

Local & State

LAWSUIT

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Shirtcliff's third option is the one he chose — to not vacate his decision but not issue a supplemental written opinion.

The issue now returns to the Oregon Supreme Court.

Attorneys representing the governor have until today to file briefs related to the preliminary injunction. The plaintiffs' attorneys have until June 2 to file responding briefs.

The current legal issue is the preliminary injunction, not the lawsuit itself.

Whether or not the Supreme Court decides to reinstate the injunction Shirtcliff granted May 18,

the lawsuit could proceed to trial in Baker County Circuit Court.

The plaintiffs, led by Elkhorn Baptist Church of Baker City and represented by Salem attorney Ray Hacke of the Pacific Justice Institute, which defends religious freedom, argue that Brown, by invoking in her executive orders a state law — ORS chapter 433 — dealing with public health emergencies, is subject to that law's 28-day limit on such emergencies. By that measure the executive orders ended in early April, and the plaintiffs contend the governor no longer has the legal authority to restrict a variety of activities, including the current 25-person limit on public gatherings such as

church services.

Shirtcliff agreed with the plaintiffs and cited the 28-day limit in his May 18 decision granting the preliminary injunction.

Brown's attorneys, meanwhile, argue that the governor's executive orders are not subject to the 28-day limit in that law because her initial declaration of an emergency related to the coronavirus was under a different law — ORS chapter 401, a general emergency statute that has no time limit.

Brown has since extended the emergency declaration to July 6.

Kevin Mannix, a Salem attorney and former state legislator who represents a group of intervenors who support

the plaintiffs in the lawsuit, issued a statement about Shirtcliff's Tuesday letter.

"I am pleased that Judge Shirtcliff chose to stand by his original decision, which I firmly believe is strongly supported by proper analysis of the statutes," Mannix wrote. "We will now have the opportunity to fully engage with the Governor's representatives in front of the Supreme Court. We will make the case that the rule of law in Oregon allows continued standard regulation of public health matters, but it does not allow the Governor extraordinary powers to close down businesses and churches, beyond 28 days from the original declaration of a public health emergency."

Ellen Rosenblum, Oregon attorney general, issued a statement Tuesday afternoon:

"In a letter to the Oregon Supreme Court this morning, the Baker County Judge announced he is standing by his decision that all of the Governor's "Stay Safe; Stay at Home" executive orders are null and void. We appreciate the Oregon Supreme Court's Saturday (of Memorial Day weekend) ruling and we look forward to the Court's consideration of the legal issues. We will be filing an extensive brief on Thursday advocating for upholding the orders and allowing for the safe and orderly reopening of our state that is already well underway. Meanwhile the Governor's orders remain lawful and in

effect."

Mannix said in a telephone interview Tuesday afternoon that the Supreme Court chose what he described as a "middle ground."

The state's highest court could have either agreed with the governor's attorneys and dismissed Shirtcliff's order granting a preliminary injunction, or it could have concurred with the plaintiffs and dismissed the governor's challenge to the injunction, reinstating Shirtcliff's order from May 18.

The Supreme Court did neither, and instead will review legal arguments from both sides on the question of whether the injunction should be tossed out or reinstated.

The travails of COVID-19 testing

By Erin Ross
Oregon Public Broadcasting

SALEM — Oregon recorded its first COVID-19 death on March 14. Over the next eight weeks, 6,799 Oregonians would die — well above the five-year average for that period.

All told, Oregon exceeded its average death toll by more than 400. It's an alarming number, particularly since traffic deaths are down 32% compared to last year. And yet, only 132 deaths in this period were attributed to the new coronavirus.

"I think that number is concerning," State Epidemiologist Dr. Dean Sidelinger said. "I wish, you know, I knew what the reason was for all those deaths."

But Sidelinger doesn't know. No one does.

Oregon started to reopen on May 15, and to do that safely, the state needs widely available, accurate testing to catch new outbreaks of the disease. And so it's critical that Oregon's COVID-19 numbers can be trusted.

Whether or not Oregon's count is missing cases comes down to three things: Are enough people being tested? Are the right people being tested? And are those tests accurate?

Compared with the number of cases per capita in places with similar populations — like Colorado or hard-hit states like New York, Massachusetts and Illinois — Oregon has, so far, been spared the worst of the COVID-19 pandemic. People largely complied with Gov. Kate Brown's stay-home order. The number of hospitalized COVID-19 patients in

Oregon has been manageable and is declining in most parts of the state.

But that above-average number of deaths is like ripples on a pond — a sign that something disturbed the water, even if you didn't see what broke the surface.

Until recently, there weren't enough COVID-19 tests, including in Oregon. So it's a given that many cases were missed as testing capacity ramped up in April and May.

But even if you got a test, there was no guarantee the results were accurate. When a diagnostic test is created, it's tested with samples that are known to have the virus, to see if it's accurate. That's in the lab, where a test might be 100% accurate.

"But it's important to remember that there's a difference between laboratory accuracy, and analytical accuracy or clinical accuracy," said Dr. Yasmine Akkari, the director of molecular pathology at Legacy Health in Portland. "Analytical sensitivity is the ability of a test to detect the virus when it's actually present in the specimen."

Basically: In the real world, things get messy. A lot of little things can go wrong.

Several studies of COVID-19 tests have found high rates of false negatives, far above the recommended 5%.

Right now, Oregon is relying on two types of tests: RT-PCR tests, considered the gold standard in disease diagnostics, and rapid tests, which have come online in large numbers more recently.

To understand how a test that seems accurate can result in false negatives,

it helps to understand the tests and the way they're conducted.

RT-PCR: an imperfect gold-standard test

The first COVID-19 tests available were RT-PCR tests. They require a very small amount of genetic material (DNA or RNA), copy that material, and then read the sequence.

For COVID-19, the test usually starts with a swab, stuck far up the nose. Then, the RNA is extracted from the virus and other material, like snot and proteins from the viral shell, are removed. The RNA forms a little pellet at the bottom of a tube.

Then that purified sample is put into the RT-PCR machine. RT stands for reverse transcription and PCR is short for polymerase chain reaction. A polymerase is a molecule that makes copies of genetic material. Scientists add a "primer" to the mix, and add the polymerase. The primer tells the polymerase what part of a gene to copy.

The machine cycles until eventually there's enough RNA to sequence. The different letters in the genetic code are tagged with pigments that glow different colors. The machine reads those colors and turns it into genetic code — a string of letters unique to that virus.

"If somebody tests positive, that's a very clear indicator that they almost definitely have a virus," said Thomas Jeanne, the Oregon Health Authority's senior adviser on testing.

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LOCAL BRIEFING

Baker County Weed Control District giving away herbicide on Saturday

The Baker County Weed Control District's annual herbicide giveaways are scheduled for Saturday, May 30, in Baker City, Hereford and Unity.

The free herbicide is designed to control noxious weeds on pasture, range and non-crop lands. Each person can get up to 5 gallons of herbicide, enough to treat about 4,000 square feet.

Please bring a closed container — a herbicide sprayer is acceptable. Due to the coronavirus pandemic, please stay in your vehicle until you're notified to come collect the herbicide.

The schedule:

- Baker County Weed Control District shop, 1050 S. Bridge St. (former ODOT maintenance shop), 9 a.m. to noon
- Hereford, Baker County shop, 1:30 p.m. to 3 p.m.
- Unity, post office parking lot, 3:30 p.m. to 5 p.m.

Harvest Christian Academy has open enrollment for all grades for the fall

Harvest Christian Academy in Baker City is enrollment students in all grades for this fall. The school is open for students age 3 through 12th grade. The school uses the Abeka curriculum for all grades.

Costs and other information are available at www.bakercityharvest.org

Community Connection has money available for food and shelter programs

Baker County will receive \$6,792 from the Federal Emergency Management Agency and \$9,683 from the CARES Act's emergency food and shelter program. Organizations that provide those services to Baker County residents can apply for some of the money through Community Connection of Baker County.

To request an application, call Joe Hayes at 541-523-6591, extension 11, or email to joe@ccno.org. Application deadline is June 12 at 4 p.m.

Officials to announce school reopening plans for fall

By Les Zaitz
Salem Reporter

SALEM — Parents, teachers and school superintendents will find out in early June how schools are expected to function this fall after months of being closed.

Colt Gill, director of the Oregon Department of Education, said in an interview that the state expects school buildings to reopen in September.

He said his agency, working with the Oregon Health Authority, will announce soon what the conditions will be for school in the fall.

"We're working really hard to ensure that school next year is going to be a safe place to be," Gill said.

Public schools closed on March 13 and are finishing the 2019-2020 school year with students never returning to their classrooms. Teachers instead worked with students remotely, relying on videos, emails and phone calls.

The unprecedented finish to the school year came as Gov. Kate Brown applied orders across the state to contain the coronavirus.

Gill said he expects schools can open in a "vast majority of Oregon communities" but said schools will have to live with new rules and restrictions. Some school systems may be required to resort to distance learning because of continuing high levels of infections in the community.

He said that schools that do open may have to teach students with a blend of in-class instruction and distance learning from home. That will depend on how many students can be safely allowed in one class, Gill said.



S. John Collins / Baker City Herald file photo-2013

"Curious George" finds it way into the hands of third-grade student Emily Huffer during a Baker County Literacy Program book giveaway at Brooklyn Primary School in 2013.

He said the state's schools and the Education Department face one challenge atop another to ready for the new school year.

Gill said he formed a "pretty significantly large team" at the state agency to plan and in recent days has had "deep engagement" with school superintendents, teachers and parents to devise the opening.

He said superintendents across Oregon are "interested in having their students back at school and be able to ensure that they can overcome any type of learning loss that has happened."

Gill cautioned that because circumstances with COVID-19 can change rapidly, plans announced in June could have to be modified even before schools open.

"We're going to be living with this disease," Gill said. "Whenever we loosen restrictions, we increase some risk that people will pick up the illness."

Jim Green, executive director of the Oregon School Boards Association, said schools want freedom to devise their own solutions to meet broad state requirements rather than having each school practice set by state officials.

Nikki Albusu, superintendent of the Ontario School District, is one who wants a level of independence.

"They need to plan not with Portland in mind but with everybody in mind. Not one size fits all," Albusu said.

Gill said he intends to allow for such "local flexibility."

"We're working really hard to ensure that school next year is going to be a safe place to be."

— **Colt Gill, director, Oregon Department of Education**

Once the state settles on how schools will function, superintendents and teachers have about 90 days to be ready to teach again.

Green said the complexity involved is "exceedingly challenging." He said the quick switch in the spring to distance learning has been a challenge for educators.

"Reopening our schools is twice that, if not more," Green said. "Schools will not look in the 2020-2021 school year like they ever have before."

"There's just so much," Albusu said. "It forces us into a plan A and a plan B and kind of a plan C."

School leaders said Oregon schools face considerable uncertainty.

One issue is staffing. While children have been less affected by the disease, vulnerable adults have been encouraged by health authorities to keep relatively isolated. That includes older adults and those with compromised health.

Green noted that 35% of the state's school employees are eligible to retire. That means some educators and employees who cook meals and drive buses may stay away from their jobs for now.

"We still have to figure out how we're going to staff school," Green said.

That could, in turn, require more substitute teachers than typical,

driving up school costs.

Albusu is surveying her staff to find out who is comfortable returning to the school buildings.

"We have a lot of adults in the at-risk category," Albusu said. "What's the plan if we can't get them back on the job?"

Green said there could be a blend of teaching, with some teachers handling in-school classes while others provide distance learning.

Busing is another uncertainty, Green said.

Current social distancing requirements — keeping people 6 feet apart — would mean that students would sit only one per seat and in every other seat on a school bus.

"School buses are not meant to have one kid every other seat," Green said.

Green said educators are asking the state to loosen that social distancing standard to ease the strain on school transportation systems. He said another challenge, though, will be that many bus drivers are retirees who are more at risk of the infection. There may be a shortage of drivers in the fall.

That could lead to longer walking distances for students, Green said.

All the planning is underway as school funding remains in question. The state budget is forecast to have billions less in revenue, but the governor hasn't indicated yet how she proposes to cut state spending to match.

Gill said his agency is advising school districts "to continue to wait" for those spending decisions before adjusting their own budgets.

"We're all in a wait-and-see mode," Gill said.