



Gillian Flaccus/AP Photo

Gov. Kate Brown at a news conference in March.

# Supreme Court keeps virus orders in place

Arguments focus on Gov. Brown's authority

By JASON JACOBY  
Baker City Herald

The Oregon Supreme Court ruled late Monday that Gov. Kate Brown's executive orders regarding the coronavirus pandemic will stand statewide until the court hears arguments following a Baker County judge's ruling that the orders were "null and void."

"Following swift action by the Oregon Supreme Court, my emergency orders to protect the health and safety of Oregonians will remain in effect statewide while the court hears arguments in this lawsuit," Brown said in a statement Monday night about the court's emergency ruling.

Baker County Circuit Court Judge Matthew B. Shirtcliff had earlier in the day ruled Brown had exceeded her authority by restricting activities, including church services and businesses, for longer than the 28 days the governor is authorized under a state law.

The judge granted a preliminary injunction blocking enforcement of each of the more than 10 executive orders the governor has issued since March 8.

Elkhorn Baptist Church in Baker City is the lead plaintiff in the lawsuit, which was filed by Salem attorney Ray Hacke of the Pacific Justice Institute, a nonprofit that defends religious liberty.

Bill Harvey, chairman of the Baker County Board of Commissioners, filed as an intervenor-plaintiff in the case as an individual rather than in his capacity as an elected official.

Harvey, who attended a 20-minute hearing Monday morning at the Baker County Courthouse during which Shirtcliff announced his decision, said after the hearing that "this is what we were seeking."

"Our emphasis was that she (Brown) overstepped her bounds," Harvey said.

The governor's lawyers, Marc Abrams and Christina Beatty-Walters, sought an immediate review of Shirtcliff's decision by the Oregon Supreme Court.

Solicitor General Benjamin Gutman filed a petition with the state's highest court Monday afternoon.

Abrams said there is evidence that measures in the governor's executive orders have been effective at curbing the spread of the coronavirus, and that Shirtcliff should delay the injunction as a result.

But Hacke countered that the "issue is not whether it's working. It's whether she has exceeded the limits of her authority."

In his written decision, the judge compared grocery stores and other businesses that have remained open, with social distancing guidelines, to churches, writing that churches can use the same precautions during worship services that involve more than 25 people, which has been the limit under the gov-

ernor's executive orders.

In granting the plaintiffs' motion for a preliminary injunction, Shirtcliff concluded that Brown, by citing a certain state law in some of her executive orders since her original emergency declaration March 8, in effect placed a 28-day limit on the state's enforcement of those orders.

That law is Oregon Revised Statute 433.441.

The law gives the governor a variety of powers, including the authority to "control or limit entry into, exit from, movement within and the occupancy of premises in any public area ..."

Although Brown invoked a different law — ORS 401.165 — when she initially declared an emergency, Shirtcliff wrote that 401.165 "does not grant the governor power directly over the movement of citizens and gatherings."

ORS 401.165 also does not include any time limits on the duration of the emergency. Brown has subsequently extended the emergency declaration through July 6.

That declaration is separate from the multiple executive orders the governor has issued. Brown eased some restrictions included in those executive orders on Friday when she authorized most of the state's 36 counties, including Baker, to move into the first phase of the state's reopening plan.

The crux of the legal dispute involves the relationship between the two laws the governor has invoked — 401.165 and 433.441.

Brown's attorneys argued in a hearing last week that because the governor cited 401.165 in the emergency declaration, that law, which has no time limits, is the controlling statute.

But Hacke argued — and Shirtcliff agreed — that the governor, by repeatedly citing ORS 433.441 in her executive orders, made those orders subject to the 28-day time limit allowed under that law for public health emergencies.

Moreover, Shirtcliff wrote in his decision that Brown, in order to issue executive orders that restrict residents' movements and the size of their gatherings, had to involve 433.441 because 401.165 doesn't give her that authority.

In his decision, Shirtcliff specifically mentioned Brown's first executive order.

"This court finds that when the governor utilized the provisions of ORS 433.441 in her executive order, she triggered all the provisions of ORS 433.441 including the time restrictions," the judge wrote. "By doing so, the executive order became null and void beyond the maximum 28-day time period allowed by the statute. Moreover, by not complying with (the) timelines, the governor's subsequent Executive Orders 20-05 through 20-25 are also null and void."

In addressing the potential conflict between the two laws — one with no time limit and one with a 28-day limit — Shirtcliff wrote that "the statutes are to be read to work together with the more specific statute governing."

## OBITUARIES

### Carol Joyce Stutesman Seaside June 25, 1954 — May 8, 2020

Carol Joyce Stutesman passed away on May 8, 2020, in Seaside, Oregon, after battling a long illness.

Carol was born on June 25, 1954, in Aberdeen, Washington, and was the second child of six children. She was the only girl born to Juanita and Drexel Stutesman.

Carol grew up in Aberdeen, and graduated from Weatherwax High School. She received a degree in business/economics education from Western Washington University.

Carol could have pursued many business career opportunities, however her passion was teaching and coaching. She had an intense desire to help students become confident young adults.

Carol taught at Coquille High School and Oregon City High School before her 29-year career at Seaside High School. Carol taught a variety of business/vocational classes that included personal finance, computer applications, accounting and graphic arts. Her students appreciated her guidance in help-

ing them make good decisions as they transitioned into independent adults.

Carol coached many ages and skill levels of athletes. She had many successful seasons coaching basketball, softball and volleyball at Seaside High School. Her volleyball team won the state 4A state championship in 1988.

Carol was often described as a one of a kind, and was known to be a straight shooter. She was extremely generous, and if someone was in need or a civic project needed to be completed, she was there to provide.

Her love and care for Seaside High School students will continue in memoriam through the Carol Stutesman scholarships funded through her estate donation.

Carol's love for life and friends will be greatly missed. Carol is survived by her brothers, Paul, Glen and Floyd, as well as numerous nieces and nephews.

Friends and family plan to hold a celebration of life in Aberdeen at a later date.



Carol Stutesman

### James O. Johnson Seaside Aug. 2, 1949 — May 6, 2020

James O. Johnson was born Aug. 2, 1949, to parents Ernest and Joyce Johnson in Astoria, Oregon.

He was preceded in death by his sister, Sharon, and his brother, Orson.

Surviving relatives are three sisters, Joy, Edna and Kathy; three sons, Justin Thorpe, Ryan Rusinovich (Aby), and Rollin Archer (Yasemin); six grandchildren, Nick, Aubrey, Anima, Adina, Nevaeh and Razari; and adopted family Alexandria Owens (AJ).

James began school in Lancaster, Minnesota, and finished in Knappa, Oregon, grad-

uating in 1967.

He moved to Arizona and while there enlisted in the Army. He was sent to Southeast Asia.

Most of his working life was driving log trucks and operating heavy machinery. He was known as "Hippie Jim" by his co-workers.

Jim was much loved by his family, and is missed by all. He will be buried with his father and immediate family, and a memorial service will be held once the coronavirus is over.

Email rollinarcher@hotmail.com to be notified of the memorial.



James Johnson

## OBITUARY POLICY

The Astorian publishes paid obituaries. The obituary can include a small photo and, for veterans, a flag symbol at no charge. The deadline for all obituaries is 9 a.m. the business day prior.

Obituaries may be edited for spelling, proper punctuation and style. Death notices and upcoming services will be published at no charge. Notices must be submitted by 9 a.m. the day of publication.

Obituaries and notices may be submitted online at [DailyAstorian.com/forms/obits](http://DailyAstorian.com/forms/obits), by email at [ewilson@dailyastorian.com](mailto:ewilson@dailyastorian.com), placed via the funeral home or in person at The Astorian office, 949 Exchange St. in Astoria.

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### SEVEN-DAY FORECAST FOR ASTORIA

TODAY	FRIDAY	SATURDAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY
56 46	58 46	59 48	60 51	62 49	62 48	65 52
A couple of showers	A morning shower	Cloudy	Cloudy, showers around	A brief shower or two	Showers possible	Partly sunny

### ALMANAC

Astoria through Tuesday

**Temperatures**

High/low ..... 57/50  
Normal high/low ..... 61/46  
Record high ..... 81 in 1978  
Record low ..... 37 in 2012

**Precipitation**

Tuesday ..... 0.06"  
Month to date ..... 2.84"  
Normal month to date ..... 2.13"  
Year to date ..... 34.90"  
Normal year to date ..... 32.42"

Forecasts and graphics provided by **AccuWeather, Inc.** ©2020

### UNDER THE SKY

**Tonight's Sky:** Corona Borealis, the northern crown, soars high across the sky tonight.

Source: Jim Todd, OMSI

### SUN AND MOON

Sunrise today ..... 5:36 a.m.  
Sunset tonight ..... 8:49 p.m.  
Moonrise today ..... 5:22 a.m.  
Moonset today ..... 7:56 p.m.

	New	First	Full	Last
	May 22	May 29	June 5	June 12

### TODAY'S TIDES

Astoria / Port Docks	Time	High (ft.)	Time	Low (ft.)
	12:48 a.m.	8.1	7:44 a.m.	-0.2
	1:53 p.m.	6.7	7:27 p.m.	2.4
<b>Cape Disappointment</b>	12:25 a.m.	8.0	6:53 a.m.	-0.1
	1:30 p.m.	6.6	6:40 p.m.	2.6
<b>Hammond</b>	12:34 a.m.	8.4	7:14 a.m.	-0.3
	1:41 p.m.	6.8	6:59 p.m.	2.4
<b>Warrenton</b>	12:43 a.m.	8.5	7:28 a.m.	-0.1
	1:48 p.m.	7.1	7:11 p.m.	2.5
<b>Knappa</b>	1:25 a.m.	8.4	8:45 a.m.	-0.1
	2:30 p.m.	6.9	8:28 p.m.	2.0
<b>Depoe Bay</b>	12:48 p.m.	6.5	6:24 a.m.	-0.3
	1:48 p.m.	6.5	6:07 p.m.	2.6

### NATIONAL CITIES

City	Today Hi/Lo/W	Fri. Hi/Lo/W
Atlanta	78/63/c	80/65/t
Boston	72/52/s	80/60/pc
Chicago	70/57/c	74/57/pc
Dallas	85/67/pc	86/70/t
Denver	73/45/pc	80/50/s
Honolulu	87/72/pc	86/73/s
Houston	92/71/pc	91/75/pc
Los Angeles	81/59/s	79/59/s
Miami	89/74/t	88/76/pc
New York City	66/53/s	72/59/pc
Phoenix	92/66/s	96/68/s
San Francisco	70/52/s	69/52/pc
Wash., DC	68/57/c	72/63/t
<b>Weather (W):</b> s-sunny, pc-partly cloudy, c-cloudy, sh-showers, t-thunderstorms, r-rain, sf-snow flurries, sn-snow, l-ice.		

### REGIONAL FORECAST

Shown is today's weather. Temperatures are today's highs and tonight's lows.

City	Today Hi/Lo/W	Fri. Hi/Lo/W	City	Today Hi/Lo/W	Fri. Hi/Lo/W
Seattle	57/46	63/45	Spokane	55/39	
Aberdeen	56/46	63/45	Moses Lake	66/44	
Tacoma	59/42	66/44	Pullman	53/38	
Olympia	59/42	66/44	Kennewick	67/46	
Longview	57/45	67/46	Walla Walla	59/43	
Astoria	56/46	67/46	Lewiston	60/44	
Portland	57/46	66/46	Enterprise	50/33	
Salem	56/43	66/46	Pendleton	60/41	
Corvallis	57/42	66/46	La Grande	52/37	
Eugene	57/42	66/46	John Day	51/35	
Bend	54/32	66/46	Burns	54/29	
Medford	66/42	66/46	Ontario	62/41	
Klamath Falls	60/31	66/46	Caldwell	61/40	
Baker City	54/33/sh	54/32/pc	North Bend	58/45/sh	59/44/pc
Brookings	58/44/c	61/47/s	Roseburg	62/45/c	65/41/c
Ilwaco	55/48/sh	55/48/pc	Seaside	55/47/sh	57/44/pc
Newberg	57/42/sh	61/38/c	Springfield	58/43/sh	62/37/pc
Newport	55/45/sh	56/40/pc	Vancouver	56/46/sh	61/42/pc