

1 during the public meeting. Defendants also failed to provide copies of any agenda of the meeting
2 requested by Plaintiff while at the meeting and subsequently, and failed to release any agenda of items
3 to be discussed during the meeting at the time of announcement, a violation of ORS 192.640.
4

5 Following the meeting on July 11th, 2024, Defendants engaged in deliberations and took
6 numerous actions by resolution which were not made public, constituting violations of the Oregon
7 Public Meetings Law (herein “OPML”) in holding what would constitute both executive sessions
8 and/or public meetings, and having failed to provide any notice to Plaintiff (or even the public at large)
9 in violation of Oregon Public Meetings Law. These resolutions and actions were obtained through
10 public records requests with other Crook County government agencies, creating prima facie evidence
11 of the violation. *See ORS 192.695.*
12

13 Plaintiff also requested the Defendants provide copies of past meeting minutes and associated
14 documents which the Defendants were required to make publicly available, and have continually failed
15 to provide despite Plaintiff’s requests, in violation of the OPML.
16

17 **Venue Facts & Parties**

18 **1.**

19 Defendant Crook County Cemetery District (“CCCD”) is an Oregon special district, specifically
20 a cemetery maintenance district, established pursuant to ORS 198.010 and ORS 265.010, and which is
21 a “public body” as defined in ORS 192.610(4).
22

23 **2.**

24 The elected Board of Directors for the CCCD (“CCCD Board”) is a “governing body” as defined
25 under ORS 192.610(3).
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3.

Defendant Jamie Wood is currently an appointed member of the CCCD Board and to Plaintiff's best knowledge, a resident of Crook County.

4.

Defendant Velda Jones is currently an elected member of the CCCD Board and to Plaintiff's best knowledge, a resident of Crook County.

5.

At all relevant times, at least a quorum of the CCCD Board knew of the legal requirements imposed by ORS 192.610 to 192.690.

6.

Compliance with these transparency laws was a topic of meetings as well as mention in public testimony, communications, and apparent legal consultation as recently as July of 2024, and through ongoing counsel from the Special Districts Association of Oregon since at least 2022

7.

Defendants have failed to comply with ORS 192.650 by failing to make available to the public within a reasonable time after a meeting, minutes which include at least one or more of the following: (a) All members of the governing; (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; (c) the results of all votes and the vote of each member by name; (d) the substance of any discussion on any matter; and (e) a reference to any document discussed at the meeting.

8.

Defendants have failed to comply with ORS 192.660(7)(a) by holding executive session(s) between on or about June 13th to on or about July 25th, for the purpose of carrying out deliberations on the filling of a vacancy in an elected office.

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9.

Defendants have failed to comply with ORS 192.660(7)(d) by holding executive session(s) between on or about July 17th to on or about August 12th, for the purpose of carrying out deliberations on the employment of the chief executive officer, other public officers, employees and staff members of a public body without; (a) advertising the vacancy; (b) adopting regular hiring procedures; (c) in the case of an officer, the public having had the opportunity to comment of the employment of the officer; and (d) in the case of the chief executive officer, the governing body has adopted hiring standards, criteria and policy policy directives in meetings open to the public in which the public has had an opportunity to comment on the standards, criteria and policy directives.

7.

Defendants have failed to comply with ORS 192.650 by failing to make available to the public within a reasonable time after a meeting, minutes which include at least one or more of the following: (a) all members of the governing; (b) all motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; (c) the results of all votes and the vote of each member by name; (d) the substance of any discussion on any matter; and (e) a reference to any document discussed at the meeting.

10.

As detailed below, the Defendants violated ORS 192.610 to 192.690.

11.

As detailed below, the Defendant's efforts to restrict video recordings or photography in a publicly place and/or during a public meeting violates Article 1, Section 8, of the Oregon Constitution; and the 1st & 14th Amendments, of the United States Constitution.

12.

At all material times mentioned herein, Justin Alderman ("Alderman") was a resident of the State of Oregon and regularly conducts work as a journalist, including but not limited to, in his capacity

1 as a managing editor and investigative reporter with Equestrian Media Group. More recently Plaintiff
2 has been working as an interim editor of a new publication known as the Prineville Review. Venue is
3 also proper according to ORS 192.680(2) for matters of the OPML.

4 **13.**

5 Among other relief, Plaintiff seeks to (a) compel the Defendants and their staff to promptly
6 seek training on Oregon Public Meetings Law from the OGEC, (b) compel Defendants to comply with
7 the notice requirements of the OPML pursuant to ORS 192.640 by providing proper notice to the
8 plaintiff and others, (c) enjoin the Defendants from holding meetings or executive sessions without
9 providing notice that complies with ORS 192.640, and compel Defendants to produce the records in
10 Plaintiff's July 11th public records request, and (d) compel Defendants to comply with the law in the
11 future.

12
13 **Factual Background**

14 **14.**

15 On July 11th, 2024, Plaintiff attended a regular public meeting of the CCCD Board for the
16 CCCD.

17 **17.**

18 The meeting was announced by the CCCD via its Facebook page two calendar days prior,
19 announcing the time and location of the meeting. Defendants stated the meeting was also announced in
20 publication by the Central Oregonian.

21 **18.**

22 No inclusion of any agenda was provided with any prior announcement of the meeting as
23 outlined in ORS 192.640, nor is there any evidence the Defendants have done so at anytime for
24 preceding meetings or executive sessions.

25 **19.**

1 resignation, and indicating the appointment of Defendant Jamie Wood as the Chairperson of the CCCD
2 Board during the period on or about July 12th, 2024 to on or about July 19th, 2024.

3 **27.**

4 The CCCD Board has stated and traditionally holds its regular meetings on the 2nd Thursday
5 of the month at 4pm.

6 **28.**

7 The Defendants or their agents published a notice on August 6th, 2024, on the CCCD
8 Facebook page announcing that a previously scheduled meeting for Monday, August 12th, 2024, was
9 being postponed, although no notice had ever been made that a meeting was scheduled for that date or
10 that the regular meeting of the CCCD Board that was expected to take place August 8th had been
11 moved to August 12th.

12
13 **Oregon Public Meetings Law Violations**

14 **29.**

15 Plaintiff incorporates paragraphs 1-28 as if fully set forth herein.

16 **30.**

17 The Defendants have violated ORS 192.640 since on or about July 11th, 2024, by failing to
18 provide notice of Plaintiff, who is both an “interested person” and member of the “news media” who
19 had requested notice on multiple occasions and through multiple mediums, including on the record of
20 the Defendant’s July 11th meeting.

21 **31.**

22 The Defendants violated ORS 192.640 by holding meetings since January 1st, 2024, and for
23 the meeting on or about July 11th, 2024, without providing notice sufficient under ORS 192.640,
24 specifically failing to provide “a list of principal subjects anticipated to be considered at the meeting”.
25 Defendants admitted to not including an agenda with their alleged public notice in a newspaper of local

1 circulation, and the Defendants Facebook page under “Crook County Cemetery District” which
2 contained notice of the time and place of the meeting, did not include any agenda. Defendants declined
3 to provide any agenda at the actual meeting when requested by Plaintiff.

4 **32.**

5 The Defendants violated ORS 192.650 by failing to record or later produce meeting minutes
6 covering the entirety of the public meeting of July 11th, 2024. Specifically, the Defendants stopped the
7 recording nearly thirty minutes prior to the end of the meeting.

8 **33.**

9 Following the July 11th meeting held by the Defendants, numerous resolutions were passed
10 by Defendants Jamie Wood and Velda Jones without any notice of a public meeting or executive
11 session. Such final actions, including accepting resignations, rescinding resignations, appointing
12 Defendant Wood as the new chairperson, and firing Defendant Crook County Cemetery District’s
13 manager Cory Nelson, constitute a violation of the Oregon Public Meetings Laws.

14 **34.**

15 No public production of any meeting minutes of these actions have taken place, but copies of
16 these signed resolutions and documents were obtained by Plaintiff from records requests with both the
17 Crook County Clerk and Crook County Board of Commissioners, providing prima facie evidence as
18 required to constitute a claim for violations of ORS 192.610 to ORS 192.680.

19 **35.**

20 The Defendants have also failed to acknowledge Plaintiff’s Public Records requests seeking
21 these documents, although such documents should not require such a request under the Oregon Public
22 Records Laws (“OPRL”). The Oregon Public Meetings Laws (“OPML”), require these documents be
23 provided publicly. Plaintiff is not currently seeking any action in this complaint under the OPRL. *See*
24 *ORS 192.650(1)*

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36.

As a result, the Defendants violated provisions of ORS 192.610 to 192.690.

37.

Pursuant to ORS 192.680, asks this court for a judgment declaring the following:

- (A) The Defendants' failure to include an agenda for its public meeting on July 11th, 2024, violated the law.
- (B) That all decisions and actions on or since July 11th, 2024, are deemed void. *ORS 192.680(1)*.
- (C) Defendant Crook County Cemetery District's failure to maintain and make publicly available a copy of its agendas and meeting minutes, violates the law.
- (D) Defendants' failure to record the minutes of the entirety of its July 11th, 2024 public meeting, violated the law.
- (E) Defendant's violated the law by failing to provide notice of executive session only meetings to the Plaintiff after having been specifically requested to provide notice pursuant to ORS 192.640.

Plaintiff asks the court to:

- (A) Compel the Defendants to comply with the notice requirements of ORS 192.640 for all public meetings and executive sessions only.
- (B) Compel Defendants to seek training from the Oregon Government Ethics Commission on the Oregon Public Meetings Law without unreasonable delay, followed by a consultation with the OGEC to review its practices 6 months following the completion of such training.
- (C) Enjoin the Defendants from future violations of ORS 192.610 through ORS 192.690.

38.

To whatever extent Plaintiff may be represented by counsel at a future date, seeks an award of attorney fees pursuant to ORS 192.680(3) and as equitable remedy.

1 **39.**

2 If the court finds any violation of law is the result of willful misconduct by Defendants Jones
3 and Wood, then Plaintiff asks the court to make them liable to Defendant Crook County Cemetery
4 District to reimburse it for attorney fees pursuant to ORS 192.680(4).
5

6 **Constitutional Violations**

7 **40.**

8 Plaintiff incorporates paragraphs 1-39 as if fully set forth herein.

9 **41.**

10 On its face, the Defendants claim that filming and/or recording in public, let alone a public
11 meeting, and filming a public official, is a blatant assault on well-established protections of freedom of
12 speech and freedom of the press guaranteed by both the U.S. Consitution's 1st Amendment; Article 1,
13 Section 8, of the Oregon Constitution; as well as supporting legal precedents at numerous levels of our
14 State and federal judiciary, including the U.S. and Oregon Supreme Courts. *See Askins v. Dep't of*
15 *Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018); *see also Fordyce v. City of Seattle*, 55 F.3d 436
16 (9th Cir. 1995).

17 Additional persuasive rulings can be found *Fields v. City of Philadelphia*, 862 F.3d 353, 356
18 (3d Cir. 2017); *Turner v. Lieutenant Driver*, 848 F.3d 678, 689 (5th Cir. 2017); *Am. C. L. Union of Ill. v.*
19 *Alvarez*, 679 F.3d 583, 600 (7th Cir. 2012); *Glik v. Cunniffe*, 655 F.3d 78, 87 (1st Cir. 2011); *Smith v.*
20 *City of Cumming*, 212 F.3d 1332 (11th Cir. 2000).

21 **42.**

22 Defendants' argument that a representative of the news media could not record them, all while
23 also recording their meeting which primarily video recorded the public (primarily audio recording the
24 Defendants), was clearly an action of viewpoint discrimination.

25 //

1 **43.**

2 In 1995, the Supreme Court declared; “When the government targets not the subject matter
3 but particular views taken by speakers on a subject, the violation of the First Amendment is all the
4 more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The
5 government must abstain from regulating speech when the specific motivating ideology or the opinion
6 or perspective of the speaker is the rationale for the restriction.” *See Rosenberger v. Rectors and*
7 *Visitors of the University of Virginia, 515 U.S. 819 (1995)*

8 **44.**

9 First & Fourteenth Amendment precedents undoubtedly prevent the exercise of viewpoint
10 discrimination under the guise of permit schemes that give unchecked discretionary power to
11 “speech-licensing” officials. *See Schneider v. State, 308 U.S. 147 (1939)*. In *Schneider*, the Court struck
12 down ordinances that banned leafleting without a license, but gave the licensing official unlimited
13 discretion when granting or denying an application. Giving such power without any transparency and
14 articulated government interest, allows Defendants to engage in what ostensibly would be
15 content-based speech regulation that violates the First Amendment’s Free Speech Clause. In *Schneider*,
16 the Court declared: “[W]e hold a municipality cannot... require all who wish to disseminate ideas to
17 present them first to police authorities for their consideration and approval, with a discretion in the
18 policy to say that some ideas may, while others may not, be carried to the homes of citizens.” The
19 Court's main concern was that speech-licensing officials would be free to engage in viewpoint
20 discrimination if limits were not imposed on such regulatory discretion. That concern has been borne
21 out by the many successful challenges in the wake of the Court's ruling in *Schneider*. The practice of
22 news gathering and practice of freedom of press is clearly less of a potential issue requiring
23 government intervention compared to acts of leafleting and advocacy when considering time, place,
24 and manner restrictions.

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45.

On the federal level, the framers designed the Free Speech Clause of the First Amendment to protect the “freedom to think as you will and to speak as you think.” *Boy Scouts of America v. Dale*, 530 U.S. 640, 660–661 (2000). They did so because they saw the freedom of speech “both as an end and as a means.” *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring); see also 12 *The Papers of James Madison* 193–194 (C. Hobson & R. Rutland eds. 1979). An end because the freedom to think and speak is among our inalienable human rights. See, e.g., 4 *Annals of Cong.* 934 (1794) (Rep. Madison). A means because the freedom of thought and speech is “indispensable to the discovery and spread of political truth.” *Whitney*, 274 U. S., at 375 (Brandeis, J., concurring). By allowing all views to flourish, the framers understood, we may test and improve our own thinking both as individuals and as a Nation. For all these reasons, “[i]f there is any fixed star in our constitutional constellation,” *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943), it is the principle that the government may not interfere with “an uninhibited marketplace of ideas,” *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (internal quotation marks omitted).

46.

While such efforts to restrict recording undoubtedly violate well established precedent on the federal level, Oregon courts examine state constitutional issues before addressing the federal one. See *State v. Kennedy*, 295 Or. 260, 262 (1983). The Oregon constitutional analysis starts with the case of *State v. Robertson*, 293 Or. 402 (1982), in which the Oregon Supreme Court established a framework for assessing whether a law violates Article 1, Section 8, of the Oregon Constitution. See also *State v. Plowman*, 314 Or. 157 (1992). The framework goes to place laws that affect speech into one of three categories: 1) laws that are directed at limiting certain identified speech regardless of the medium of communication or the effects the speech produces; 2) laws that are directed at the pursuit or accomplishment of a harmful result; and 3) laws that, without mentioning speech, might be applied so as to affect it. The Court in the *Robertson* case established that laws within the first category must fail

1 when challenged under Article 1, Section 8, unless “the scope of the restraint is wholly confined within
2 some historical exception that was well established when the first American guarantees of freedom of
3 expression were adopted.” *Robertson*, 293 Or. at 412.

4 “No law shall be passed restraining the free expression of opinion, or restricting the right to speak,
5 write, or print freely on any subject whatever; but every person shall be responsible for the abuse of
6 this right.” *Art. 1, Sec. 8, Or. Const.*

6 **47.**

7 Freedom of speech and of the press are fundamental rights which are safeguarded by the due
8 process clause of the Fourteenth Amendment of the Federal Constitution. *Gitlow v. New York*, *supra*, p.
9 268 U.S. 666; *Stromberg v. California*, *supra*, p. 283 U.S. 368; *Near v. Minnesota*, 283 U.S. 697, 283
10 U.S. 707; *Grosjean v. American Press Co.*, 297 U.S. 233, 297 U.S. 243, 297 U.S. 244. The right of
11 peaceable assembly is a right cognate to those of free speech and free press, and is equally
12 fundamental. The First Amendment of the Federal Constitution expressly guarantees that right against
13 abridgment by Congress. But explicit mention there does not argue exclusion elsewhere. For the right
14 is one that cannot be denied without violating those fundamental principles of liberty and justice which
15 lie at the base of all civil and political institutions -- principles which the Fourteenth Amendment
16 embodies in the general terms of its due process clause. *Hebert v. Louisiana*, 272 U. S. 312, 272 U.S.
17 316; *Powell v. Alabama*, 287 U.S. 45, 287 U.S. 67; *Grosjean v. American Press Co.*, *supra*.

18 **48.**

19 As is, the Defendants’ efforts to prohibit recording during a public meeting violates the
20 Plaintiff’s constitutional rights protected under Article 1, Section 8, of the Oregon Constitution as well
21 as the 1st and 14th Amendments of the Oregon Constitution, as well as that of countless other
22 Oregonian’s and news media representatives.

23 **49.**

24 Plaintiff asks this court for a judgment declaring the following:

25 (A) The Defendants’ efforts to suppress or restrict Plaintiff’s right to record a public meeting and

1 public officials engaged in their duties in a public place, or to suppress and restrict any other
2 member of the news media and general public the same, is a violation of Article 1, Section 8,
3 of the Oregon Constitution.

4 (B) The Defendants' efforts to suppress or restrict Plaintiff's right to record a public meeting and
5 public officials engaged in their duties in a public place, or to suppress and restrict any other
6 member of the news media and general public the same, is a violation of the 1st Amendment of
7 the United States Constitution.

8
9 Plaintiff asks the court to:

10 (A) Enjoin the Defendants from any action to restrict or suppress, directly or indirectly, recording
11 by means of audio or video, of public meetings or of the Defendants and the officials of the
12 CCCD from a public area.

13 **50.**

14 To whatever extent Plaintiff may be represented by counsel at a future date, seeks an award of
15 attorney fees pursuant to ORS 192.680(3) and as equitable remedy.

16 **51.**

17 WHEREFORE, Plaintiff seeks the findings and relief requested above plus costs and disbursements
18 pursuant to ORS 28.100 and the ORCPs, attorney fees to the extent Plaintiff is represented by or
19 supported by counsel and other relief or remedies the court deems just.

20
21 RESPECTFULLY SUBMITTED this 12th day of August, 2024.

22
23 */s/ Justin Alderman*

24 _____
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