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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK

JUSTIN ALDERMAN, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 CROOK COUNTY CEMETERY DISTRICT, an)
 Oregon special district,)
)
 JAMIE WOOD, a member of the governing)
 body of the Crook County Cemetery District,)
 and)
)
 VELDA JONES, a member of the governing)
 body of the Crook County Cemetery District,)
)
 Defendant(s),)
)
 _____)

Case No. **24CV38680**

**PLAINTIFF’S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE**

ORCP 79

EX PARTE

Motion

1.

Pursuant to ORCP 79, Plaintiff moves this Court for a Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue, as stated below, enjoining Defendants from any action to; suppress or limit Plaintiff, and public at large, from filming or recording Defendants during the course of public meetings or while conducting official duties in publicly accessible areas;

1 and holding public meetings or executive sessions generally without permitting attendance by failing to
2 provide notice of such meetings as required under ORS 192.640 to Plaintiff and the public. Plaintiff
3 further asks the Court to enjoin Defendants from failing to provide notice of public meetings
4 preventing attendance of citizens of Crook County and public at-large. This Motion is supported by the
5 Plaintiff's Complaint and Declaration in Support.

6 Without this Court's immediate intervention, the continued and rapid efforts to suppress and
7 restrict the Plaintiff from accessing these meetings of a governing body infringe on well established
8 rights. All meetings of the governing body of a public body shall be open to the public and all persons
9 shall be permitted to attend any meeting..." See *ORS 192.630(1)*. The actions of the Defendants are an
10 effort to stifle and suppress rights protected by both the Oregon & U.S. constitutions— with an
11 unregulated and unchecked "speech-licensing" scheme by effectively disallowing access to public
12 meetings through an clear and intentional effort to avoid notice of such meetings. These actions also
13 come after Defendants initially made efforts to restrict filming and recording of a public meeting held
14 by the Defendants, also a violation of the rights afforded under Oregon law and the respective state and
15 federal constitutions. Plaintiff continues to engage in reporting related to the Defendants of significant
16 public interest and impact, with ongoing developments on an almost daily basis. Defendants actions
17 have already and will likely continue to cause further violations of the constitutional rights of Plaintiff,
18 tax-paying citizens, the public generally, and other representatives of the news media; through the
19 actual or attempted enforcement of arbitrary restrictions and blatant failure to comply with notice
20 requirements under the Oregon Public Meetings Law ("OPML").

21 Plaintiff requests that the Court hear oral argument on Plaintiffs' motion and estimate oral
22 argument will require approximately 30-minutes. Official court reporting services are requested. This
23 motion is authorized under ORCP 79. Plaintiff makes this request on an emergency basis, and seeks
24 this Court's expedited consideration of their motion.

1 **STATEMENT OF FACTS**

2 **2.**

3 Plaintiff incorporates by reference the allegations and pleading contained in Plaintiff's
4 Complaint, attached hereto as Exhibit 1, and Plaintiff's Declaration in Support.

5 **POINTS & AUTHORITIES**

6 **3.**

7 Plaintiff asserts they are entitled to a temporary restraining order and preliminary injunction in
8 this matter pursuant to ORCP 79 A(1)(a) or A(1)(b). Therefore, Plaintiff addresses each in turn.

9 **(a) PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER**

10 Plaintiff respectfully moves that this Court grant a temporary restraining order, restraining
11 Defendants from restriction and filming or recording of the Defendants in the course of a public
12 meeting. Plaintiff files this Motion shortly after the filing of the Complaint in this action. As Plaintiff
13 has just filed this action, Plaintiff is unsure which attorney will be representing Defendants in this
14 action. However, weeks ago, attorney Jared Reid of Prineville called Plaintiff on behalf of Defendant
15 Crook County Cemetery District related to matters of Plaintiff's public records requests and intention
16 to seek a petition with the Crook County District Attorney requiring release of public records as part of
17 a request being ignored well beyond statutory deadlines for responses from Defendants Crook County
18 Cemetery District.

19 Plaintiff then recently contacted Mr. Reid's office and spoke to an assistant who confirmed
20 that Mr. Reid was not representing any of the Defendants. *See Declaration of Plaintiff.*

21 Before the filing of this motion, Plaintiff, on August 12th at approximately 3:17pm, did contact
22 Defendant Crook County Cemetery District by telephone and left a voicemail, as well as sending an
23 email informing the Defendants that Plaintiff intended to file this motion, also suggesting that
24 Plaintiff's email should be promptly provided to any potential legal counsel retained by the Defendants.
25

1 However, as will be shown throughout this motion and complaint, immediate and irreparable injury
2 will result to Plaintiff before Defendants can be heard in opposition if the temporary restraining order is
3 not granted, see ORCP 79 B(1)(a), because Plaintiff will have continued to have constitutional rights
4 violated that are afforded pursuant to Article 1, Section 8 of the Oregon Constitution; and the 1st
5 Amendment of the United States Constitution, limiting rights of free speech and free press which are a
6 bedrock of our democracy. These rights go beyond recording and filming in a publicly accessible area,
7 they primarily involve the documenting of the actions of the peoples government during proceedings
8 which are further enshrined in Oregon law (*See ORS 192.630*) that entitle all citizens the right to. The
9 past actions by the Defendants to potentially and unlawfully exclude Plaintiff from a public meeting
10 simply for his exercise as a journalist, gives Plaintiff convincing belief he would be subject to further
11 efforts to restrict if not outright remove Plaintiff from attending such proceedings even if held
12 publically. Further, Defendants have already and continue to prevent Plaintiff's attendance by failing to
13 provide notice of such meetings and executive sessions, including so far as avoid any public
14 notification whatsoever despite the clear requirements outlined in ORS 192.640 and the Defendants
15 clear indication of their legal obligations. *See Elrod v. Burns*, 427 US 347, 373 (1976) ("The loss of
16 First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable
17 injury"); *Melendres v. Arpaio*, 695 F3d 990, 1002 (9th Cir 2012) ("It is well established that the
18 deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") ("It is always in the
19 public interest to prevent the violation of a party's constitutional rights"); see also *Elkhorn Baptist*
20 *Church v. Brown*, 366 Or 506, 546 (2020) ("The inability of plaintiffs to worship in the manner that
21 they prefer and the inability of intervenors to carry on their businesses in the manner that is usual (or at
22 all) is irreparable harm for these purposes, even if temporary.) (Garrett, 1., concurring).

23 If Plaintiff is not granted the temporary restraining order, Plaintiff will suffer the irreparable
24 deprivation of their Constitutional rights pursuant to Or. Const. Art. 1, Sec. 8, and U.S. Const., Amend.
25 1, while Plaintiff awaits a hearing on the preliminary injunction. This deprivation of rights, even for a

1 day, is irreparable and cannot be tolerated in a free society, especially in light of the patently
2 unconstitutional nature of the Defendants' past and persistent actions.

3
4 **(b) PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION; ORCP 79 A(1)(a).**

5 Pursuant to ORCP A(1)(a), a temporary restraining order or preliminary injunction may be
6 obtained when:

7 **A(1)(a)** When it appears that a party is entitled to relief demanded in a pleading, and such relief, or
8 any part thereof, consists of restraining the commission or continuance of some act, the commission or
9 continuance of which during the litigation would produce injury to the party seeking relief[.]

10 ORCP 79 A(1)(a). Plaintiff is likely to succeed on the merits and have requested a permanent
11 injunction enjoining Defendants from restricting Plaintiff from filming and recording during public
12 meetings, as well as from a de facto restriction from meetings and executive sessions through a failure
13 to provide notice under the OPML. Plaintiff, as well as countless other Oregonians (mostly from Crook
14 County), will be irreparably injured during the pendency of this case, as this would prevent Plaintiff
15 and other representatives of the news media from engaging in one of the most essential rights that has
16 long been embedded and protected in American and Oregon society.

17 No doubt, Defendants may argue that the special district will suffer irreparable injury through
18 reporting and documenting on its public meetings, especially as the Defendants undoubtedly struggle
19 with understanding some of the formalities required in its legal conduct of business which have been
20 deficient. However, this does not excuse such conduct by the government and elected officials intended
21 to suppress free speech and public transparency in the interim. Further, it should absolutely be asked
22 which predominates, the State's liberty or the people's? The Oregon Constitution, like the U.S.
23 Constitution, is intended to *restrain* the State and to recognize and protect the rights of Oregonians. Our
24 constitutional form of government thus heavily weighs in the favor of granting this motion, especially
25 considering its impact on the vital role that a free press plays in our democracy. As such, this Court
should grant Plaintiff's motion and immediately enjoin the Defendants as requested. The Defendants

1 may also argue that these actions are only intended to apply to “private events”, but as Plaintiff has
2 highlighted in the complaint and this motion, such meetings are subject to the OPML. *See* ORS
3 192.630. It is clear that any deliberations and meetings by the current two members (Defendants Wood
4 and Jones) of the normal three member governing body of the Crook County Cemetery District,
5 constitute a quorum. *See ORS 192.630(2)*. Plaintiff has also sought the appropriate relief pursuant to
6 ORCP 79. In addition to the obligation to demonstrate the apparent entitlement to the relief requested,
7 ORCP 79 also requires Plaintiff to show that the relief demanded in the pleading consists or partially
8 consists of restraining the commission or continuance of some act. Here, Plaintiff has asked for
9 declaratory judgment and injunctive relief which may be afforded under 208 USC § 2201 and ORS
10 28.020 declaring the Defendants actions to prevent filming and recording to unconstitutional and
11 unenforceable, that its continued actions to avoid notice of such meetings a violation of those rights as
12 well as well established Oregon law, and permanently enjoining Defendants from enforcing it.

13 **(c) PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION; ORCP 79 A(1)(b).**

14 Pursuant to ORCP A(1)(b), a temporary restraining order or preliminary injunction may be
15 obtained when:

16 **A(1)(b)** When it appears that the party against whom a judgment is sought is doing or threatens, or is
17 about to do, or is procuring or suffering to be done, some act in violation of the rights of a party
18 seeking judgment concerning the subject matter of the action, and tending to render the judgment
ineffectual.

19 ORCP 79 (A)(1)(b). It is beyond clear that the failure to provide notice of public meetings is a
20 violation of ORS 192.640. Further, it is well established that Plaintiff and other citizens have the right
21 to open and transparent government. *See* ORS 192.630. Any enforcement or attempts by Defendants to
22 both restrict and avoid access to such meetings, as well as attempt to suppress or restrict filming and
23 recording, would be a violation of the rights of the Plaintiff and innumerable other journalists or
24 citizens they deem unfavorable. The rights of the Plaintiff and all Oregonians are the subject matter of
25 this action. Once these rights are infringed, Plaintiff and all other Oregonians, no later Judgment can

1 restore the right that was deprived to them, or compensate for the deprivation. *See Elrod*, 427 at 373;
2 *Melendres*, 695 F3d at 1002; *Elkhorn Baptist Church*, 366 Or at 546 (Garrett, J., concurring).

3
4 **BOND REQUIREMENT**

5 **7.**

6 No bond is required pursuant to ORS 28.020. Further, the court is required to dispense with
7 any bond requirement in this instance pursuant to ORS 82 A(1)(b)(ii) as no security bond can be
8 required where “[a] restraining order or preliminary injunction is sought to prevent unlawful conduct
9 when the effect of the injunction is to restrict the enjoined party to available judicial remedies.” *Id.* . In
10 this case, a Preliminary Injunction will only require Defendants to adhere to the status quo. Any
11 position by the Defendants that the enforcement of their filming and recording policy somehow
12 constitutes an emergency is unsupportable, as well as their failure to provide notices of and allow
13 attendance at meetings, including media attendance at executive sessions (which must still be publicly
14 declared)..

15 Alternatively, should the Court find a bond is necessary to issue the restraining order or
16 preliminary injunction, Plaintiff contends that this bond should be for a nominal amount because of the
17 purpose of the bond under ORCP 82 is “for the payment of such costs, damages, and attorney fees as
18 may be incurred or suffered” by Defendants if they are found to have been “wrongfully enjoined or
19 restraining.” Here, the Crook County Cemetery District can defer paying filing fees as it is a special
20 district, not a private entity. *See* ORS 20.140. Further, Defendants are not entitled to attorney fees in
21 this action and will not incur damages as a result of being enjoined until the closure of this case.

22
23 **CONCLUSION**

24 **7.**

25 In light of the foregoing, and pursuant to ORCP 79, Plaintiff respectfully moves that this

1 Court enter a Temporary Restraining Order & Order to Show Cause why Preliminary Injunction Shall
2 Not Issue, enjoining Defendants from enforcing their unconstitutional and oppressive policies and
3 restrictions from meetings of the Defendants until a determination on the merits can be reached.
4 Plaintiff further moves this Court to issue a Preliminary Injunction for the same. Absent this Court's
5 intervention, Plaintiff, the public at large, and other representatives of the news media will be deprived
6 of Constitutional rights to engage in freedom of speech, and of the press, pursuant to Article 1, Section
7 8, of the Oregon Constitution; the 1st Amendment of the United States Constitution, as well as the
8 rights afforded under ORS 192.630. This deprivation of rights, even if only during the pendency of this
9 case, cannot be afforded in a free society in which a free press is necessary to ensure accountability and
10 transparency of the people's government.

11
12 RESPECTFULLY SUBMITTED this 13th Day of August, 2024.

13
14 /s/ Justin Alderman
15 _____
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