

IN THE COURT OF APPEALS OF THE STATE OF OREGON

KA'ILA FARRELL-SMITH; ROWENA JACKSON; SARAH WESTOVER; and ROSEMARY FRANCIS EATHERINGTON,

Plaintiffs-Appellants,

and

ROGUE CLIMATE and 350 EUG ("350 EUGENE"),

Intervenor Plaintiffs-Appellants,

v.

THE OREGON DEPARTMENT OF JUSTICE; DAN RAYFIELD, in his official capacity as the Attorney General of the State of Oregon; and MICHAEL SLAUSON, in his official capacity as Chief Counsel of the Criminal Justice Division of the Oregon Department of Justice;

Defendants-Respondents.

Marion County Circuit Court
Case No. 21CV47809

CA A187251 (Control)
CA A187250

**AMICI CURIAE BRIEF OF LEGAL SCHOLARS
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Appeal from the judgment of the Circuit Court for Marion County;
Honorable Lindsay R. Partridge, Judge

(Counsel continued on following page)

October 2024

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INTEREST OF *AMICI CURIAE*

Amici, listed below, are legal scholars with recognized expertise in state constitutional law, the law of democracy, and individual rights. They have researched and published extensively in these areas, and they have a professional interest in promoting a proper understanding of the constitutional and democratic principles at issue in this case. Their institutional affiliations are listed for identification purposes only.

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INTRODUCTION

The Oregon Terrorism Information Threat Analysis Network Fusion Center (TITAN) is a domestic surveillance program that tracks and investigates individuals engaging in organizing, advocacy, and peaceful protest; surveils communities and organizations who are not suspected of any criminal conduct; and shares resulting intelligence with myriad governmental and private actors. The question in this case is whether Oregon law authorizes such sweeping and invasive surveillance of its residents. The court below answered yes, even though no statute expressly creates, regulates, or even mentions TITAN. Instead, the court relied on a grab bag of vague or implied statutory indicators and monetary appropriations.

As Plaintiffs-Appellants explain in their brief, that conclusion was mistaken: None of the statutes referenced enable TITAN's invasive practices, and the Oregon Supreme Court has in fact rejected the argument that several of them confer investigatory power on Respondents at all. *See* Appellants' Opening Br. 32-39; *State ex rel. Thornton v. Williams*, 215 Or 639, 646, 651-52, 336 P2d 68, 74-75 (1959). But the trial court's ruling also suffers from another fundamental error: Its mode of statutory analysis defies the Oregon Constitution's overriding—and in some ways unique—democratic commitments. As both the document itself and Oregon Supreme Court decisions make clear, those

commitments manifest through formal structures of democracy like elections, initiatives, and recall, as well as through individual rights that are essential to democratic self-government. These constitutional principles supply “state constitutional context” that must inform the interpretation of Oregon statutes, especially those that imperil participation in the democratic process. *State v. Bollet*, 341 Or App 1, 6, 572 P3d 1095, 1099 (2025).

The ruling below ignored that constitutional context. The court acknowledged that “Plaintiffs have constitutional and statutory rights to assemble and protest,” and concluded they had standing to bring this challenge because “the operation of [TITAN] and the resulting scrutiny on them have violated their rights in the past and chill the exercise of these rights in the future.” ER-141. Yet the court’s statutory analysis failed to account for these constitutional interests.

Amici submit this brief to emphasize that Oregon’s Constitution counsels against the lower court’s interpretive approach. Extensive, invasive surveillance like that embodied in TITAN can threaten and chill fundamental freedoms, and therefore popular self-government itself. Courts should not read authorization for such programs impliedly. Nor, given the Constitution’s fidelity to transparent and accountable lawmaking process, should they construe omnibus appropriations as indicators of legislative intent or authorization itself. To fulfill Oregon’s constitutional commitments, this Court should reverse.

ARGUMENT

The question of TITAN’s authorization is one of statutory construction. *See Ochoco Const. v. LCDC*, 295 Or 422, 426, 667 P2d 499, 502 (1983) (an agency is “a creature of statute,” and therefore “has no inherent power, but only such power and authority as has been conferred upon it by its organic legislation.”). Under the Oregon Supreme Court’s established methodology, courts must (1) examine statutory “text and context,” (2) consider any pertinent legislative history, and (3) if uncertainty remains look to “general maxims of statutory construction.” *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042, 1050 (2009). As this Court has explained, “relevant context” at step one includes the “state constitutional context” that serves as backdrop for legislative action. *Bollet*, 341 Or App at 6. Constitutional context is also vital at step three, since the canon of constitutional avoidance is a prominent interpretive maxim. *See, e.g., Westwood Homeowners Ass’n, Inc. v. Lane Cnty.*, 318 Or 146, 159, 864 P2d 350, 359 (1993) (noting the well-established goal to “construe the statute so as to satisfy the constitution”); *State v. Edgmand*, 306 Or 535, 540, 761 P2d 505, 507 (1988) (explaining “the often-stated rule to give statutes a constitutional interpretation unless the lawmakers unmistakably have adopted the questionable policy”).

As detailed below, the democratic rights and structures that suffuse the Oregon Constitution should be central to this Court’s assessment of whether TITAN is statutorily authorized. Part I outlines the Oregon Constitution’s foundational textual, structural, and historical commitments to democracy. Part II then explains that, because large-scale state surveillance poses risks to democratic self-government, legal authorization for programs like TITAN cannot be cobbled together through statutory implications. If such a program is to exist, the onus is on the state’s democratically elected lawmakers to create it expressly and transparently—and ideally with ample safeguards against potential constitutional infringements.

I. OREGON’S CONSTITUTION EMBODIES AN OVERRIDING COMMITMENT TO POPULAR SELF-GOVERNANCE AND CORE DEMOCRATIC RIGHTS

A. Oregon’s Constitutional Text, Structure, and History Center Democratic Self-Governance

Oregon’s Constitution is not merely a charter of government. It is a blueprint for collective self-rule. From its opening declaration to its structural design, the Oregon Constitution exemplifies a broader state constitutional tradition of embracing core democratic principles more expressly and extensively than the U.S. Constitution. *See* Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich L Rev 859, 865 (2021). And Oregon’s Constitution goes further than many of its sibling states,

embedding direct democratic mechanisms and political participation into its foundational law.

The Constitution begins with a clear affirmation: “[A]ll power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.” Or Const, Art I, § 1. These principles undergird the entire document, which establishes a government that is not only representative but also directly accountable to the people themselves.

Oregon’s commitment to popular sovereignty is as old as the state itself. As Judge David Schuman noted: “the Oregon Constitutional Convention of 1857 had been convened by popular vote, and once in session referred the issues of ratification * * * to the electorate.” Hon. David Schuman, *The Origin of State Constitutional Direct Democracy: William Simon U’ren and “The Oregon System”*, 67 Temp L Rev 947, 950 (1994); see also Hon. David Schuman, *The Creation of the Oregon Constitution*, 74 Or L Rev 611, 612 (1995) (surveying how “the distinctive political culture that gave rise to [direct democracy] was present even at the founding”).

Those commitments to popular self-government only expanded with time. In 1902, 91 percent of voters approved an amendment to the Oregon Constitution

allowing for “[t]he people” to “propose laws and amendments to the Constitution * * * independently of the legislature” through initiative power. Or Const, Art IV, § 1(2); see Legislative Policy and Research Office, *Direct Democracy in Oregon: Background Brief*, Oregon Legislature (Nov. 19, 2020).¹ Oregonians later enacted mechanisms for direct primaries in 1904 and added the power to directly recall public officials in 1908. Oregon Secretary of State, *Initiative, Referendum and Recall Introduction*, Oregon Blue Book.² This arrangement of initiatives, referenda, and recall provisions that enable the people to propose new laws or amend the Constitution directly has since become known nationwide as “the Oregon System.” See Schuman, 67 Temp L Rev at 948.

Democratic reformers were particularly concerned that elected officials might co-opt the structure of government to serve minoritarian, rather than majoritarian, goals. See Joseph G. Lapalombara, *The Initiative and Referendum in Oregon: 1938-1948* 10 (1950) (“The most important single cause for the advent of direct legislation is to be found in the declining popular trust in the judgment and integrity of the elected representatives of the people.”). This

¹ Available at <https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Direct-Democracy-in-Oregon.pdf>.

² Available at <https://sos.oregon.gov/blue-book/Pages/state/elections/history-introduction.aspx>.

distrust of legislative power, and the ways it might undermine the public will, animates provisions throughout the document: “the Oregon Constitution was designed to protect the people from the corrupt influences in their government * * * One of the prime constitutional problems was to prevent the legislature from using that delegated power from all the people in a manner contrary to the interests of the common good.” Bradley J. Nicholson, *A Sense of the Oregon Constitution* 431 (2015).

Today, the Oregon Constitution contains a litany of provisions aimed at ensuring the people can govern themselves as political equals, aided by elected representatives who are responsive and accountable to popular majorities. The Constitution provides for free and fair elections, Or Const, Art II, § 1; ensures majority rule, Art II, § 16; safeguards against bribery and “undue influence” in electoral contests, Art II, §§ 7, 8; and, as discussed, sets forth mechanisms for reasserting popular sovereignty directly through initiative, referendum, and recall; Art IV; Art II, § 18.

Likewise, the Oregon Constitution establishes an infrastructure of rights that allows individuals to participate in the democratic process. It declares that all are “equal in right,” Or Const, Art I, § 1; creates a robust right to free speech and expression, Art 1, § 8; and contains a self-standing provision protecting the right to assembly, separate and apart from rights of speech or association, Art 1,

§ 26. These rights of speech, association, and assembly enable functioning participatory processes—and serve as an extension of democracy itself. Indeed, the Oregon Supreme Court has expressly “recognize[d] the importance of the electorate’s liberties of expression of opinion and assembly in the overall system of government established by our state and federal constitutions.” *Deras v. Myers*, 272 Or 47, 54-56, 535 P2d 541, 544-45 (1975). And this Court has explained how the Oregon Constitution safeguards collective self-governance in part through its prominent assembly clause, which stands separate from the free expression clause—a contrast from the First Amendment’s “conflat[ion]” of assembly and expression. *Lahmann v. Shimer*, 202 Or App 123, 141, 121 P3d 671, 682 (2005); *see also id.* at 682 (explaining that Oregon’s framers “appreciated the import of the right of assembly for consultation on the common good” and sought to guarantee that the people would be free “to deliberate on matters of public concern as a part of the political process”); Nikolas Bowie, *The Constitutional Right of Self-Government*, 130 Yale LJ 1652, 1734-35 (2021) (identifying *Lahmann* as “one of only a handful of articles and judicial opinions in the past century” to recognize the colonial tradition of assembly-as-governance—that is, the “constitutional right of self-government”). Simply put, a commitment to direct, collective self-governance suffuses the Oregon Constitution from root to stem.

B. Statutory Interpretation in Oregon Has Long Taken Account of the Constitution's Democratic Commitments

Oregon courts have long recognized the Oregon Constitution's democratic design not just in constitutional litigation, but in statutory cases as well. Again and again, they have interpreted statutes in ways that advance rather than impair the Constitution's overarching structural and rights-based commitments to democratic self-government.

For example, Oregon, like sibling states, has a robust tradition of interpreting laws to facilitate the franchise. *See, e.g., State ex rel. Bylander v. Hoss*, 143 Or 383, 388, 22 P2d 883, 885 (1933) (“Election laws should be liberally construed to the end that the people may have the opportunity of expressing opinion concerning matters of vital interest to their welfare. Expression, not suppression, tends towards good government. * * * If the statute is of doubtful construction, we think the doubt should be resolved in favor of free expression of opinion.”). The same goes for direct democracy provisions. *See, e.g., Bernstein Bros. v. Dep’t of Revenue*, 294 Or 614, 621, 661 P2d 537, 541 (1983) (explaining that where the “purpose” of a law “was to chill the exercise of the power of referendum * * * [t]hat purpose is not to be tolerated”); *State v. Mack*, 134 Or 67, 67, 292 P 306, 307 (1930) (constitutional provisions for initiative and referendum “should have a liberal construction”); *Othus v. Kozier*,

119 Or 101, 109, 248 P 146, 149 (1926) (“doubt should be resolved in favor of the exercise of the right of the people to initiate a law, if they see fit”).

This commitment sits within a larger tradition of state courts safeguarding democracy and the right to vote. *See, e.g., Alaska Democratic Party v. Beecher*, 572 P3d 556, 567 (Alaska 2025) (referencing the state’s “clear precedent favoring ballot access”); *Queenan v. Mimms*, 283 SW2d 380, 382 (Ky 1955) (“It is a fundamental principle that the courts will construe election statutes liberally in favor of the citizens whose right to choose their public officers is challenged.”); *Silberstein v. Prince*, 149 NW 653, 654 (Minn 1914) (“[I]t is a rule of universal application that all statutes tending to limit the citizen in the exercise of his right of suffrage must be construed liberally in his favor.”); *see generally* Richard L. Hasen, *The Democracy Canon*, 62 Stan L Rev 69 (2009).

The upshot is that courts not only recognize that Oregon’s founding document prioritizes structures of electoral accountability alongside individual rights like speech and assembly, but they also deploy that insight in statutory cases and resolve doubts in favor of interpretations that foster democratic deliberation and participation.

II. BECAUSE EXTENSIVE STATE SURVEILLANCE THREATENS CORE RIGHTS, AUTHORIZATION FOR PROGRAMS LIKE TITAN CANNOT BE ASSUMED OR IMPLIED.

Expansive and intrusive state surveillance, like that embodied in TITAN, can threaten fundamental freedoms and thereby undermine the people’s ability to govern themselves. Properly considering the Constitution’s textual, structural, and historical commitments to popular sovereignty and core democratic rights, courts should not presume that legislation authorizes such coercive power impliedly. Neither statutory silence nor scattered appropriations authorize the state to chill or burden rights.

A. Extensive Surveillance Threatens Core Democratic Rights

Taking Plaintiffs’ allegations as true—as the Court must at this stage, *see Slogowski v. Lyness*, 324 Or 436, 439, 927 P2d 587, 588 (1996)—TITAN embodies a staggeringly expansive and intrusive surveillance apparatus.

By its own description, TITAN is an “all crimes/all hazard[s]” intelligence program that collects, analyzes, stores, and distributes information about Oregonians. ER-7 ¶ 27, ER-9 ¶ 34, ER-10 ¶¶ 41-43. Plaintiffs allege that TITAN “analysts routinely surveil * * * peaceful assemblies”; that surveillance of social justice advocates “is a regular aspect of TITAN’s operations”; and that TITAN’s “pattern of collecting, disseminating, and retaining intelligence without any criminal nexus * * * continues unabated.” ER-11 ¶ 46, ER-14 ¶ 60, ER-17 73.

Specifically, the Complaint contends that, regardless of whether residents are suspected of criminal activity, TITAN produces threat assessments, safety bulletins, and suspicious activity reports (“SARs”). ER-10 ¶¶ 41-43. The Complaint includes references to how TITAN has tracked social media users posting the “Black Lives Matter” hashtag (including ODOJ’s own Director of Civil Rights), ER-14 ¶ 61; collated “criminal intelligence” reports on the Women’s March; ER-14 ¶ 62; and, in the words of a former Chief Counsel of ODOJ, was “prepared to report on groups that were assembling in protest even when there was no report of criminal nexus or public safety concern,” ER-16 ¶ 72. Plaintiffs also allege that TITAN routinely shares this information with numerous government agencies and even private companies. ER-10 ¶¶ 41-43; ER-13 ¶¶ 55-57.

These activities threaten democratic self-determination. As the Oregon Supreme Court has cautioned: “[F]reedom may be impaired as much, if not more so, by the threat of scrutiny as by the fact of scrutiny.” *State v. Campbell*, 306 Or 157, 172, 759 P2d 1040, 1048 (1988); *cf. id.* at 1049 (concluding that attaching a radio transmitter to a car was a search in violation of Article 1, Section 9 because “[t]here would * * * be no ready means for individuals to ascertain when they were being scrutinized and when they were not. That is nothing short of a staggering limitation upon personal freedom.”). Other state courts have similarly

warned of how intrusive surveillance undermines democratic values. *See, e.g., State v. McKelvey*, 544 P3d 632, 645-46 (Alaska 2024) (recognizing that law enforcement recordings risk “chilling ‘public and private expression on the great issues of our day, as well as private discussion about the mundane, the trivial, and the banal,’ turning our ‘once free society’ into ‘a nation of “hagridden and furtive” people’”) (quoting *State v. Glass*, 583 P2d 872, 877 (Alaska 1978)); *Commonwealth v. Perry*, 184 NE3d 745, 760 (Mass 2022) (“Providing law enforcement with [intimate] personal information is of particular concern because it risks chilling the associational and expressive freedoms that our State and Federal Constitutions strive to protect. * * * Privacy in one’s associations, whether political, religious, or simply amicable, plays a crucial role in maintaining our democracy.”); *White v. Davis*, 533 P2d 222, 229 (Cal 1975) (warning how “covert police surveillance and intelligence gathering may potentially impose a significant inhibiting effect on the free expression of ideas”). Writing about the dangers of aggregate surveillance programs like TITAN specifically, Professors Danielle Citron & Frank Pasquale have detailed how “[m]embers of the public may decline to engage in certain discussions, travel to certain places, or join legitimate political, ethnic, or religious groups,” or “may refrain from exploring non-mainstream ideas both online and offline.” Danielle

Keats Citron & Frank Pasquale, *Network Accountability for the Domestic Intelligence Apparatus*, 62 Hastings LJ 1441, 1459 (2011).

In short, “[s]urveillance has a profound chilling effect.” *Id.* As courts in Oregon and elsewhere have recognized, it therefore imperils democratic rights.

B. Given Oregon’s Constitutional Commitment to Democracy, Authorization For A Surveillance Program Like TITAN Should Not Be Lightly Implied

Whether framed as “context” at step one of the Court’s statutory analysis or as constitutional avoidance at step three, Oregon’s fundamental charter counsels against reading ambiguous or vague statutory commands (much less patching them together in combination) to authorize a broad-based surveillance program that threatens to chill speech, assembly, or political association. Instead, absent plain evidence of intent, courts should presume that the legislature, acting as a faithful fiduciary of the people, did not intend to jeopardize Oregonians’ fundamental rights or ability to self-govern. This Court should not endorse the lower court’s conclusion: that a mandate for chilling surveillance can be extrapolated from multiple generalized statutory provisions.

In fact, the Oregon Supreme Court has suggested the opposite: that as potential intrusions to fundamental freedoms increase, so too must the specificity of authorization. As the Court explained in the context of law enforcement roadblocks, although executive branch actors often have leeway “to carry out

their assigned responsibilities” over matters such as law enforcement, “some procedures may invade personal freedoms protected from government interference by the constitution.” *Nelson v. Lane Cnty.*, 304 Or 97, 103, 743 P2d 692, 695 (1987). This includes roadblocks, which “are seizures of the person, possibly to be followed by a search of the person or the person’s effects.” *Id.* “For this reason,” the Court wrote, “the authority to conduct roadblocks *cannot be implied.*” *Id.* at 103-04 (emphasis added). Instead, roadblocks require “explicit authority from outside the executive branch.” *Id.* at 104; *see also* Appellants’ Opening Br. 41-42.

Similar logic should govern here: the authority to conduct surveillance that burdens core democratic rights must not be lightly implied. Courts should not presume the legislature set out to imperil core democratic rights—and if the state’s democratically elected lawmakers truly intend to enact a program like TITAN, the onus is on them to create it expressly and transparently. *See Seale v. McKennon*, 215 Or 562, 573, 336 P2d 340, 346 (1959) (“Of course, the ultimate question is, what was the legislative intent? Doubt should be resolved in favor of constitutionality.”); *see generally* Shambie Singer, 3C Sutherland Statutory Construction § 76:13 (8th ed.) (“The interpretation of statutes which impinge upon civil liberties generally has been treated as a serious undertaking, subject to special considerations”). The lower court’s approach—patching vague and

disparate statutory instructions together to authorize concentrated and intrusive surveillance authority—is incompatible with the principles of self-rule and democratic rights embodied in the Oregon Constitution.

Other legal constraints on law enforcement power underscore this conclusion. Understanding the democratic dangers of mass surveillance, Oregon has enacted a broad prohibition on police surveillance that bars police from collecting or maintaining information about a person or group’s political, religious, or social views, associations or activities. The resulting statute is now codified as ORS 181A.250. More generally, as Plaintiffs describe in their merits brief, *see* Appellants’ Opening Br. 33-36, the Oregon Supreme Court has flatly rejected the proposition that ODOJ has unbounded investigatory authorization, instead limiting the agency to exercising powers outlined by statute or direction from the governor. *See Thornton*, 215 Or at 646, 651-52. These authorities reinforce the conclusion that the legislature has not implicitly sanctioned a dragnet surveillance apparatus. *See Ogle v. Nooth*, 355 Or 570, 584, 330 P3d 572, 581 (2014) (explaining that at the first level of the *PGE* analysis, “[a] statute’s context includes other provisions of * * * related statutes, the pre-existing statutory framework within which the statute was enacted, and prior opinions of this court”).

C. The Appropriation of Funds Does Not Mean That TITAN Is Lawful

Finally, the court below also relied on a monetary appropriation as evidence of authorization. The Court observed that “ODOJ has sought and received funding from the legislature to operate [TITAN]. Clearly, [it] is a program known to the legislature and partially funded by general fund dollars.” ER-144.

The mere fact that the legislature has funded TITAN does not reflect whether the program was validly authorized through enabling legislation. As other courts have noted, appropriations are neither authorizations themselves nor reliable indicators of authorization elsewhere. Instead, because of the omnibus nature of appropriations, other courts have reasoned that a vote in favor of omnibus funding is not tantamount to a legal judgment regarding funded programs or purposes. *See e.g., Tenn. Valley Auth. v. Hill*, 437 US 153, 190 (1978) (explaining how appropriation measures “have the limited specific purpose of providing funds for authorized programs” and that “[w]hen voting on appropriations measures, legislators are entitled to assume that the funds will be devoted to purposes that are lawful”); *Sellers v. Frohmiller*, 24 P2d 666, 669 (Ariz 1933) (“[A] general appropriation bill is not in the true sense of the term legislation; it is, as the language implies, merely a setting apart of the funds necessary for the use and maintenance of the various departments of the state

government already in existence and functioning.”); *Benjamin v. Devon Bank*, 368 NE2d 878, 881 (Ill 1977) (holding that because a provision “of the appropriation bill purported to change the existing general substantive law,” “it was therefore itself substantive in nature, and could not be included in the appropriation bill”); *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 342 P2d 588, 592 (Wash 1959) (“[A]n appropriation bill is not a law in its ordinary sense. It is not a rule of action. It has no moral or divine sanction. It defines no rights and punishes no wrongs. * * * It is a means only to the enforcement of law.”). The central logic of these cases is that appropriations alone are not reliable or clear indicia of substantive legislative intent.

That conclusion is especially strong where, as here, the Oregon Constitution contains explicit provisions that require lawmaking to be transparent and comprehensible and that aim to ensure the accountable exercise of power. Consider, for example, the single-subject rule, Or Const, Art IV, § 20, which aims to ensure that “every legislative subject should receive separate consideration and rise or fall on its own merits, not because it is conjoined with an unrelated measure.” Hon. Jack L. Landau, Oregon Constitutional Law (OSB) § 19.4-2(a). This constitutional provision also requires that every Act’s single subject “be expressed in the title,” and “was designed to prevent the use of the title as a means of deceiving members of the legislature and other interested persons as the bill

moved through the legislative process.” *Warren v. Marion County*, 222 Or 307, 311, 321, 353 P2d 257, 264 (1960); *see also* Or Const, Art IV, § 22 (requiring revisions and amendments to legislative acts to be set out in full).

As states with similar provisions recognize, these constitutional clauses ensure transparency around both substance and process for any legislative enactment—and therefore require organic legislation and funding mechanisms to remain separate. *See, e.g., Bd. of Trs. of N.D. Pub. Emps. Ret. Sys. v. N. Dakota Legislative Assembly*, 996 NW2d 873, 887-88 (ND 2023) (invalidating an appropriations bill that contained substantive provisions and surveying decisions that “have struck down substantive legislation attached to general appropriations bills as violating constitutional one-subject provisions”); *Planned Parenthood v. Dep’t of Soc. Serv.’s*, 602 SW3d 201, 207 (Mo 2020) (“[A]ny bill that purports to combine appropriations with the enactment or amendment of general or substantive law necessarily contains more than one subject.”); *S.D. Educ. Ass’n v. Barnett*, 582 NW2d 386, 393 (SD 1998) (invalidating an appropriations bill changing educators’ collective bargaining rights because “[t]he title expresses the subject of appropriating money for the expenses of various state entities” and “no reasonable individual concerned with any aspect * * * would be put on inquiry that provisions altering collective bargaining rights * * * would be included in the bill.”); *Flanders v. Morris*, 558 P2d 769, 773 (Wash 1977) (“An

appropriations bill which ‘defines no rights’ certainly cannot abolish or amend existing law.”). Under the Oregon Constitution’s commitment to accountable lawmaking, it is not enough for TITAN to be referenced in an appropriation. To be lawful, the TITAN program must be directly considered and approved through legislation.

Indeed, the distinction these cases identify between appropriations and programmatic authorizations fully aligns with the Oregon Supreme Court’s approach to statutory interpretation. As the Supreme Court reiterated in *State v. Gaines*, “[t]he formal requirements of lawmaking produce the best source from which to discern the legislature’s intent.” 346 Or at 171. The court then quoted Thomas Cooley for the proposition that the will of lawmakers must “be express[ed] in due form of law” using “the mode pointed out by the instrument which invests them with the power.” *Id.* (quoting Thomas M. Cooley, *A Treatise on the Constitutional Limitations* 130 (1868)).

Viewing omnibus appropriations as clear statements of legislative intent, as the lower court did, thus flouts Oregon’s constitutional commitments to the transparent, accountable exercise of public power. Oregon has long embraced the constitutional importance of a “legitimate law-making process,” which respects not just “what law was made, but how it was made.” Hon. Hans A. Linde, *Due Process of Lawmaking*, 55 Neb L Rev 197, 239 (1975). The principles embodied

in the state's fundamental charter counsel against viewing monetary appropriations as anything more than just that: appropriations.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to reverse the judgment below.

Dated this 16th day of October, 2025.

Respectfully submitted,

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