

REQUEST FOR INVESTIGATION OF
ELECTION LAWS VIOLATIONS COMMITTED BY
JACKSON COUNTY COMMISSIONERS,
COUNTY ADMINISTRATOR & COUNTY COUNSEL

Jackson County for All of Us (JCFA) is a nonpartisan grassroots association of citizens who seek to give Jackson County voters the opportunity to decide three questions about the County's governing body, the Board of Commissioners:

1. Should the elected post of Commissioner be nonpartisan?
2. Should the number of seats on the Board be increased to five?
3. Should the Commissioners' salaries, the highest in the state, be reduced?

The activities of JCFA and its volunteers are protected under the United States and Oregon Constitutions, and state statutes and administrative rules.

JCFA filed "prospective initiative petitions" with the Jackson County Clerk on July 28, 2023, (Exhibit 1) thereby activating the prohibitions of ORS 260.432¹:

(1) A person may not attempt to, or actually, coerce, command or require a public employee to ...

(d) Promote or oppose the gathering of signatures on an initiative...

(e) Promote or oppose the adoption of a measure...

(2) A public employee may not engage in any of the following activities while on the job during working hours or while otherwise acting in the public employee's official capacity ...

(d) Promote or oppose the gathering of signatures on an initiative...

(e) Promote or oppose the adoption of a measure...

The County Clerk certified the JCFA Petitions for circulation on September 15, 2023, and JCFA volunteers began their drive to gather a minimum of 10,500 signatures on each initiative petition. (Exhibit 2.)

¹ Oregon Secretary of State, *Restrictions on Political Advocacy by Public Employees* adopted by OAR No. 165-013-0030 (rev. July 2023) (hereinafter "SoS Manual") at 7. Violations of the SoS Manual are enforced as violations of ORS 260.432 itself. *Id.* at 3.

The current County Commissioners – Rick Dyer, Colleen Roberts and Dave Dotterer – began actions in opposition to the JCFA initiatives. They have admitted that they were contesting the initiatives with “generalities.” They had not done research or fact-based analysis and did not have “the numbers.”² County Administrator Danny Jordan proposed that he direct County personnel “to run the numbers” to fit the Commissioners' predetermined arguments. Jordan and the Commissioners are adamant the Measures will have negative impacts. Their positions seem to be based on personally motivated opinions, not objective provable facts.

In January, Commissioners Dyer and Dotterer simultaneously attended the monthly meeting of the Jackson County Republican Central Committee (JCRCC). Usually the Commissioners recognize that when two of them are present at the same convening relating to government or policy, they constitute a quorum of the Board, triggering the requirements of Oregon's Public Meetings Law.³ Not this time.

At the Board/Staff Meeting on January 11, noticed⁴ as a “public meeting” of the Board of Commissioners sitting in their official capacities, Dyer introduced details about the JCRCC meeting as a “Liaison Report.” Annually each

2 See, e.g., Exhibit 6, p. 13 (“Coming out, I was interviewed by the Mail Tribune. I mentioned a lot of these things. Of course, I didn’t have the specific figures.”); Id. p. 14 (“Again, I didn’t investigate and do all the research that went into these numbers, but I very clearly stated in the first interview that I was asked to give on these petitions and I sent out a list of additional cost increases and how these initiatives definitely would increase costs. Now, they can be discounted. Somebody can say, well, that’s not true.”)

3 Pursuant to the Commissioners' policy, practice, and expressed understandings of the Public Meetings Law, no more than one Commissioner is allowed to monitor the meetings of the Association of Oregon Counties (AOC), although they connect remotely, remain on mute, and apparently cannot be seen on video by the legitimate AOC members who participate. The Commissioners opted to drop out of AOC in 2023 and can no longer invoke the exemption in ORS 192.610(7)(b). See Exhibit 4, page 8, for the Board's argument that Dyer's and Dotterer's *personal* memberships in JCRCC bring that *county-level* political party unit within the scope of ORS 192.610(7)(b).

4 The notices and agendas of the January 11 and 18 and February 15 and 20 Board meetings discussed in this Request are posted on the County's official website, [BoC Meetings and Agendas \(jacksoncountyor.gov\)](https://www.jacksoncountyor.gov). Links to audio minutes of Tuesday and Thursday meetings are also found on this page. Video and audio of these meetings are contemporaneously broadcast via Zoom; those video files presumably are available to the Secretary of State from the County, although not maintained in accessible form for the public.

Commissioner accepts a "Liaison" assignment, in their official capacities, to engage with recognized governmental and policy-making entities such as incorporated municipalities, and report back to the other Commissioners. Some also adopt informal "liaison" roles with constituent groups left out of the formal Liaison system, such as rural unincorporated communities. There are no Liaison assignments for personal partisan activities or political parties, and there should be no official dialog or agreements between the Board as governing body of Jackson County and the JCRCC.

A transcript of relevant portions of the January 11 meeting is attached as Exhibit 3.2. Review of the audio minutes will reveal the concern in Dyer's voice when he said:

[T]he article in the paper yesterday about the initiatives, the Jackson County For All initiatives and how they are now potentially are trying to get this on the May ballot... [T]he party has taken this on as one of their biggest, the main issues. They oppose it...

It's just a matter of the timing. I don't know that it's necessarily a great strategy to wait for it to hit the ballot, but a lot of people think, well, once it hits then I'll get involved.

I think we are there now. I think we are at the point where it needs to have some attention. We don't want to be caught flat-footed. That's even before I knew they were talking about putting it on the May ballot.

Summary: The Commissioners agreed to actively seek invitations to appear on a regional conservative talk radio program in serial fashion to speak out in opposition to the JCFA Petitions.

At the next Staff Meeting on January 18, Jordan urged the Commissioners to endorse an assignment of County personnel and resources to create a dossier critical of the JCFA Measures. Jordan raised this after all properly-noticed agenda items had been completed and the meeting was effectively over. As "the tenor, style and timing"⁵ of Jordan's proposal make clear, his objective was to develop a counter-campaign. His criticisms are evident in the written transcript, Exhibit 5,

⁵ *Burt v. Blumenauer*, 65 Or. App. 399, 406 (Or. Ct. App. 1984), approved by the Oregon Supreme Court in *Burt v. Blumenauer*, 299 Or. 55, 63 (Or. 1985), quoting *Stanson v. Mott*, 13 Cal. 3D 206, 222 (Cal. 1976).

but are far more emphatic in the audio record. This meeting was contemporaneously broadcast on Zoom, and investigation of that video will reveal more about Jordan's style and tenor.

Statements of particular note:

Jordan - "Can I ask you all something real quick? This – I don't want you to make a decision about anything, but – you know, 'em, you have these three initiative petitions that haven't yet qualified for the ballot. You are able to use that to gather factual information about that. **We can't, once it qualifies for the ballot, then we can't do anything that supports or opposes it**, although we can still share factual information. I'm just making sure you all know this."

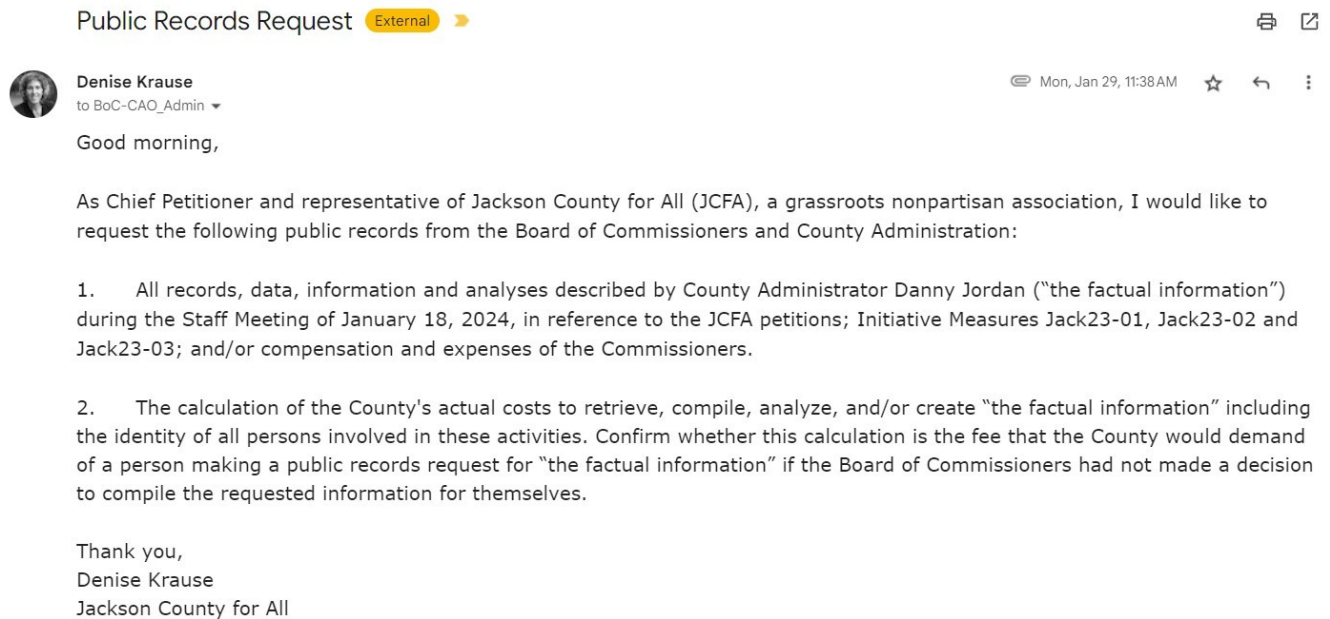
Jordan knew his proposal would violate ORS 260.432 if that statute had been in effect. He thought he could employ County personnel for advocacy work up until the Petitions *qualified* for the ballot, not the July 28 filing of prospective initiative petitions.

Jordan referred to "specific people [who] are pushing these initiatives... There's a lot of comments that are being made about the specifics of those three things that are not factually correct." Critically, he urged:

You know, **if we do this before it qualifies for the ballot it's different than after it qualifies for the ballot**. And it will take some Staff resources to do it but we can run, you know, a lot of those numbers.

It appears Jordan believed he and the Commissioners were not required to abide by ORS 260.432, based on his misunderstanding, unfamiliarity with or disregard of the SoS Manual. Comforted by this erroneous advice, the Commissioners endorsed Jordan's proposal to "take some Staff resources to ... run, you know, a lot of those numbers."

On January 29, JCFA submitted a public records request for “those numbers”:



Jordan refused to produce records as they were prepared, asserting that a renewed request could be submitted only *after* he presented his materials at a public meeting, and flatly ignored Request Number 2.

On February 15, 2024, Jordan and the Commissioners conducted a tense,⁶ one-sided meeting lasting over an hour. This occurred inside the County office building, using County resources, in what was noticed and convened as an official public meeting of the Board. Dyer gave Jordan free rein to assert arguments against the Measures and hand out documents created by County employees from January 18 through that morning which Jordan declined to provide to the citizens in attendance.⁷ Jordan's presentation was not measured, dispassionate or objective, nor was it factually accurate. This was by no means an informational session. Jordan stated “I’m going to make some statements here right up front and then I’m going to provide documentation to support everything that I say and

⁶ *Grants Pass Daily Courier*, February 16, 2024, p. 1. See Exhibit 7.

⁷ “[B]etween that time and now up until this morning I have been putting together information to support my statements.” Exhibit 6, p. 1

then people can go at work critiquing it all they want.”⁸

In fact, Jordan did *not* provide documentation to support everything he said, not even to the Commissioners. He disclosed that his highest hypothetical costs were merely ballpark estimates based on his opinions and predictions.⁹ Jordan did repeatedly propose to have County personnel prepare more documentation to fit his arguments, however.

“[T]he style, tenor and timing”¹⁰ of the February 15 presentation by Jordan and followup speeches by the Commissioners all confirm that these participants were mounting a concerted, purposeful campaign against JCFA and the Measures.¹¹

Style: One-sided, intended to intimidate¹²

Tenor: Hostile, condescending, insulting

Timing: Rushed with only five days until the Petitions would be filed with the County Clerk

These characteristics are apparent in the silent transcript attached as Exhibit 6. The audio record posted on the County's website provides much more insight. The meeting was contemporaneously broadcast by video, and first-hand witnesses are available to attest to the style of the proceedings and tenor of Jordan's and Dyer's statements.

8 Exhibit 6, p. 1. “People could say, you know you could change things. You could do business differently.” Exhibit 6, p 7. “Anyone can argue those numbers. You can try to knock some things out or not.” Exhibit 6, p. 8.

9 “So if you pass five commissioners but don’t pass the cap, it’s \$500,000-700,000. These are general numbers... These are my estimates... I didn’t prepare that. I gave you rough numbers. I can put that on paper if you all want me to... If you want me to prepare a budget that reflects five commissioners without the salary cap ... *in my opinion*, that’s a potential if not probable outcome... I didn’t prepare that, I gave you rough numbers.” Exhibit 6, pp. 7, 8, 18.

10 See footnote 5 above.

11 Exhibit 6, p. 17.

12 Overall, the February 15 proceeding was clearly intended to chill JCFA volunteers and Jackson County voters from continuing to engage in protected activities: exercising their rights to speak, propose initiatives, obtain signatures on the JCFA Petitions, and promote the Measures to the electorate. 42 U.S.C. § 1983.

A full investigation could obtain and review this video record, and seek statements or affidavits of the following witnesses:

Denise D. Krause
Dr. David Gilmour
Laura B. Ahearn
John E. Littleton

JCFA will provide contact information for these witnesses on request.

As for timing, Jordan and the Commissioners were down to the wire. The JCFA initiatives had proven overwhelmingly popular and each petition already bore over 10,500 signatures as of February 15. Word was out that the petitions would be delivered to the County Clerk on February 20.¹³

Further proof of the true purpose of the February 15 meeting is in the fallacies, errors and fictions in the information provided by Jordan.¹⁴ This was not a good faith effort to put objective and accurate information in the hands of the public. A legitimate presentation of valid budget estimates would have included the range of potential scenarios. Instead, Jordan stacked the deck against the JCFA Measures.

To note just a few examples of unfounded "facts" and opinions:

\$50,000 in dues to the Association of Oregon Counties are claimed to be a cost of implementing the Measures; See Exhibit 6.6.

Jordan instructed Facilities Maintenance personnel to prepare and cost out detailed floor plans for new suites of offices that fit *his* vision. (Exhibit 6.5.) Of the two options, he chose the one that would cost an extra \$100,000 and significantly rounded up the estimates. \$319,500 became \$350,000 without explanation. Remodeling offices in either configuration is not Jordan's decision alone to make.

A \$5,000 retreat budget item is inflated to \$8,335.

¹³ On February 20, the County Clerk accepted nine boxes containing over 11,500 signatures on each of the JCFA petitions. She has until March 19 to verify signatures and certify the JCFA Measures for the May ballot, the event which Jordan and the Commissioners believe will require them to start honoring ORS 260.432.

¹⁴ Cf. ORS 260.532(1): No person shall cause to be written, printed, published, posted, communicated or circulated, including by electronic or telephonic means, any [medium] with knowledge or with reckless disregard that the [medium] contains a false statement of material fact relating to any ... measure.

Jordan repeatedly mischaracterized budgetary allocations of total County overhead and contingency reserves as “costs” of implementing the JCFA Measures. This was misleading. The Measures will not increase these County-wide costs in any material way. Jordan's accounting apportioned a greater share of overhead to the Board's departmental budget, but that exercise doesn't mean overhead itself would increase. These entries were not “costs” in the way which most voters would understand that term.

Jordan proposes to spend \$30,000 to reconfigure the auditorium for the Budget Committee which holds hearings only three days a year. Let the elected Commissioners choose a more sensible plan.

Jordan displayed a 1990 opinion from the Josephine County Circuit Court to intimate that some unnamed person would litigate Measure 3. That 1990 case was reversed and remanded by the Appellate Court in 1992, with instructions to dismiss the entire case for non-justiciability. The opinion has zero legal effect, even in Josephine County.¹⁵

Repeatedly Jordan invoked the name of Dr. David Gilmour, a Chief Petitioner and former Commissioner, who was involved in adopting a salary plan back in 2008. Jordan insinuated it was wrong for Dr. Gilmour to disagree with the Commissioners' salaries today – because all that the County has done over the intervening sixteen years is to grant cost of living adjustments and add steps to the seniority system.

[E]ach year the commissioners' pay plan and all elected officials **has only been adjusted for CPI**. So the pay plan today is **the exact same pay plan that was adopted in 2008**.¹⁶

Jordan and Dyer acknowledged the Commissioners and the Compensation Board

¹⁵ Examples of how Jordan misrepresented the 1990 documents: “This has been adjudicated... You can expect if [JCFA Measure 3] passes here we're going to have to do the same thing... I will say this. If you read the case, it's very persuasive as to how a Jackson County Circuit Court would interpret an amendment to our charter to set the compensation... [I]t is case law... There is also an opinion that goes with that only further supports the persuasiveness of the argument that I just went over.” Exhibit 6, p. 9-10; see also p. 19.

Exhibits 6.1, 6.2 and 6.3 bear indicia that they were collected and prepared by personnel in the office of County Counsel Joel Benton, e.g., notes that the documents are verified copies dated May 1, 2015, and a legal memo which was clearly prepared to support Jordan's criticisms of Measure 3.

¹⁶ Exhibit 6, p. 4 (emphasis added).

have not complied annually with the requirements of ORS 204.112(3).¹⁷

Jordan and the Commissioners also repeatedly acknowledged historical precedents, when Commissioners have declined full salaries with concomitant reductions in overhead costs, which are not taken into account in Jordan's *pro forma* budget.¹⁸

Please see Exhibit 8 for an itemized response to Jordan's *pro forma* reworking (Exhibit 6.6) of the *draft* FY24-25 budget, which the public will not see for several weeks, costing out a hypothetical budget on how five Commissioners would be accommodated if they were taking their seats in January 2025 though they won't take their seats until January 2027¹⁹. Jordan's *pro forma* is an exorbitant hypothetical, leaving far too much unexplained, and encroaches on decisions which should be left to elected officials accountable to the voters. And Jordan had no backup for the highest numbers he posited, yet he asserted them in a time and place designed to get them on the front page.

Please contact JCFA at info@jacksoncountyforall.org if there are questions about this request for an investigation into these past and, it is believed, ongoing Election Laws violations.

17 "The county compensation board **shall annually review** the compensation paid to persons comparably employed by the State of Oregon, local public bodies and private businesses within a labor market deemed appropriate by the board for each elective officer. The county compensation board **shall take into account** such factors as the number of employees supervised and the size of the budget administered by each elective officer, the duties and responsibilities of each elective officer, and the compensation paid to subordinates and other appointed employees who serve in positions of comparable management responsibility. The county compensation board shall prepare and approve by majority vote a recommended compensation schedule for the elective officers and shall submit the recommended compensation schedule to the county governing body." (Emphasis added.)

Cost of living is not a factor, yet that is all that has been reviewed and taken into account.

18 As one example: "Any Commissioner, as we've shown, can take any range of pay they choose or none or benefits or none... If they want to take less is always available." Exhibit 6, 17.

19 "I'm preparing the budget for 24/25 right now. I took the budget I'm comparing and then did it if this were to pass. This is all written out. Anyone can look at it." Exhibit 6, p. 7. Except it isn't all written out, and the public can't look at whatever Jordan is preparing right now. He wouldn't even let the public look at the documents sitting right there on the table during the February 15 meeting.