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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 PENDLETON SCHOOL DISTRICT 16R;  
7 EUGENE SCHOOL DISTRICT 4J; CROW-  
8 APPLGATE-LORANE SCHOOL  
9 DISTRICT 66; COOS BAY SCHOOL  
10 DISTRICT 9; CORVALLIS SCHOOL  
11 DISTRICT 509J; JOSEPHINE COUNTY  
12 UNIT/THREE RIVERS SCHOOL  
13 DISTRICT; ALEXANDRA KIESLING and  
14 TIMOTHY KIESLING, minors, by Amy  
15 Cuddy, their guardian ad litem; GRACE  
16 PEYERWOLD, a minor, by David and Maria  
17 Peyerwold, her guardians ad litem;  
18 MARSHALL TAUNTON and HARRISON  
19 TAUNTON, minors, by Tim and Wendy  
20 Taunton, their guardians ad litem,

21 Plaintiffs,

22 v.

23 STATE OF OREGON; PETER COURTNEY,  
24 in his capacity as Senate President of the  
25 Legislative Assembly of Oregon; KATE  
26 BROWN, in her capacity as Senate Majority  
Leader; TED FERRIOLI, in his capacity as  
Republican Leader of the Senate; KAREN  
MINNIS, in her capacity as Speaker of the  
House of Representatives; WAYNE SCOTT,  
in his capacity as Majority Lead of the House  
of Representatives; JEFF MERKLEY, in his  
capacity as Democratic Leader of the House of  
Representatives,

Defendants.

Case No. 0603-02980

MOTION TO CHANGE VENUE

**(ORAL ARGUMENT REQUESTED)**

Oral Argument Requested: Yes

Court Reporting Services Requested: Yes

Estimated Time for Argument: 30 minutes

1 Pursuant to ORS 14.110(1)(a), defendants move the court for an order to change the place  
2 of trial from Multnomah County to Marion County. The motion is made on the grounds that:

3 (a) The facts giving rise to this cause of action all occurred in Marion County.

4 (b) No part of the cause of action occurred in Multnomah County; and

5 (c) Pursuant to ORS 14.060, venue is proper in Marion County.

6 This motion is supported by the affidavit of Katherine G. Georges submitted with this  
7 motion, and all papers on file in this action.

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9 **POINTS AND AUTHORITIES**

10 **A. Background.**

11 This action arises out of the Legislature's act of appropriating money for K-12 public  
12 schools for the 2005-07 biennium. Plaintiffs are six school districts and three students and their  
13 parents who seek declaratory and injunctive relief that the Legislature failed to appropriate  
14 constitutionally adequate funding for K-12 public schools for the 2005-07 biennium, in violation  
15 of Article VIII, sections 3 and 8, of the Oregon Constitution. Complaint (Ex. A).

16 Defendants are the State of Oregon and six legislators, who are sued in their official  
17 capacities and on behalf of all members of the Legislature (Complaint, ¶ 25): Senate President  
18 Peter Courtney; Senate Majority Leader Kate Brown; Republican Leader of the Senate Ted  
19 Ferrioli; Speaker of the House of Representatives Karen Minnis; Majority Leader of the House  
20 of Representatives Wayne Scott; and, Democratic Leader of the House of Representatives Jeff  
21 Merkley.

22 Plaintiffs assert three claims for relief. Plaintiffs' first claim seeks declaratory judgment  
23 that "pursuant to Article VIII, section 8, of the Oregon Constitution, [the Legislature] must  
24 appropriate for each biennium a sum of money sufficient to ensure that the state's system of  
25 K-12 public education meets the quality goals established by law, and the Legislature has failed  
26

1 to appropriate a sum of money sufficient to ensure, for the 2005-07 biennium, that the state’s  
2 system of K-12 public education meets the quality goals established by law[.]”

3 Plaintiffs’ second claim seeks declaratory judgment that “pursuant to Article VIII,  
4 section 3 of the Oregon Constitution, [the Legislature] must appropriate funds sufficient to  
5 maintain an adequate system of K-12 public schools, and the Legislature has failed to  
6 appropriate a sum of money sufficient to maintain an adequate system of K-12 public schools for  
7 the 2005-07 biennium[.]”

8 Plaintiffs’ third claim seeks an injunction requiring defendants “to appropriate for the  
9 current [2005-07] biennium funding sufficient to provide the Required Service Levels, *i.e.*, the  
10 service levels that the Commission determined were necessary to achieve quality goals  
11 established by law.” *See* Complaint, Prayer, pages 22-23.

12 The facts giving rise to this cause of action all occurred in Marion County. Plaintiffs  
13 allege that the amount appropriated by the Legislature for the K-12 public schools budget for the  
14 2005-07 biennium was constitutionally inadequate. The Legislature’s act of appropriating  
15 money for the K-12 public schools budget for the 2005-07 biennium was an official legislative  
16 act that occurred in the Legislative Assembly during legislative sessions in the Capitol in Marion  
17 County. No part of the Legislature’s act of appropriating money for public schools for the  
18 2005-07 biennium occurred in Multnomah County.

19 **B. Pursuant to ORS 14.060, venue is proper in Marion County.**

20 Plaintiffs allege that venue is proper in Multnomah County under ORS 14.060.  
21 Complaint, ¶ 15. Defendants agree that ORS 14.060 applies here, but ORS 14.060 requires suit  
22 to be brought in Marion County, where the cause of suit arose.

23 ORS 14.060 governs venue of suits against the state, state agencies and departments, and  
24 state officials sued in their official capacities. It provides:  
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1 Any suit against any department, official, officer, commissioner,  
2 commission or board of the state, as such, or in virtue of such  
3 status, other than a suit for the causes enumerated in ORS 14.040<sup>1</sup>,  
may be brought *in the county wherein the cause of suit, or some  
part thereof, arose.* (Emphasis added).

4 Venue under ORS 14.060 is exclusive, and actions against the state and state officials may only  
5 be brought in the county where the cause of suit arose. *Nibler v. ODOT*, 338 Or. 19, 105 P.3d  
6 360 (2005).

7 In *Nibler*, plaintiff, as personal representative of his wife's estate, filed an action against  
8 defendants, the Oregon Department of Transportation and the Oregon State Police, alleging  
9 negligence arising out of an automobile accident. Defendants moved to change venue from  
10 Multnomah County to Washington County, where the accident occurred. The Multnomah  
11 County circuit court denied the motion. Defendants filed a petition for writ of mandamus to  
12 require the trial court to change venue. The Oregon Supreme Court issued a writ directing the  
13 trial court to vacate its order and to enter a new order granting the motion to change venue to  
14 Washington County. *Nibler*, 338 Or. 19.

15 Plaintiff argued that the word “may” in the statute was permissive, and that the statute  
16 granted plaintiff the discretion to either file the action in the county where the claim arose, or  
17 elect instead to proceed under ORS 14.080, the “catch-all” venue statute, which allows “all other  
18 actions” to be filed in “the county in which the defendants, or one of them, reside at the  
19 commencement of the action or in the county where the cause of action arose.” Plaintiff argued  
20 that “[b]ecause, in plaintiff’s view, the state resides in every county, the county of venue is  
21 [plaintiff’s] to choose.” *Id.* at 26. The Supreme Court rejected plaintiff’s arguments. The court  
22 held that “ORS 14.060, and no other statute, grants a plaintiff statutory authority to file an action  
23 against the state and its subdivisions in a particular county,” and that “ORS 14.060 grants [a  
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26 <sup>1</sup> ORS 14.040, to which ORS 14.060 refers, applies to actions involving real property, and it is  
not applicable here.

1 plaintiff] statutory authority to file his action *in the county where his claim arose.*" *Id.* at 27-28.  
2 (Emphasis added).

3 Plaintiffs' complaint here is that the Legislature appropriated constitutionally inadequate  
4 funding for the K-12 public schools budget for the 2005-07 biennium. Pursuant to ORS 14.060,  
5 venue is proper in Marion County, where plaintiffs' cause of action arose. *Nibler*, 338 Or. at 27.

6 **CONCLUSION**

7 Plaintiffs' suit arose out of the acts of the Legislature in appropriating funds for the K-12  
8 public schools budget for the 2005-07 biennium. Plaintiffs claim that the Legislature's  
9 appropriation for the K-12 public schools budget for the 2005-07 biennium was constitutionally  
10 inadequate, and plaintiffs seek an injunction to order the Legislature to increase the amount of  
11 the 2005-07 appropriation. The Legislature's act occurred in Marion County. No part of that act  
12 occurred in Multnomah County. Pursuant to ORS 14.060, venue is proper in Marion County,  
13 and defendants' motion to change venue to Marion County should be granted.

14 DATED this 7 day of April, 2006.

15 Respectfully submitted,

16 HARDY MYERS  
17 Attorney General

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