title**

Union Representative

**Date**

June 11, 2019

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Rec'd 6-14-19  
2:30pm  
NLKB-SR 36

# EXHIBIT 3

**BEFORE REGION 19 OF  
THE NATIONAL LABOR RELATIONS BOARD**

DS SERVICES OF AMERICA, INC.

Employer,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 206

Petitioner.

Case No. 19-RC-243327

**EMPLOYER’S MOTION FOR STAY OF ELECTION**

Employer, by and through its attorneys, move for a stay of the RC Petition in the above-captioned matter. In support hereof, the Employer states as follows:

**INTRODUCTION**

The current representation election must be stayed. In short, absent the requested stay, the Employer will be (and is being) forced to conduct this campaign under an Oregon state law that effectively prohibits mandatory employee meetings about unionization. ORS 659.785. This law flagrantly infringes on an Employer’s free speech rights under the First Amendment and the National Labor Relations Act (“NLRA”), is contrary to more than 70 years of National Labor Relations Board (“NLRB” or “Board”) case law that expressly permits such meetings, and is preempted by the NLRA. 29 U.S.C. § 158 (c); Peerless Plywood Co., 107 NLRB 427, 429-30 (1953).

In Chamber of Commerce v. Brown, the Supreme Court held that the NLRA “expressly precludes regulation of [non-coercive] speech about unionization.” 554 U.S. 60, 68 (2008). Congress has explicitly “creat[ed] a zone free from all regulations, whether state or federal,” and, thus, any state law that directly or **indirectly** regulates non-coercive speech is preempted. *See id.*

at 75 (quotation marks omitted). In Brown, the Supreme Court held that the NLRA preempted a California law indirectly regulating speech where the law (1) regulated the market; (2) targeted speech about unionization; and (3) imposed deterrent litigation risks on employers. The Oregon law does all three. Thus, the Oregon law, like the California law, is preempted.

Because the Oregon law “frustrates the comprehensive federal scheme” and “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the NLRA,” the Board cannot hold a fair election. Brown, 554 U.S. at 73-74 (quotation marks omitted). In Independent Residences, Inc., then-Members Schaumber and Hayes rightly noted that the Supreme Court’s holding in Brown mandates that an election conducted in the face of an unlawful restriction on speech be overturned. 355 NLRB 724, 738 (2010). Even the majority in Independent Residences recognized that a statute barring a “form of campaign speech or conduct” is grounds for overturning election results. Id. at 731.<sup>1</sup>

Forging ahead with the election now when the result must be set aside under Brown is an inefficient use of Board resources and a waste of judicial economy. Seward Int’l, Inc., 270 NLRB 1034, 1034 (1984) (noting the importance of judicial economy considerations in Board procedural matters). Beyond these process concerns, moving ahead with the election under this circumstance is fundamentally unfair to the Employer.

Let us be clear: the Employer has already suffered harm in this case because of the Oregon law. With the Oregon law looming in the background, six days into the campaign, the Employer has not conducted a single mandatory employee meeting. The law has already

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<sup>1</sup> For this reason, Independent Residences does not control. To the extent the Regional Director disagrees, the decision is bad law that directly conflicts with Brown, and a stay should be granted to permit the Board to consider whether to adhere to Independent Residences. NLRB R&R § 102.67(d)(4).

interfered with the election and potentially destroyed laboratory conditions. The law will continue to do so each day that goes by without redress.

Forcing the Employer to conduct the election under the cloud of a preempted law that infringes on the Employer's substantive rights under the NLRA and the First Amendment itself is a violation of fundamental due process and fairness. See, e.g., NLRB v. St. Francis Healthcare Ctr., 212 F.3d 945, 966 (6th Cir. 2000) (The Board abuses its discretion if "the Board's order is the product of procedures which are fundamentally fair.").

We know that stays are rare in Board elections; this is the rare circumstance where one is warranted.

### **ARGUMENT**

1. On June 14, 2019, the International Brotherhood of Teamsters Local 206 ("Union") filed an RC Petition with Region 19 of the NLRB. By virtue of filing the election petition, the parties have entered the "critical period" and an NLRB election is imminent. The NLRB election process is in full swing. For example, Region 19 has scheduled a Notice of Representation Hearing for June 26, 2019.

2. The Supreme Court of the United States has long held that employers have a First Amendment right to engage in non-coercive speech "to persuade [employees] to action with respect to joining or not joining unions" and that right "**cannot be impaired.**" Thomas v. Collins, 323 U.S. 516, 537-38 (1945) (emphasis added).

3. And, in 1947, Congress amended the NLRA to include "express protection of free debate" by employers. Brown, 554 U.S. at 68. Section 8(c) "implements the First Amendment" and "manifests a congressional intent to encourage free debate on issues dividing labor and management." Id. (internal quotations omitted). Section 8(c) "expressly precludes regulation of

[non-coercive] speech about unionization,” and, thus, the law is an “explicit direction from Congress to leave noncoercive speech unregulated.” Id.

4. Although the NLRA does not contain an express preemption provision, the Supreme Court has held that the act mandates two types of preemption: Garmon and Machinists. See San Diego Build. Trades Council v. Garmon, 359 U.S. 235 (1959); Machinists v. Wisconsin Employment Relations Comm’n, 427 U.S. 132 (1976). Garmon preemption forbids states from “regulat[ing] activity that the NLRA protects, prohibits, or arguably protects or prohibits.” Brown, 554 U.S. at 65 (quotation marks omitted). Machinists preemption forbids both states and the NLRB from “regulat[ing] conduct that Congress intended be unregulated because left to be controlled by the free play of economic forces.” Id.

5. Because Section 8(c) implicitly and explicitly protects non-coercive speech, neither the NLRB nor a state can regulate such speech, whether directly or indirectly. Id. at 68. The NLRA forbids such regulation, and any state law directly or indirectly regulating non-coercive speech is preempted. Id.

6. Given these authorities, for more than 70 years, the NLRB has adhered to a bright-line rule that management speeches on company time to massed assemblies of employees are permitted under the NLRA as long as such speeches do not take place within 24 hours of a union election. Peerless Plywood Co., 107 NLRB 427, 429-30 (1953) (“[N]on-coercive speeches made prior to the proscribed period will not interfere with a free election.”); Comet Elec., Inc., 314 NLRB 1215, 1216 (1994) (“[U]nder Peerless Plywood and its progeny, the Employer was privileged to conduct captive audience meeting[s] for its employees[.]”).

7. Mandatory meetings with employees are vital to communicating about the important issue of union representation and to ensuring free and robust debate.

8. Management’s right to speak with employees in this manner is protected by Section 8(c) of the NLRA. 29 U.S.C. § 158(c). Going beyond the First Amendment, Section 8(c) “serves a labor law function of allowing employers to present an alternative view and information that a union would not present.” Healthcare Ass’n of N.Y. State v. Pataki, 471 F.3d 87, 98 (2d Cir. 2006).

9. In direct conflict with the U.S. Constitution, the NLRA, and the Supreme Court’s precedent, the Oregon law bars employers from exercising their free speech right by prohibiting them from engaging in non-coercive speech about unionization during mandatory meetings. *See* ORS 659.785 (imposing liability upon an employer that takes or proposes to take any adverse employment action against an employee for declining to attend a work meeting).

10. In particular, the law creates a private cause of action for employees who are discharged or disciplined for refusing to attend a “mandatory meeting” “if the primary purpose of the meeting or communication is to communicate the opinion of the employer about religious or political matters.” ORS 659.785.

11. The Oregon law defines “political matters” to include “the decision to join, not join, support or not support any lawful political constituent group,” which includes “labor organizations.” ORS 659.780(1), (5).

12. The Oregon law is a speaker-focused, content-based regulation of speech: it applies only to employers, and it regulates speech about “the decision to join, not join, support or not support” any “labor organization.” ORS 659.780(1), (5), ORS 659.785(1). As such, the law violates the First Amendment because it cannot satisfy strict scrutiny. *See, e.g., Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2230 (2015) (holding that “speaker based” restrictions of speech



“are all too often simply a means to control content,” and “content-based restrictions ... can stand only if they survive strict scrutiny”).

13. Further, the Oregon law is preempted by the NLRA because it indirectly regulates non-coercive speech. The Supreme Court has repeatedly and unequivocally held that the NLRA “favor[s] uninhibited, robust, and wide-open debate in labor disputes” and Section 8(c) “expressly precludes regulation of speech about unionization so long as the communications do not contain a threat of reprisal or force or promise of benefit.” Brown, 554 U.S. at 68 (internal quotations omitted); see also Garmon, 359 U.S. 236 (1959); Machinists, 427 U.S. 132 (1976).

14. For that reason and because the NLRA “is federal legislation, administered by a national agency, intended to solve a national problem on a national scale,” the Board has a long history of refusing to defer to state laws that are clearly preempted and takes proactive steps to ensure that the law has no impact on the parties before it. NLRB v. Hearst Pubs., 322 U.S. 111, 123 (1944); see, e.g., Laclede Gas Light Co., 80 NLRB 839, 842 (1948); Eppinger & Russell Co., 56 NLRB 1259 (1944); Ind. Residences, Inc., 355 NLRB No. 153 (2010).

15. Here, the Oregon law indirectly bars campaign speech or conduct, and, consequently, the Employer cannot have mandatory employee meetings to communicate with its employees about unionization. The law restricts the Employer’s speech on unionization by imposing severe liability for enforcing mandatory meetings – even those that involve only non-coercive speech. That liability – which exists as to each employee – includes monetary damages, injunctive relief, treble damages, and attorneys’ fees and costs. ORS 659.785.

16. In Brown, the Supreme Court held that a California law indirectly regulated speech where the law (1) regulated the market; (2) targeted speech about unionization; and (3) imposed deterrent litigation risks on employers. 554 U.S. at 69-74.

17. The Oregon law does the same. The Oregon law regulates the market. The law applies generally to employers, and it was not enacted by the state as a market participant to regulate business transactions with the state. See ORS 659.785.

18. The Oregon law also targets speech by employers about unionization. The law does not apply to speech by workers or labor organizations. The law prohibits employers from requiring employees to attend “an employer-sponsored meeting or communication with the employer or [his] agent” if the primary purpose of the meeting is to communicate the employer’s opinion about whether the employee should “join, not join, support or not support any lawful political or constituent group.” ORS 659.780(5), 659.785(1)(a). Because the law does not apply equally to workers or labor organizations, **the law is plainly targeted at interfering with the NLRA and employers’ campaign speech.**

19. Last, the Oregon law imposes deterrent litigation risks. Like the California law, the Oregon law allows an employee to bring a civil action against an employer for monetary damages, injunctive relief, treble damages, attorneys’ fees, and costs. ORS 659.785(2). The mere existence of the law’s enforcement mechanisms “put[s] considerable pressure on” the Employer “to forego his free speech right” and “chills one side of the robust debate which has been protected under the NLRA.” Brown, 554 U.S. at 73 (quotation marks omitted).

20. Thus, under Brown, the Oregon law is an indirect regulation of speech. As such, Garmon and Machinists preemption apply. The Oregon law is preempted under Garmon because the law regulates non-coercive speech, which is “activity that the NLRA protects” under Section 8(c). Brown, 554 U.S. at 65 (quotation marks omitted). And the Oregon law is preempted under Machinists because Congress intended non-coercive speech to be unregulated and “left to be controlled by the free play of economic forces.” 427 U.S. at 140 (quotation marks omitted); see

also Brown, 554 U.S. at 69 (holding that laws that indirectly regulate an employer’s non-coercive speech about unionization are preempted).

21. Thus, under Brown, Garmon, and Machinists, the Oregon law is preempted.

22. As a result, the law unfairly interferes with the current representation election, and, as then-Members Schaumber and Hayes noted in their dissent in Independent Residences, an election conducted under such circumstances must be overturned under Brown and the Board’s prior decisions. 355 NLRB at 738-39. Even the majority in Independent Residences acknowledged that a law barring a “form of campaign speech or conduct” could be grounds to overturn an election. Id. at 731.

23. Because the law is preempted and unfairly interferes with the election, the Employer’s motion to stay should be granted.

24. In the alternative, a stay is also the best course so that the current Board may consider whether to adhere to the broader precedent set forth in Independent Residences that an election will not be overturned unless a preempted state law creates a serious obstacle to an employer’s free speech. *See* NLRB R&R § 102.67(d)(4).

25. The current Board should have the opportunity to examine adopting a different standard—advocated by then-Members Schaumber and Hayes in their dissent in Independent Residences—that would find preempted state laws that infringe on an employer’s rights in an NLRB election as “unlawful conduct” that “interferes with the exercise of a free and untrammelled choice in the election” unless “it is virtually impossible to conclude that the unlawful conduct could have affected the election.” Independent Residences, 724 NLRB at 738. This “virtually impossible” standard is drawn from a long line of NLRB cases “in which there has been a determination that an unlawful restriction has been imposed on a union’s or

employee's right to distribute or access information relevant to a decision on unionization." Id.; see also Safeway, Inc., 338 NLRB 525, 526 n.3 (2002).

26. Indeed, given the muzzle on the Employer right now because of the preempted Oregon law, it appears that this alternative standard set forth by then-Members Hayes and Schaumber is more akin to the present situation.

27. Moving forward with the election now when the result will likely be set aside under current controlling authority or following reconsideration of Independent Residences is an inefficient use of Board resources and a waste of judicial economy. Seward, 270 NLRB at 1034 (noting the importance of judicial economy considerations in Board procedural matters).

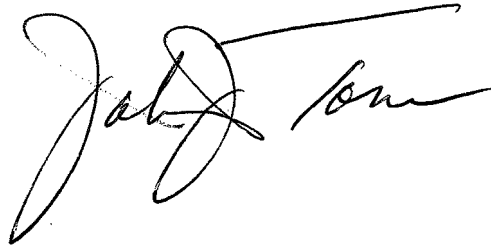
28. Moreover, with the Oregon law looming in the background and the risk of severe financial liability, the Company has not held any mandatory meetings with employees.

29. The Employer's failure to hold mandatory meetings has already resulted in irreparable harm, potentially destroyed laboratory conditions, and resulted in a deprivation of Constitutional rights in the underlying representation case. Each day that goes by the Employer is forced to conduct its campaign without being able to properly exercise its free speech rights and is further prejudiced in the campaign. Thus, an immediate stay is necessary to prevent further harm to the Employer.

30. For these reasons, the Regional Director should grant the Employer's motion and stay this action.

Date: June 20, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Toner". The signature is fluid and cursive, with a long horizontal line extending from the end.

---

John J. Toner  
Seyfarth Shaw LLP  
975 F Street, NW  
Washington, DC 20004  
Telephone No.: (202) 828-3575  
Fax No.: (202) 828-5393  
Email: [jtoner@seyfarth.com](mailto:jtoner@seyfarth.com)

# EXHIBIT 4

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DS Services of America, Inc.  
Employer

and

Case 19-RC-243327

Teamsters Union Local No. 206  
Petitioner

ORDER

The Employer's request to stay all proceedings and its Request for Review of the Regional Director's denial of its motion to stay all proceedings are denied. This order does not preclude the Employer from raising issues related to the impact, if any, of OR. REV. STAT. § 659.785, in any post-election proceedings.<sup>1</sup>

JOHN F. RING,	CHAIRMAN
LAUREN McFERRAN,	MEMBER
MARVIN E. KAPLAN,	MEMBER

Dated, Washington, D.C., July 26, 2019.

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<sup>1</sup> Chairman Ring and Member Kaplan express no view with respect to whether they agree or disagree with the revisions made by the Board's Election Rule, but they agree that it applies here and warrants denial of the Employer's request to stay the election.

Chairman Ring and Member Kaplan acknowledge that *Independence Residences*, 355 NLRB 724 (2010), is extant precedent, and that it supports denying the stay. They would be willing to reexamine that precedent in an appropriate post-election proceeding.

# EXHIBIT 5



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

**DS SERVICES OF AMERICA, INC.**

**Employer**

**and**

**TEAMSTERS LOCAL UNION NO. 206,  
AFFILIATED WITH INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**Petitioner**

**Case 19-RC-243327**

**TYPE OF ELECTION: RD DIRECTED**

**CERTIFICATION OF RESULTS OF ELECTION**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has not been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board,

It is certified that a majority of the valid ballots has not been cast for any labor organization and that no labor organization is the exclusive representative of the employees in the bargaining unit described below.

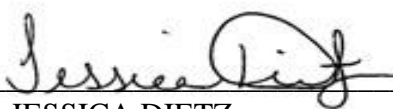
**Unit:** All full-time and regular part-time loader, production operator, warehouse, equipment service associate, inter-branch transfer driver, and production coordinator employees employed at the Employer's facility located at 13233 N.E. Jarrett Street, Portland, Oregon; excluding all route service representative-home office delivery, route service representative-office coffee service, route service representative-onboarder, route service representative-trainee, Relyant service technician, fleet mechanic, customer care specialist, sales representative, area sales representative, and territory account executive employees, guards, and supervisors as defined by the Act.

However, quality associate employees are neither included in nor excluded from the bargaining unit covered by this certification, inasmuch as the Regional Director did not rule on the inclusion or exclusion of these employees and ordered them to vote subject to challenge and resolution of their inclusion or exclusion was unnecessary because their ballots were not determinative of the election results.



August 7, 2019

**RONALD K. HOOKS**  
Regional Director, Region 19

By   
**JESSICA DIETZ**  
Officer in Charge, Subregion 36  
National Labor Relations Board

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of the regional director's decision to direct an election, if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by August 21, 2019. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.