

Plaintiffs say Oregon governor's COVID-19 orders have expired

By Jayson Jacoby
EO Media Group



Judge Matt Shirtcliff

Gov. Kate Brown's executive orders during the coronavirus pandemic have already expired under state law, the lawyer for a group of churches and other plaintiffs argues in a brief filed Tuesday in the Oregon Supreme Court.

Ray Hacke, an attorney with the Pacific Justice Institute in Salem, argues that because Brown invoked the state's public health emergency law, she is bound by its 28-day limit.

Hacke filed a 29-page brief in response to the brief Oregon Solicitor General Benjamin Gutman filed May 28 on behalf of Brown.

The court had set a deadline of Tuesday for Hacke and another Salem attorney, Kevin Mannix, who represents a group of intervenors, to file briefs in response. Mannix also filed his brief Tuesday.

Mannix, in his brief, said the governor still has significant powers to address the

coronavirus pandemic under Oregon's public health laws, included in ORS Chapter 431A.

The key point, however, is that these broad powers do not include the powers to close businesses and churches or to impose "re-opening" orders on counties, Mannix argued.

At issue is the preliminary injunction Baker County Circuit Judge Matt Shirtcliff granted to the plaintiffs on May 18. The Supreme Court later that day set aside the injunction and allowed the state to continue to enforce the governor's executive orders restricting some businesses and limiting the size of public gatherings, including church services, to 25 people.

After Shirtcliff declined to withdraw his decision granting the preliminary injunction, the Supreme Court told attorneys

on both sides to submit written arguments for whether the injunction should stand.

The Supreme Court has not given a timeline for its decision.

In his brief, Hacke addresses the two state laws Brown has cited during the pandemic.

The first is Oregon Revised Statutes chapter 401. That's the general emergency law Brown invoked when she initially declared an emergency due the pandemic on March 8. Chapter 401 does not set a time limit on the emergency — it can continue until either the governor or the Legislature decides to end it.

The second law is ORS chapter 433, which deals specifically with public health emergencies. Chapter 433, which Brown cited in several of the executive orders she issued following the March 8 emergency declaration, has a 28-day limit.

Hacke contends that, when two laws are involved, the "newer and more specific pro-

vision" is the controlling statute. Chapter 433 is newer, passed by the Legislature in 2003 and revised in 2007. Chapter 401 dates to 1949.

He writes in the brief that Brown cannot "treat the time limits imposed under (chapter) 433 as optional."

Shirtcliff, the circuit court judge, agreed with that reasoning in his decision granting the preliminary injunction.

Gutman disputes that interpretation of the interplay between the two laws. He argued in his May 28 brief that the laws are not in conflict but are instead complementary, and that Brown can invoke an emergency under chapter 401, without time limits, but also use the specific powers granted under chapter 433 without then being limited to the 28 days in that statute.

Hacke countered a contention in Gutman's brief that the plaintiffs "did not assert a free-exercise claim in their complaint."

Hacke cited sections in the

amended lawsuit contending that one of Brown's executive orders "at least implicitly impinges on plaintiffs' free exercise of religion" under the Oregon Constitution.

Hacke also argues in his brief that Brown's executive orders "have consistently shown hostility toward religion."

He cited executive order 20-25, which limits "faith-based gatherings" to 25 people, regardless of the size of the church building.

Hacke notes that during phase one of the state's reopening plan, the governor allows restaurants and bars to determine maximum occupancy while still maintaining social distancing, but doesn't allow churches to use the same guidelines.

Hacke acknowledged that, although Brown signed executive order 20-25 after the lawsuit was filed, two earlier orders also fail to treat religious gatherings with the same leniency as secular gatherings.

Hacke concludes his brief by asking the Supreme Court to affirm Shirtcliff's decision to grant the preliminary injunction, which would block the governor from enforcing executive orders, including those limiting the number of people attending church services.

The Supreme Court could do so for either of two reasons, Hacke argues.

The first reason is the governor's failure to abide by the 28-day limit by which Hacke contends she is bound.

The second reason, Hacke writes, is that "the severe curtailment of core constitutional freedoms even in areas of the state that have experienced few or no coronavirus cases cannot be further sustained."

"When wielding her emergency powers, the Governor can and should — nay, must — respect individual liberties to the greatest extent possible," Hacke writes.

Capital Press contributed to this story.

Congressional seat is GOP's to lose in second district

By Gary A. Warner
For Oregon Capital Bureau

It's bigger than some states, includes two time zones and is a bright red Republican stronghold in a deeply blue Democratic state. Oregon's CD2 — shorthand for the 2nd Congressional District — has been on electoral autopilot the past two decades, sending Rep. Greg Walden, R-Hood River, to Washington, D.C., 11 straight times. He's the only Republican among Oregon's congressional delegation of two senators and five members of the House of Representatives.

Something that hasn't happened this century will occur Nov. 3. There will be no CD2 incumbent on the ballot — Walden is retiring at the end of the current session. Republican Cliff Bentz, a former state senator from Ontario, emerged as the winner from a scrum of 11 candidates in the May 19 GOP primary. He'll face writer and political strategist Alex Spenser of Klamath Falls, winner of the Democratic primary.

Odds are the Republican will take the oath of office Jan. 3 when the 117th United States Congress convenes.

"Cliff Bentz is as close to a sure thing as you can get," said longtime Oregon election analyst Jim Moore, a politics and government professor at Pacific University.

A more than 40,000 Republican voter registration edge over Democrats, combined with Spenser's lack of name recognition and campaign funds, is enough for Bentz to win the district, Moore said.

There are over 203,000 non-affiliated registered voters, but Moore said those that go to the polls "break the same

way as whatever the Republican-Democratic split goes."

Democrat Jamie McLeod-Skinner of Terrebonne ran for the seat in 2018. She was an adroit fundraiser and campaigned nonstop, driving 40,000 miles criss-crossing the district. She still only won 39% of the vote in a year Democrats piled-up wins to take control of the House. With the COVID-19 pandemic, rallies and meetings in 2020 are going to be small or non-existent. Most of the campaigning will be online and ads on television or social media.

"Spenser maybe gets 35% of the vote, since there is no incumbent," Moore said.

Dems bet 'Dump Trump' wave will win

Spenser, 55, says she knows she has a tough task to get to Capitol Hill. But 2020 is different: an unprecedented election year of pandemic, record unemployment and a "divisive" President Trump at the top of the ticket.

"There's going to be a blue tsunami," she said.

Spenser didn't start out as a congressional candidate at all. She was campaign manager for Raz Mason of The Dalles. When Mason dropped out of the race, she encouraged Spenser to jump in. On the night of the primary, the first returns showed Spenser trailing Nick Heuertz, a non-profit vice-president from Central Point. But in the end, she eked out a victory of just over 800 votes.

Molly Woon, deputy director of the Democratic Party of Oregon, said the party has just recently been reaching out to Spenser and other Democratic primary winners in congressional and legislative races to bring them into the concerted

2020 efforts in Oregon.

"I'm looking forward to meeting all the other Democratic candidates to compare strategies," Spenser said.

U.S. Sen. Ron Wyden, D-Oregon, said the race is an opportunity for the Democratic Party.

"I have worked with Rep. Walden on issues that affect Oregon where we have found common ground," Wyden said. "But in November, I'm with the Democrat."

Spenser said she wants to tap into the large number of non-affiliated voters, along with Republicans who can no longer support the party's agenda under President Donald Trump. She sees water as one of the keys that will resonate with district voters. She supports a \$450 million plan to restore the Klamath River by removing four hydroelectric dams in Oregon and California. It would be part of a national trend which has seen 1,700 dams across the nation removed in recent years. Wind farms can provide electricity and also help with irrigation, Spenser said. She wants a more efficient and equitable way to distribute water in Eastern Oregon.

"You have 90% of the water going to irrigation and 40% of that is lost through evaporation," she said. "Meanwhile, wells are running low in Harney County. At the bottom is arsenic — we're going to poison these people."

Regardless of the message, the electoral number crunchers say Spenser is facing an uphill battle that looks more like a wall than a slope.

The Cook Voting Index rates districts by their propensity to back one party or the other in presidential races. CD2 is "R+11" — meaning it

is expected to give the Republican nominee 11% more of the district's vote than the national average. In 2016, the district gave nearly 55% of its vote to Donald Trump, while Democrat Hillary Clinton won 35%. In 2012, Republican Mitt Romney received 56% of the vote compared to 40% for President Barack Obama.

Herding Republicans

Covering nearly 70,000 square miles, district voters in the sparsely populated eastern, central and south central two-thirds of the state have voted solidly Republican over the past 40 years. Successive reapportionments have added reliably conservative areas to CD2, with Democrats largely content to put the largest concentration of the state's Republicans into CD2. The move has enabled Democrats to win and hold the other four House seats in Oregon.


One of the ironies is CD2 is among the most politically flexible in the country — just not in a way that helps Democrats.

Nate Silver, an analyst of election data, showed Oregon's CD is the 25th most politically "elastic" of the nation's 435 congressional districts. Silver, editor of the political website FiveThirtyEight.com — named for the total of Senate and House seats in the country — measures how sensitive each House district is to changes in the national political mood. An elastic district will show big shifts in voter preferences. Inelastic districts tend to stay in a much smaller range whatever the immediate political situation.

Voter sentiment in CD2 can be moved a great deal — but the end result, a Republican victory, is the same. Walden won the seat by over 70% of the vote in 2014 and

2016, but received "only" 56% of the vote in 2018. In most districts, a swing of 14% would likely bring victory to the other party. But in CD2, it means Republican victories range from blowouts to comfortable wins.


Like Walden, Bentz had put in years as a state lawmaker representing Eastern Oregon in the House and Senate, where he was known as somewhat of a wonk on transportation issues. While supporting Trump, Bentz didn't make it a centerpiece of his campaign — in a group of candidates trying to grab the right side of the political spectrum, Bentz represented a conservative middle ground. He emphasized his family's long history in the district, his conservative voting record in the Legislature and stuck much of the time to regional issues like federal land use, water and agriculture.




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We would also like to thank all the folks who bought wreaths to support the class of 2020.

Committee Volunteers Needed

Grant County is now recruiting volunteers to serve on active boards and committees.

Obtain an Application to Volunteer from County Court, 201 S. Humbolt, No. 280, Canyon City OR 97820; (541-575-0059) puckettk@grantcounty-or.gov Applications are due by Tuesday, June 30th, 2020

Committees are formal public bodies required to comply with Oregon Public Meetings Law ORS 192.610.

- College Advisory Board**
Seven members plus three ex-officio members serve a three year term and meet monthly to promote local educational opportunities and identify educational needs within the community.
- Extension & 4-H Service District Advisory Council**
Eleven members serve three year terms and meet semi-annually to provide guidance and assistance to local OSU Extension staff in planning, developing, and evaluating balanced educational programs directed to high priority needs of county residents. Membership is limited to one re-appointment.
- Library Advisory Board**
Seven members serve four year terms and meet monthly to promote public awareness and support of library services, receive public input, review and update library materials, and coordinate activities with the Grant County Library Foundation. Membership is limited to one re-appointment.
- Natural Resources Advisory Committee**
Nine members serve one and two year terms. Members must live in Grant County and constitute a representation of agriculture and livestock production, timber and wood products production, recreation, hunting and fishing, water resources, mining, cultural resources and advocates for natural resources stewardship through continuation of the customs, culture, health, safety and economic stability of Grant County.
- Senior Citizens Advisory Council**
Five members serve three year terms and meet semi-annually to define the needs of older adults, promote special interests and local community involvement, and represent senior citizens as an advocate to the local, state and federal government and other organizations.