IN THE SUPREME COURT OF THE STATE OF OREGON

HOLLY COOPER, an individual,
Plaintiff-Appellant,
Respondent on Review,

v.

ROBERT G. RUST, JR., D.M.D., PC; ROBERT RUST, JR.; and TRACI RUST,
Defendants-Respondents,
Petitioners on Review.

Supreme Court No. S072335

Court of Appeals No. A179367

Lane County Circuit Court No. 21CV36278

BRIEF OF AMICUS CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONERS ON REVIEW

Review of the decision of the Court of Appeals on appeal from a judgment of the
Circuit Court for Lane County, Honorable Karrie K. McIntyre, Judge

Court of Appeals opinion filed: September 10, 2025
Author of Opinion: Pagán, J.
Before: Shorr, Presiding Judge, Powers, Judge, and Pagán, Judge

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I. INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (the Chamber) respectfully submits this brief as *amicus curiae* in support of petitioners on review, Robert G. Rust, Jr., D.M.D., PC, Robert Rust, Jr., and Traci Rust.

The Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country, including Oregon. An important function of the Chamber is to represent the interests of its members in matters before Congress, the executive branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases that raise issues of concern to the nation's business community, including small businesses like petitioners here. This has included six amicus briefs in the Oregon Supreme Court over the last ten years.

Many of the Chamber's members are employers or representatives of employers subject to ORS 659A.112, the Americans with Disabilities Act (ADA), 42 USC §§ 12101 *et seq*., as amended, and other labor and employment statutes and regulations.

Because its members are potential defendants to claims under these laws of workplace disability discrimination and failure to accommodate, the Chamber has a direct and ongoing interest in the issues presented in this appeal. The Chamber accordingly has filed numerous amicus briefs in cases before state and federal appellate courts involving the proper construction and interpretation of the ADA and state disability discrimination laws.

The Chamber seeks to assist the Court by highlighting the effect its decision may have beyond the immediate concerns of the parties to the case. This brief therefore highlights relevant matters that have not already been brought to the Court's attention by the parties, particularly as it relates to employers' obligation to provide employees with indefinite leave as a disability accommodation when regular attendance is an essential function of their jobs. Because of its experience in these matters, the Chamber is well-situated to brief the Court on the relevant concerns of the business community and the significance of this case to employers.

II. STATEMENT OF THE CASE

Dr. Robert Rust is the sole practitioner at Rust Dental in Eugene, a dental practice he owns with his wife, Ms. Traci Rust.

Cooper v. Robert G. Rust, Jr., D.M.D., PC, 343 Or App 390, 392 (2025). Dr. Rust, Ms. Rust, and Rust Dental are petitioners here. Rust Dental hired respondent Holly Cooper in April 2021 as the practice's office manager. *Cooper*, 343 Or App at 392. Shortly after starting, Cooper was diagnosed with breast cancer. *Id*. Cooper underwent surgery on June 25, 2021, and Rust Dental allowed her a period of leave to recover until July 26, 2021. *Id*. Soon after returning to work, Cooper developed complications. *Id*. She underwent emergency surgery on August 2, 2021, and had further surgery planned for the next week. *Id*.

Cooper requested an additional, indefinite, and unpredictable amount of time off work. *Id*. On August 7, 2021, the Rusts called Cooper to ask what she wanted to do going forward, to which Cooper replied, "I don't know." *Id*. On August 9, petitioners texted Cooper that "for your recovery we have decided to let you go." *Id*. Cooper's employment ended on August 11, 2021. *Id*.

Cooper brought a wrongful termination action against petitioners, alleging retaliation and disability discrimination related to her cancer diagnosis and treatment under Oregon state law. *Id*. at 392-93. The Lane County Circuit Court granted summary judgment

for petitioners on Cooper's claims for retaliation for requesting sick time (ORS 653.641), aiding and abetting unlawful employment practices (ORS 659A.030(1)(g)), discrimination for requesting accommodation (ORS 659A.109), and disability discrimination for failing to accommodate (ORS 659A.112). *Id.* On the accommodation claim, the trial court relied on *Samper v. Providence St. Vincent Med. Ctr.*, 675 F3d 1233 (9th Cir 2012), concluding that Cooper was not qualified for the position because its essential functions included regular in-person attendance, and Cooper's requested accommodation was an indefinite leave from work. *Cooper*, 343 Or App at 399.

The Court of Appeals reversed and remanded on all claims before it. *Id.* at 403. Relevant here, the Court of Appeals held that "[i]t could have been a reasonable accommodation to allow [Cooper] unpaid medical leave to recover from her emergency surgery." *Id.* at 401. This petition followed.

III. SUMMARY OF ARGUMENT

Oregon's disability-accommodation statutes do not require an employer to treat an indefinite or uncertain period of medical leave as a reasonable accommodation when regular attendance is an

essential function of the job. A reasonable accommodation may modify how an employee performs essential functions, including through the types of measures identified in ORS 659A.118. But it cannot excuse the essential function of regular attendance for an uncertain or undefined period. Oregon and federal law contain other robust statutory schemes that provide medical leave rights to employees while ensuring workable processes and protections for employers.

The Court of Appeals' holding here fails to recognize that Oregon law provides that a reasonable accommodation must ***enable*** an employee to perform the essential functions of a position, not ***excuse*** her from an essential function. The Court of Appeals skipped over analyzing whether plaintiff Cooper's requested change was an accommodation or, rather, the elimination of an essential job function. Instead, the court focused on whether the change would be an undue hardship to her employer. But the undue hardship analysis is relevant only if an employee's request to change some aspect of her job is an accommodation for a qualified individual. When the employee's request would eliminate an essential function of her job, it is not a request for an accommodation; it is an indication that the

requesting employee is not a "qualified individual" within the meaning of ORS 659A.115.

The broader statutory context shows that an undefined period of leave cannot be a reasonable accommodation for a job that requires regular attendance. Oregon's Legislature and Congress have enacted targeted leave statutes—the Oregon Family Leave Act, the Oregon Sick Time Law, Paid Leave Oregon, and the FMLA—that define eligibility, duration, notice, certification, payment, and reinstatement rules for medical leave. Courts should not read ORS 659A.112 to create a separate, open-ended entitlement to an undefined period of leave necessitated by a medical condition that is untethered to those limits, especially for small employers that must plan staffing and coverage for any absences.

The Court should reverse the Court of Appeals and clarify that unpaid leave is not a reasonable accommodation when it excuses an essential attendance function for an uncertain, undefined, or indefinite period. It should hold that, where in-person attendance is an essential job function, a proposed leave can be a reasonable accommodation only if it will allow the employee to physically return to work within a reasonable and sufficiently definite period.

IV. ARGUMENT

A. ORS 659A.112 and ORS 659A.115 require an accommodation that *enables* performance of essential functions, not one that *eliminates* them.

An individual who cannot perform the essential functions of a position even with a reasonable accommodation is not qualified for that position and cannot invoke ORS 659A.112. The starting point of statutory interpretation is the statute's text. *State v. Gaines*, 346 Or 160, 164 (2009). ORS 659A.112 is unambiguous: It prohibits an employer from failing to reasonably accommodate a "qualified individual with a disability" unless the employer can demonstrate undue hardship. *Cooper*, 343 Or App at 402. ORS 659A.115 defines "qualified" to mean that the person, "with or without reasonable accommodation, ***can perform the essential functions*** of the position." *Id*. at 399-400 (emphasis added).

This interpretation is supported by federal law. ORS 659A.139 specifically directs courts to construe Oregon law "in a manner that is consistent with any similar provisions of" the ADA. *Cooper*, 343 Or App at 397, n. 5. The ADA also defines a "qualified individual" as one who, with or without reasonable accommodation, can "perform the essential functions of the employment position." 42 USC § 12111(8).

Both the ADA and Oregon law thus impose a threshold limitation on accommodation claims. The laws do not require employers to provide any conceivable form of assistance to any employee with a disability; they require employers to provide only those reasonable accommodations that will allow the employee to perform the essential functions of the job. *Cooper*, 343 Or App at 399-400. If the proposed accommodation is the elimination of an essential function of the job, rather than designed to enable the employee to perform those essential functions, the purported accommodation does not comply with the statutory requirements.

To that end, in *Samper*, the Ninth Circuit rejected a requested accommodation that would have exempted the plaintiff from the essential function of regular attendance, explaining that the plaintiff's request caused the essential function and reasonable accommodation analyses to "run together" and would leave the employer with the potential for unlimited absences. 675 F3d at 1240.

The Court of Appeals distinguished *Samper* on the ground that the plaintiff's job in that case involved caring for premature infants in a NICU. *Cooper*, 343 Or App at 401. But the principle in *Samper* is not a special rule for those in certain job positions. Whether an

employee's request for an undefined period of leave is a request for an accommodation or, rather, a request to eliminate the essential functions of her job does not turn on whether a court regards the job as life-or-death. Instead, it turns on whether regular attendance is an essential function of the employee's job. The relevant question—under both Oregon law and the ADA—is whether the employee can perform the job's essential functions with or without accommodation. *See Wolff v. Tomahawk Mfg.*, 689 F Supp 3d 923, 947 (D Or 2023) (holding that, for an accommodation to be reasonable under Oregon law and the ADA, it "must enable the employee 'to perform the essential functions of an available job'" (quoting *Dark v. Curry Cnty.*, 451 F3d 1078, 1088 (9th Cir 2006))); *see also Chandler v. DeJoy*, 714 F Supp 3d 1108, 1128, 1133, 1142 (D Ariz 2024) (holding that where plaintiff requested an indefinite leave of absence from job as letter carrier as an accommodation, the requested accommodation was unreasonable as a matter of law because plaintiff's job required regular attendance as an essential function); *Rancourt v. OneAZ Credit Union*, 2018 WL 3926491, at *3 (D Ariz Aug 16, 2018) (relying on *Samper* and concluding that plaintiff's requested accommodation of an indefinite leave from work for cancer treatment was

unreasonable as a matter of law). If the employee cannot perform the job's essential functions with or without reasonable accommodation, she is not a "qualified individual with a disability" and not entitled to the disability-related protections of ORS 659A.112.

Oregon courts apply this threshold limitation. In *Kelley v. Washington County*, the Court of Appeals applied ORS 659A.115 by focusing on whether the asserted function was fundamental to the actual position, giving due consideration to the employer's judgment, the written job analysis, staffing limits, and the consequences of nonperformance. 303 Or App 20, 26 (2020). The court's analysis confirms that an accommodation must allow the employee to perform the essential functions of the position; a job change that eliminates essential functions is not an accommodation. *Id*. at 26-27.

B. The catchall provision for "other similar" reasonable accommodations does not authorize indefinite leave excusing an essential in-person attendance function.

The concept of indefinite leave for required in-person work runs contrary to the statutory definition of a reasonable accommodation. Both the Oregon Legislature and Congress included examples of

possible reasonable accommodations within the laws, which underscore this point: All the specific examples listed in ORS 659A.118 and in 42 U.S.C. § 12111(9) focus on job ***enablement***—including making facilities readily accessible, job restructuring, revising schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjusting exams, trainings, or policies, and providing qualified readers or interpreters. ORS 659A.118; 42 U.S.C. § 12111(9).

Although the ADA includes a catchall at the end of the list of possible accommodations ("and other similar accommodations for individuals with disabilities," 42 U.S.C. § 12111(9)), the universe of possible accommodations under both statutes should be understood by reference to the specific examples the legislatures provided. This is the principle of *ejusdem generis*: When a general catchall follows a list of specific examples, it refers to "items of the same kind" as the listed examples. *Bellikka v. Green*, 306 Or 630, 636 (1988); *see also Schmidt v. Mt. Angel Abbey*, 347 Or 389, 404 (2009) ("That does not mean … that the specific examples constitute the universe of items to which the general term refers; rather, it means only that our interpretation of the general term includes consideration of those

specific examples."). Because the "common characteristic" of the listed examples of possible accommodations is that they enable the accomplishment of essential job functions, courts should not interpret the general catchall of "other similar accommodations" to include something so radically different—leave that ***removes*** an essential function. *McLaughlin v. Wilson*, 365 Or 535, 551 (2019).

Another maxim of statutory interpretation, *noscitur a sociis*, supports this approach. That concept "reminds us that 'the meaning of words in a statute may be clarified or confirmed by reference to other words in the same sentence or provision.'" *Gordon v. Rosenblum*, 361 Or 352, 365 (2017) (*quoting Goodwin v. Kingsmen Plastering, Inc.*, 359 Or 694, 702 (2016)). Through this lens, courts should interpret the catchall of "other similar accommodations" to refer to other means of facilitating employees' ability to perform essential job functions. That is the threshold inquiry in the statutes, and it is the purpose of all the listed examples. It makes no sense for courts to interpret the catchall to include eliminating essential job functions by removing the employees from the workplace indefinitely.

C. The regulatory guidance that suggests leave as an accommodation in certain circumstances does not support the entitlement to indefinite leave where regular attendance is an essential function.

The concept of unpaid leave as an accommodation does not appear in either ORS 659A.112 or the ADA. But even the apparent sources of unpaid leave as a reasonable accommodation—regulatory guidance from the Oregon Bureau of Labor and Industries (BOLI) and the EEOC[1]—do not purport to require such leave in circumstances where such leave would eliminate the essential function of regular attendance.

The BOLI regulations state that a reasonable accommodation ***may*** include "[p]roviding a leave of absence." OAR 839-006-0206(2). The EEOC interpretive guidance includes, as examples of ***potential*** accommodations, "permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment…." 29

[1] The Oregon and federal case law addressing leave as an accommodation cite two sources, (1) BOLI regulations (OAR 839-006-0206), and (2) EEOC interpretive guidance (29 CFR part 1630, app (discussing § 1630.2(o))— or earlier cases that in turn rely on these regulatory pronouncements. *See, e.g., Cooper*, 343 Or App at 401 (citing *Nunes v. Wal-Mart Stores, Inc.*, 164 F3d 1243, 1247 (9th Cir 1999), which relies on the EEOC guidance).

CFR part 1630, app (discussing § 1630.2(o)).[2] The EEOC's qualifier that the leave would be for "necessary treatment" tracks the only discussion of leave as an accommodation in the House Conference Report regarding the ADA. *See* H.R. CONF. REP. 101-596, 62, 1990 U.S.C.C.A.N. 565, 571 (giving an example that, "if an individual has an infectious disease that can be eliminated by taking medication ***for a specified period of time***, the employer must offer the employee the reasonable accommodation of allowing the individual time off to take such medication." (emphasis added)).

Of course, when regular attendance is not an essential job function, unpaid leave can be a reasonable accommodation. *See*

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[2] Because the EEOC's Appendix to 29 CFR part 1630 is interpretive guidance that lacks the force of law, it is entitled, at most, to *Skidmore* deference—only such weight as its reasoning persuasively warrants. *See Christensen v. Harris County*, 529 US 576, 587 (2000) (interpretations in "opinion letters, policy statements, agency manuals, and enforcement guidelines" "are entitled to respect" only under *Skidmore*); *Meritor Sav. Bank, FSB v. Vinson*, 477 US 57, 65 (1986) (EEOC guidelines are "not controlling upon the courts," but may be consulted for their power to persuade). Consistent with that principle, federal courts have declined to give controlling deference to EEOC guidance and afforded it little weight when not supported by thorough reasoning or consistency. *See Young v. United Parcel Serv., Inc.*, 575 US 206, 226–27 (2015). The Ninth Circuit likewise treats EEOC guidance under *Skidmore*, according it no deference where it lacks persuasive force. *See Garcia v. Salvation Army*, 918 F3d 997, 1005 n. 12 (9th Cir 2019).

Nunes v. Wal-Mart Stores, Inc., 164 F3d 1243, 1247 (9th Cir 1999). In *Nunes*, the Ninth Circuit—relying on the EEOC interpretive guidance, not the text of the ADA—observed generally that "[u]npaid medical leave may be a reasonable accommodation under the ADA," at least where the employer's policies provide for it. *Id.*

Noting that "[d]etermining whether a proposed accommodation (medical leave in this case) is reasonable, including whether it imposes an undue hardship on the employer, requires a fact-specific, individualized inquiry," the Ninth Circuit held that the employer could not show that regular attendance was an essential function of the plaintiff's job as a sales associate in that case because the employer had a policy allowing up to one year of unpaid medical leave and approved the plaintiff for leave under that policy before later terminating her on undue hardship grounds. *Nunes*, 164 F3d at 1247. But contrary to the Court of Appeals view, *Nunes* did not hold that an undetermined period of unpaid leave can be a reasonable accommodation for a job that requires regular attendance, and neither does the BOLI or EEOC guidance.

D. Medical leave is available under specific statutory regimes, not through general disability-accommodation statutes.

The Court of Appeals' open-ended approach to indefinite leave for a job that requires regular attendance cannot be reconciled with the detailed statutory schemes that the Oregon Legislature and Congress have devised to govern employee medical leave. Both legislatures have addressed when, how long, and under what conditions an employee may take time away from work for medical reasons. They did so through targeted statutes with defined eligibility rules, durations, notice and certification requirements, and enforcement mechanisms. Each legislature declined to include these considerations in the statutory text of ORS 659A.112 and the ADA, respectively. Courts should not construe the disability-accommodation statutes to silently displace those carefully drawn legislative frameworks with a judicially created entitlement to indefinite leave where a position requires regular attendance.

The Oregon Legislature has enacted targeted leave laws. The Oregon Family Leave Act, ORS 659A.150 *et seq*., addresses protected leave in defined circumstances, subject to eligibility, notice, certification, and reinstatement provisions. The Oregon Sick Time

Law, ORS 653.601 to 653.661, separately requires Oregon employers to provide accrued sick time that an employee may use for the employee's own illness, injury, or health condition, including for diagnosis, care, or treatment. And in Paid Leave Oregon, ORS chapter 657B, the Legislature created a state-administered insurance program providing paid leave for, among other things, an employee's own serious health condition—again subject to defined contribution, eligibility, duration, and benefit rules. Together, these statutes reflect the Legislature's considered judgment about what leave entitlements Oregon employees have, who pays for them, and how they are administered.

Congress likewise has addressed medical leave directly in the Family and Medical Leave Act (FMLA), 29 USC § 2601 *et seq*., which entitles eligible employees of covered employers to up to twelve workweeks of unpaid, job-protected leave in a twelve-month period for, among other things, a serious health condition that makes the employee unable to perform the functions of the position. 29 USC § 2612(a)(1)(D). The FMLA imposes detailed eligibility thresholds, notice and certification requirements, and limits on intermittent leave, and it specifies the conditions under which an employer must

restore the employee to the same or an equivalent position. 29 USC §§ 2611, 2613, 2614. Congress thus made a deliberate policy choice that federally guaranteed medical leave would be capped at twelve weeks, would be available only to employees who meet defined service and hours thresholds, and would be administered through a defined certification and reinstatement regime.

The fact that Oregon's Legislature and Congress enacted legislation providing employees with unpaid leave for medical reasons is evidence that Oregon's disability-accommodation law and the ADA do not provide a right to an undetermined period of unpaid leave. And where the Legislature has enacted a comprehensive scheme addressing a particular subject, this Court has long been reluctant to read general statutory language as silently interfering with that scheme. *See, e.g., State v. Vasquez-Rubio*, 323 Or 275, 282-83 (1996) (specific statute controls over general); *Davis v. O'Brien*, 320 Or 729, 740 (1995) (courts construe statutes to give effect to the entire statutory scheme). The Court thus should read Oregon's disability-accommodation law in harmony with, not as a workaround to, the leave entitlements the Legislature has defined separately. *See Davis v. Wasco Intermediate Educ. Dist.*, 286 Or 261, 270 (1979)

(rejecting interpretation of statutory definition of "public employee" that would cause "changes and inconsistencies … in relation to the specific laws governing the employment of teachers").

The Seventh Circuit recognized this inherent conflict and resulting problem in *Severson v. Heartland Woodcraft, Inc.*, 872 F3d 476 (7th Cir 2017). The court rejected the contention that long-term medical leave is an accommodation under the ADA, explaining that "long-term medical leave is the domain of the FMLA," which "protects up to 12 weeks of medical leave, recognizing that employees will sometimes be unable to perform their job duties due to a serious health condition." *Id.* at 481. By contrast, "the ADA applies only to those who can do the job." *Id.* (*quoting Byrne v. Avon Prods., Inc.*, 328 F3d 379, 381 (7th Cir 2003)). "[I]f employees are entitled to extended time off as a reasonable accommodation, the ADA [would be] transformed into a medical-leave statute—in effect, an open-ended extension of the FMLA"—"an untenable interpretation of the term 'reasonable accommodation.'" *Id.*

E. An unfettered right to indefinite leave that eliminates essential regular attendance would be unworkable for Oregon employers.

The Court of Appeals' decision, if affirmed, would leave Oregon employers in an untenable position with respect to jobs that require regular attendance. Employers cannot reliably plan staffing, coverage, and workflow if they cannot distinguish between, on the one hand, finite leave that might function as a bridge back to essential in-person work, and on the other, open-ended or uncertain leave that indefinitely exempts the employee from the essential function of regular attendance. And treating an indefinite request for additional leave as a request for a reasonable accommodation under ORS 659A.112 would displace targeted leave statutes with a judicially created right to an indeterminate leave of absence without the eligibility thresholds, durational caps, and certification requirements the Legislature and Congress built into leave laws to make those programs workable for employers.

The burden and uncertainty of such a system would be especially acute for small employers, who cannot easily absorb indefinite absences. Petitioners here, for example, operated a one-practitioner dental practice and had to get family members to cover

Cooper's absence. *Cooper*, 343 Or App at 402. They, like all employers, need reasonable, administrable rules to determine when they must hold a position open and when they may fill it.

F. The Court should adopt a clear rule limiting leave-as-an-accommodation claims where regular attendance is an essential function.

The Court can resolve the uncertainty and confusion caused by the snowballing expansion of leave-as-an-accommodation claims without adopting a categorical rule against medical leave. It should hold that, while a request for a ***determinate*** period of leave that will facilitate an employee's return to essential functions might in certain circumstances be a request for a reasonable accommodation, an ***indeterminate*** or open-ended request for leave like the one at issue here is not a request for a reasonable accommodation within the plain meaning of ORS 659A.112 and ORS 659A.115 when regular attendance is an essential function. That rule would preserve the careful statutory balance enacted by the Oregon Legislature and Congress, and it would provide employers with clarity regarding their obligations when assessing employee requests for leave as an accommodation.

Such a rule would be consistent with Oregon and federal authority. In *Holmes v. Willamette University*, for example, the court reversed dismissal of the plaintiff's accommodation claim because the requested leave was "for a specific period." 157 Or App 703, 711-12 (1998) (opinion adhered to as modified on reconsideration, 158 Or App 485 (1999)). In *Dark*, the Ninth Circuit reached a similar conclusion where the plaintiff had sought to use 89 days of accrued sick leave as an accommodation. 451 F3d at 1090. And in *Humphrey v. Memorial Hospitals Association,* 239 F3d 1128, 1135-36 (9th Cir 2001), the court concluded based on the record that either a defined leave of absence or a work-from-home accommodation would have allowed plaintiff to perform the essential functions of her job. It also is consistent with the aforementioned EEOC guidance and ADA legislative history, both of which mention leave as an accommodation only in the context of an employee receiving a defined treatment for a specific period of time.

The federal case law relied on by the Court of Appeals also supports the proposed rule more than the rule adopted by the Court of Appeals. *Nunes*, *Humphrey*, and *Holmes* suggest that leave may be reasonable when it is provided for in an employer's policies, when

regular or in-person attendance is not an essential function, or when the leave has a treatment-based or otherwise plausible connection to a return to essential functions and is for a set period. But that trio of decisions does not show that unpaid leave is always consistent with the essential functions of a job. And *Samper* confirms that it is not: *Samper* rejected an accommodation that would have exempted the employee from the essential function of regular attendance.

Accordingly, this Court should hold that the dispositive question when an employee requests leave as an accommodation is whether the requested leave is limited and will function as a bridge to renewed performance of the job's essential functions. Unlike the Court of Appeals' approach, that rule tracks the requirements of ORS 659A.115—that employers must only provide an accommodation if it enables an employee to perform the essential functions of their position.

V. CONCLUSION

Amicus curiae Chamber of Commerce of the United States of America respectfully asks this Court to hold that indefinite leave is not a reasonable accommodation under ORS 659A.112 and ORS 659A.115 when the position requires regular attendance. The Court

should reverse the Court of Appeals' decision and clarify that when a position's essential function includes regular attendance, leave is a reasonable accommodation only when it is limited, sufficiently definite, and plausibly tied to the employee's ability to return and perform the essential functions of the position.

DATED this 14th day of May, 2026.

Respectfully submitted,

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DATED: May 14, 2026.

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CERTIFICATE OF FILING AND SERVICE

I certify that I filed this **BRIEF OF AMICUS CURIAE** with the Supreme Court Administrator on this date using the Court's electronic filing system. I certify that service of a copy of this brief will be accomplished on the following participants in this case by the courts' eFiling system at the participant's email address as recorded this date in the eFiling system and via email:

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