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**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION**

	)	Case No. 25CV08937
Chad Mangum,	)	
Plaintiff,	)	
-v-	)	<b>PLAINTIFF’S MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION</b>
	)	
State of Oregon, acting by and through the State Board of Tax Practitioners,	)	
Defendant.	)	
	)	
	)	

**I. INTRODUCTION**

1.

This case challenges the Oregon Board of Tax Practitioners’ (Defendant) unauthorized expansion of regulatory authority. Defendant seeks to impose licensing requirements on out-of-state tax preparers without adhering to the procedural safeguards required under the Oregon Administrative Procedure Act (APA), as detailed in ORS 183.335. Plaintiff, an out-of-state tax preparer, was compelled to obtain an Oregon license under duress, incurring non-recoverable fees, due to a policy enacted via Frequently Asked Questions notice (FAQ) (Exhibit 1) rather than through the proper rulemaking process. This policy constitutes an ultra vires action, making it legally void and unenforceable.

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2.

Defendant’s unapproved rule, stemming from ORS 673.610, also violates the Equal Protection Clause of the Fourteenth Amendment by creating a discriminatory classification:

- a) Burdened Group: Out-of-state tax preparers, including federally recognized Enrolled Agents (EAs), employees of EAs, and employees of attorneys.
- b) Exempt Group: In-state and out-of-state CPAs and their employees, CPA Firms and their employees, in-state and out-of-state attorneys, who are not subject to the same licensing restrictions.

3.

This distinction fails rational basis review as there is no legitimate state interest in treating similarly qualified professionals differently. The statutory language and legislative history confirm that Defendant’s regulatory jurisdiction is limited to tax preparers physically located “in this state”, ORS 673.730, yet the policy unlawfully extends beyond these bounds.

4.

Additionally, Defendant’s actions deprive Plaintiff of procedural due process by implementing a new licensing requirement without notice or opportunity to be heard. The right to pursue one’s profession is a protected property interest (*Board of Regents v. Roth*, 408 U.S. 564, 576 (1972)), and the policy’s sudden imposition violates fundamental due process protections (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985)). Defendant has imposed financial burdens of nearly \$60,000 in unlawful fees on out-of-state tax preparers (Exhibit 2) without following proper rulemaking procedures. Defendant has financially benefitted from this.

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5.

The balance of equities strongly favors Plaintiff. Defendant’s policy disrupts existing client relationships, imposes unwarranted financial burdens on tax preparers, and restricts Oregon taxpayers’ access to professional tax services. The preliminary injunction sought in this case is necessary to halt the unlawful enforcement of this policy, prevent further irreparable harm, and uphold the principles of due process and equal protection under the law.

6.

To guide the Court’s analysis, this memorandum is structured according to the four required elements for a preliminary injunction:

- a) **Likelihood of Success on the Merits:** The Defendant’s policy is an ultra vires rule under ORS 183.335, violates Equal Protection, and infringes on Procedural Due Process.
- b) **Irreparable Harm:** Plaintiff, among others, face non-recoverable financial losses, loss of business goodwill, and client attrition that cannot be remedied by monetary damages due to Defendant’s sovereign immunity.
- c) **Balance of Equities:** The harm to Plaintiff is severe, whereas Defendant suffers no harm from maintaining the status quo.
- d) **Public Interest:** Oregon taxpayers will suffer from a shortage of available tax preparers if Defendant's policy remains in effect, harming both professionals and the public. The enforcement of unpromulgated rules undermines the integrity of government regulatory processes and sets a dangerous precedent. Hundreds of thousands of tax preparers should not be unfairly subjected to a policy that violates their constitutional due process rights.

1 7.

2 The Court should issue an immediate preliminary injunction to suspend enforcement of  
3 Defendant's unlawful and unconstitutional policy.

4 **II. STATEMENT OF JURISDICTION**

5 8.

6 This Court has subject matter jurisdiction under the Oregon Administrative Procedure Act  
7 (APA), ORS Chapter 183, as this case challenges an unlawful rule issued by a state agency.  
8 Plaintiff asserts that Defendant's policy, published as an FAQ, constitutes a de facto rule that  
9 was not properly promulgated in accordance with APA rulemaking requirements. By failing to  
10 follow ORS 183.335, Defendant exceeded its statutory authority, rendering the policy invalid  
11 and unenforceable (*GTE Northwest Inc. v. Public Utility Commission (PUC)*, 321 Or. 458, 468  
12 (1995)).

13 9.

14 Additionally, this case presents a constitutional question under the Fourteenth Amendment to  
15 the United States Constitution. Plaintiff asserts that Defendant's policy discriminates against out-  
16 of-state tax preparers, violating Equal Protection, and imposes licensing mandates without notice  
17 or hearing, violating Procedural Due Process. While a federal claim is implicated, Oregon state  
18 courts maintain primary jurisdiction over state administrative law challenges, particularly where  
19 APA violations and statutory interpretation are central to the claim.

20 10.

21 Personal jurisdiction is proper because Defendant is a state agency operating within Oregon,  
22 and Plaintiff, though residing out-of-state, has been directly harmed by the Defendant's unlawful  
23 policy. Plaintiff was compelled under duress to comply with Defendant's licensing mandate, paid

1 licensing fees directly to the state, and became obligatorily state-licensed. These facts establish  
2 sufficient minimum contacts with Oregon for this Court to exercise jurisdiction (*International*  
3 *Shoe Co. v. Washington*, 326 U.S. 310 (1945)).

4 11.

5 This Court is the proper venue to adjudicate this matter, as it involves:

- 6 a) The interpretation of Oregon statutes and agency rulemaking authority.
- 7 b) A challenge to an ultra vires agency action under the APA.
- 8 c) The balance of equities, which strongly favors Plaintiff due to irreparable harm  
9 and Defendant’s sovereign immunity, preventing monetary recovery.

10 12.

11 Given these factors, judicial review is necessary to ensure Defendant’s compliance with APA  
12 mandates, constitutional safeguards, state administrative procedures, and statutory powers.

13 13.

14 The preliminary injunction requested here is warranted not only to prevent further harm to  
15 Plaintiff, but also to safeguard the rights of other similarly situated tax professionals.  
16 Defendant’s policy impacts a nationwide pool of tax preparers—over 768,000 professionals—  
17 (Exhibit 3) who are now faced with the choice of either ceasing services to Oregon clients or  
18 paying unlawful fees under duress. Without intervention by the Court’s governing jurisdiction,  
19 legitimate businesses will be forced out of the Oregon market, reducing consumer choice and  
20 harming both professionals and taxpayers.

21

22

23

1 **III. STATEMENT OF ISSUES**

2 14.

3 Does the Oregon Board of Tax Practitioners’ (Defendant) policy unjustly discriminate  
4 against out-of-state tax preparers by imposing additional licensing barriers on them, while  
5 granting preferential treatment to CPAs and their employees, in violation of the Equal Protection  
6 Clause of the Fourteenth Amendment?

7 15.

8 Did the Defendant’s June 14, 2024 FAQ, which effectively mandated licensing for out-of-  
9 state tax preparers, deprive the Plaintiff of a protected property interest in practicing his  
10 profession without due notice and opportunity to be heard, thus infringing upon procedural due  
11 process under the Fourteenth Amendment?

12 16.

13 Did the Defendant’s June 14, 2024 FAQ constitute a de facto rule that should have been  
14 promulgated in accordance with the Administrative Procedure Act (APA), ORS 183.335, given  
15 its imposition of nearly \$60,000 in licensing and exam-related fees on 207 newly licensed tax  
16 consultants, many of whom are out-of-state (Exhibit 2), without public comment or legislative  
17 oversight?

18 17.

19 Given the nationwide impact on over 768,000 tax preparers nationwide and the reported  
20 cessation of services to Oregon clients, does the balance of equities favor the Plaintiff in  
21 enjoining the enforcement of Defendant’s policy, which was implemented in violation of APA  
22 rulemaking procedures?

1 18.  
2 Does the enforcement of Defendant’s licensing mandate against out-of-state professionals,  
3 without any evidence of consumer harm or fraud, serve a legitimate government interest, or does  
4 it function solely as an anti-competitive restriction and/or means of financial gain?

5 **IV. STATEMENT OF THE CASE**

6 19.  
7 On February 10, 2025, Plaintiff, an out-of-state tax preparer, filed a Complaint against  
8 the Oregon Board of Tax Practitioners (Defendant) in the Oregon Circuit Court, alleging that  
9 Defendant’s licensing mandate for out-of-state tax preparers lacks statutory basis and is ultra  
10 vires, violates the Administrative Procedure Act (APA) due to unpromulgated rulemaking, and  
11 infringes upon Plaintiff’s constitutional rights under the Fourteenth Amendment’s Due Process  
12 and Equal Protection Clauses. The Complaint seeks declaratory and injunctive relief to prevent  
13 Defendant from unlawfully enforcing the policy.

14 20.  
15 On February 18, 2025, Plaintiff served Defendant at Defendant’s physical address via  
16 certified mail with the Summons and Complaint. Plaintiff also filed an Amended Complaint with  
17 the Court. The proof of service for the initial Summons and Complaint was filed with the Marion  
18 County Circuit Court on February 22, 2025, and accepted on February 24, 2025. The Amended  
19 Complaint was also accepted on February 24, 2025.

20 21.  
21 On February 24, 2025, Plaintiff served Defendant at the Attorney General’s office with the  
22 Amended Complaint, Notice of Mediation, and Summons. The proof of service and summons  
23 were filed with the Court the same day and accepted on February 25, 2025.

1 22.

2 On March 3, 2025, Plaintiff will file a Motion for Preliminary Injunction, along with a  
3 Memorandum in Support, related Exhibits, and a Proposed Order, seeking to halt Defendant's  
4 enforcement of its licensing mandate while the case is adjudicated. The motion asserts that  
5 Defendant's policy is ultra vires, was not lawfully enacted under the Oregon Administrative  
6 Procedure Act (APA), and violates constitutional protections under the Fourteenth Amendment.  
7 Plaintiff seeks immediate injunctive relief to prevent continued unlawful enforcement actions  
8 against out-of-state tax preparers serving Oregon taxpayers.

9 23.

10 As of this filing, Defendant has not responded to Plaintiff's Complaint or Amended  
11 Complaint, nor has Defendant entered an appearance or filed an answer in this case.

## 12 V. STATEMENT OF FACTS

13 24.

14 On June 14, 2024, Defendant published a Frequently Asked Questions (FAQ) document,  
15 which stated, "Anyone residing within the State of Oregon or *outside of the State* must be  
16 licensed to prepare any Oregon personal returns." (emphasis added). This FAQ imposed a new  
17 licensing requirement on out-of-state tax preparers without adherence to the Oregon  
18 Administrative Procedure Act (APA), ORS 183.335.

19 25.

20 Despite lacking formal rulemaking authority, Defendant began enforcing this licensing  
21 requirement, resulting in 207 new tax consultants being licensed and nearly \$60,000 in fees  
22 collected, many from out-of-state applicants.



1 26.

2 Defendant's policy has no foundation in any approved administrative rule. There is no  
3 provision in Oregon's official rules or statutes requiring out-of-state tax preparers to obtain an  
4 Oregon license in order to prepare Oregon personal income tax returns.

5 27.

6 Plaintiff suffered direct financial harm by paying licensing fees to Defendant under  
7 duress, as the FAQ explicitly mandated licensure for out-of-state tax preparers under threat of  
8 enforcement.

9 28.

10 Declarations from multiple tax professionals demonstrate that others also suffered  
11 financial harm, and some chose to forgo Oregon clients rather than be forced into compliance  
12 with an unlawful licensing requirement (Exhibits 5 and 6).

13 29.

14 On January 17, 2025, Defendant held an emergency public board meeting and voted to  
15 approve proposed rule amendments. These rule amendments expand its enforcement authority  
16 over out-of-state tax preparers.

17 30.

18 Following this meeting, Plaintiff submitted a public records request seeking copies of the  
19 finalized rule amendments.

20 31.

21 Defendant refused to release the requested records, claiming ORS 192.355(1) (advisory  
22 communications privilege) and ORS 192.355(9) (attorney-client privilege). However, at the time

1 of Plaintiff's request, the rules had already been finalized and voted upon, meaning they were no  
2 longer subject to advisory privilege (Exhibit 7).

3 32.

4 Defendant offered to provide a redacted copy of the rule amendments for \$356, stating  
5 that the redactions would "take the document back to its current form as it appears on the  
6 Secretary of State website... which is freely available to the public." This response effectively  
7 denied access to the actual amendments, undermining transparency and violating Oregon public  
8 records laws.

9 33.

10 Defendant attempted to discredit Plaintiff's request, arguing that Plaintiff had "only  
11 strong and personal interest" in the issue—ignoring the broader repercussions on hundreds of  
12 thousands of PTIN holders nationwide.

13 34.

14 On October 3 and 4, 2024, Plaintiff submitted additional public records requests seeking:

15 a) The legal basis for Defendant's FAQ statement requiring both in-state and out-of-  
16 state tax preparers to be licensed.

17 b) Records related to the H&R Block settlement, which could provide insight into  
18 Defendant's prior enforcement policies.

19 35.

20 Defendant delayed responding for nearly two months, ultimately estimating that 64 hours  
21 of agency time and 16 hours of attorney time would be required, demanding \$6,000 in fees  
22 before providing the requested records (Exhibit 8).

23

1 36.

2 Defendant prematurely closed the requests, **upon advice of counsel**, violating Oregon  
3 public records statutes, ORS 192.329(3)(b) (Exhibit 9).

4 37.

5 Plaintiff had reminded Defendant of its statutory obligation to provide a reasonable  
6 estimated completion date within 10 business days under ORS 192.329(5). Defendant failed to  
7 comply, forcing Plaintiff to seek administrative appeals through the Oregon Attorney General's  
8 Office (Exhibit 10).

9 38.

10 The Oregon Attorney General's Office ruled that Defendant violated public records laws  
11 by failing to provide timely responses (Exhibit 11).

12 39.

13 Defendant had the information necessary to provide a general estimate to respond timely  
14 to Plaintiff's PRR request, appealed in Exhibit 11, but did not.

15 40.

16 Defendant made concerning statements regarding public records, including, "It appears  
17 that your third request for records was *not* accompanied by a request for waiver of fees... but...  
18 *the Board would again deny any request for fee waiver.*" (emphasis added).

19 41.

20 The requested public records were finally released—but only after the initial public  
21 hearing on HB 2338 had already taken place. This deliberate delay limited public input, ensuring  
22 that key documents were not available before legislative review.

23

1 42.

2 On February 28, 2025, Defendant sent an email to select individuals, titled “Testifying  
3 Members on HB 2338”, providing notice of the newly proposed rules, public comment period,  
4 and hearing schedule (Exhibit 12).

5 43.

6 Despite Plaintiff providing both written and oral testimony on HB 2338, Plaintiff was  
7 excluded from this communication.

8 44.

9 Plaintiff was formally listed on the Witness Registration for HB 2338, yet some non-  
10 listed individuals received direct notice from Defendant, indicating selective stakeholder  
11 engagement.

12 45.

13 In its February 28, 2025, communication, Defendant admitted: "I have delayed posting  
14 [the proposed rules] until now," confirming that the delay was intentional.

15 46.

16 This selective release of information deprived Plaintiff and other professionals of the  
17 opportunity to engage in the rulemaking process, limiting meaningful participation.

18 47.

19 Defendant’s pattern of obstructing public records access, delaying rule disclosures, and  
20 selectively notifying industry members reflects an intentional effort to shield its policymaking  
21 from full public scrutiny.

22

23

1 48.

2 Defendant failed to meet its statutory obligations under Oregon public records laws,  
3 prevented public participation in rulemaking, and attempted to enforce an unapproved licensing  
4 requirement without following APA procedures.

5 49.

6 Defendant’s licensing mandate was enacted without legal authority and has had a chilling  
7 effect on out-of-state tax preparers, leading many to cease providing services to Oregon clients  
8 and others to be unlawfully, irreparably harmed by licensing.

9 50.

10 Defendant’s deliberate delay in rule publication, selective stakeholder communication,  
11 and obstruction of public records requests demonstrate a pattern of procedural violations that  
12 further warrant injunctive relief.

13 51.

14 Plaintiff seeks an injunction to prevent further harm to tax professionals and consumers.  
15 Defendant’s licensing mandate was not legally enacted, is not supported by any valid  
16 administrative rule, and has been selectively enforced without due process.

17 **VI. ARGUMENT**

18 52.

19 **Defendant’s Licensing Mandate is an Unlawful Agency Rule Implemented in Violation**  
20 **of the Oregon Administrative Procedure Act (APA).** Defendant’s June 14, 2024, FAQ  
21 constitutes an agency rule under ORS 183.310(9), as it imposes new legal obligations on out-of-  
22 state tax preparers. The Oregon Supreme Court has repeatedly struck down agency policies that  
23 impose new requirements without following APA rulemaking procedures (*GTE Northwest Inc. v.*

1 *PUC*, 321 Or. 458 (1995); *Friends of Columbia Gorge v. Energy Facility Siting Council*, 365 Or  
2 371, 446 P3d 53 (2019)). Because Defendant failed to issue this licensing mandate through  
3 formal rulemaking, it is invalid and unenforceable under ORS 183.335.

4 53.

5 **The FAQ Imposes New Obligations and Thus Qualifies as a Rule Under Oregon Law.** The  
6 APA defines a "rule" as any agency directive, standard, policy, or statement of general  
7 applicability that implements or interprets law (ORS 183.310(9)). The FAQ establishes a new  
8 mandate—requiring out-of-state preparers to obtain an Oregon license—despite no prior  
9 regulation requiring such licensure. This policy is not a clarification of existing law but an  
10 entirely new regulatory requirement, making it subject to APA rulemaking procedures.

11 54.

12 **Defendant Failed to Follow APA Rulemaking Procedures.** Under the APA, agencies must  
13 give public notice, allow for public comment, and obtain legislative oversight before  
14 implementing a new rule (ORS 183.335). Defendant ignored these requirements, instead  
15 enacting a binding policy through an FAQ with no formal process. This action denied affected  
16 tax preparers an opportunity to object or provide input, violating fundamental principles of  
17 procedural fairness established in *Friends of Columbia Gorge v. Energy Facility Siting Council*,  
18 365 Or. 371, 446 P.3d 53 (2019).

19 55.

20 **Defendant's Policy is Void and Unenforceable Under Oregon Law.** Oregon courts have  
21 consistently invalidated agency actions that exceed statutory authority or fail to comply with  
22 APA rulemaking requirements. In *GTE Northwest Inc. v. PUC*, 321 Or. 458 (1995), the Oregon  
23 Supreme Court ruled that agency policies imposing new burdens on businesses must be formally

1 enacted through APA procedures. Similarly, in *Friends of Columbia Gorge v. Energy Facility*  
2 *Siting Council*, 365 Or. 371, 446 P.3d 53 (2019), the Oregon Supreme Court invalidated an  
3 administrative rule due to the agency’s failure to comply with procedural rulemaking  
4 requirements under ORS 183.335. Defendant’s licensing mandate suffers from identical  
5 procedural defects and should therefore be deemed unenforceable as a matter of law.

6 56.

7 **The Court Should Issue an Injunction to Prevent Further Unlawful Enforcement.**

8 Because the FAQ-imposed licensing mandate is legally invalid, any continued enforcement  
9 constitutes an ongoing violation of state law. Unless enjoined, Defendant will continue collecting  
10 unlawful licensing fees, forcing out-of-state preparers to either comply under duress or cease  
11 serving Oregon clients. Courts have long recognized that injunctive relief is warranted when an  
12 agency exceeds its statutory authority, causes ongoing harm to affected parties, and has a  
13 significant impact on their business practices. *Abbott Laboratories v. Gardner*, 387 U.S. 136  
14 (1967). Plaintiff has demonstrated a strong likelihood of success on the merits, justifying  
15 immediate preliminary injunctive relief.

16 57.

17 **Defendant’s Licensing Mandate Violates the Equal Protection Clause by Arbitrarily**

18 **Discriminating Against Enrolled Agents and Certain Tax Professionals.** The Equal

19 Protection Clause of the Fourteenth Amendment prohibits states from treating similarly situated  
20 individuals differently without a rational basis. Defendant’s policy imposes licensing  
21 requirements on employees of attorneys, federally credentialed Enrolled Agents (EAs), and  
22 PTIN-only preparers while exempting CPAs, CPA firms, and the employees of each. This

1 disparate treatment lacks any legitimate justification and functions as an arbitrary regulatory  
2 barrier that discriminates against federally credentialed tax professionals.

3 58.

4 **The Policy Creates an Unconstitutional Classification.** Classification of Tax Preparers

5 Under Defendant's Policy:

6 Burdened Groups:

7 a) Enrolled Agents (both in-state and out-of-state), despite holding a federal credential  
8 issued by the IRS that authorizes them to represent taxpayers before the IRS in all states.

9 b) Employees of attorneys, even though their employers (attorneys) are exempt from  
10 licensure.

11 c) Tax preparers who only hold a PTIN, despite the fact that a PTIN is a federally  
12 recognized credential for preparing tax returns.

13 Exempt Groups:

14 a) CPAs (both in-state and out-of-state) and their employees are not required to obtain an  
15 Oregon tax preparer license.

16 b) CPA Firms (both in-state and out-of-state) and their employees are not required to obtain  
17 an Oregon tax preparer license.

18 c) Attorneys (both in-state and out-of-state) are also exempt, while their employees must  
19 still obtain an Oregon tax preparer license.

20 59.

21 Defendant's policy explicitly favors CPAs and attorneys over Enrolled Agents and PTIN  
22 holders, despite the fact that all these groups perform the same tax preparation services.

23



1 60.

2 **The Classification Fails Rational Basis Review.** Under rational basis review, a state policy  
3 must be rationally related to a legitimate government interest (*City of Cleburne v. Cleburne*  
4 *Living Center*, 473 U.S. 432 (1985)). Here, Defendant’s policy imposes arbitrary burdens on  
5 certain tax professionals while exempting others, with no justification based on consumer  
6 protection, competency, or fraud prevention.

7 61.

8 Enrolled Agents are already subject to rigorous federal regulation by the IRS, including  
9 examinations, continuing education, and disciplinary oversight.

10 62.

11 Attorney employees perform the same tax-related functions as CPA employees, yet only  
12 attorney employees are subject to additional licensing requirements.

13 63.

14 PTIN holders are authorized by the IRS to prepare tax returns, yet Defendant imposes  
15 additional licensure barriers on them with no demonstrable benefit to consumers.

16 64.

17 Defendant has failed to provide any evidence that requiring licensure for Enrolled Agents,  
18 PTIN holders, or attorney employees while exempting CPAs CPA Firms, and attorneys serves  
19 any legitimate government interest. This selective application of licensure requirements  
20 functions as an economic restriction rather than a consumer protection measure, making it  
21 constitutionally invalid (*Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985)).

22

23

1 65.

2 **Defendant’s Licensing Mandate Functions as an Economic Barrier to Competition.** The

3 Privileges and Immunities Clause of Article IV, Section 2 prohibit states from imposing

4 protectionist regulations that unduly burden non-residents or restrict market competition.

5 Defendant’s policy artificially limits the number of tax preparers available to Oregon residents

6 by forcing federally credentialed Enrolled Agents, PTIN holders, and attorney employees to

7 obtain redundant state licensure.

8 66.

9 Courts have invalidated similar protectionist barriers that serve no legitimate purpose other

10 than restricting competition (*New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988)).

11 Here, Defendant’s licensing requirement places an undue burden on tax professionals outside

12 Oregon, violating the Equal Protection Clause.

13 67.

14 **Injunctive Relief is Necessary to Prevent Irreparable Harm to Burdened Tax**

15 **Professionals.** Defendant’s licensing mandate immediately and irreparably harms Enrolled

16 Agents, attorney employees, and PTIN-only preparers by forcing them to pay unnecessary fees,

17 meet redundant licensing requirements, or abandon Oregon clients altogether. Courts recognize

18 that economic restrictions on professionals, when tied to constitutional violations, constitute

19 irreparable harm (*Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975)).

20 68.

21 Unless enjoined, Defendant will continue enforcing an unconstitutional policy, causing

22 permanent financial losses, client attrition, and long-term damage to professional reputations.

1 The Court should issue a preliminary injunction to prevent further harm and restore fairness in  
2 tax preparation licensing requirements.

3 69.

4 **Defendant’s Licensing Mandate Violates Procedural Due Process by Depriving Tax**  
5 **Preparers of Their Right to Practice Without Notice or Opportunity to Be Heard.** The Due  
6 Process Clause of the Fourteenth Amendment prohibits the government from depriving  
7 individuals of life, liberty, or property without due process of law. Defendant’s licensing  
8 mandate imposes new licensing requirements on out-of-state tax preparers without providing  
9 adequate notice or an opportunity to challenge the policy before it was enforced. This procedural  
10 failure renders Defendant’s licensing mandate unconstitutional and unenforceable.

11 70.

12 **Plaintiff and Similarly Situated Professionals Have a Protected Property Interest in**  
13 **Practicing Their Profession.** Courts have long held that a state-imposed licensing restriction  
14 preventing an individual from practicing their chosen profession implicates due process  
15 protections (*Greene v. McElroy*, 360 U.S. 474 (1959)). Plaintiff, as a federally credentialed tax  
16 preparer, had a legitimate expectation of continuing to serve Oregon clients without arbitrary  
17 state interference.

18 71.

19 Enrolled Agents are recognized under federal law as authorized tax professionals, yet  
20 Defendant unilaterally imposed a new licensing requirement on them without proper notice or  
21 process.

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72.

The FAQ-imposed licensing mandate was not part of any prior regulation, meaning Plaintiff and other similarly situated professionals had no prior warning that their ability to work with Oregon clients would suddenly be restricted.

73.

Because Plaintiff's ability to serve clients is a recognized professional property interest, Defendant could not impose new barriers without following due process requirements (*Board of Regents v. Roth*, 408 U.S. 564 (1972)).

74.

**Defendant Failed to Provide Notice or an Opportunity to Be Heard.** The Supreme Court has held that due process requires notice and a meaningful opportunity to be heard before a state imposes a burden on a protected interest (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)). Here, Defendant:

- a) Did not provide any prior notice to out-of-state tax preparers before imposing the new licensing mandate through the FAQ.
- b) Failed to offer a formal hearing, public comment period, or review process before enforcement began.
- c) Refused to provide the legal basis for the licensing requirement, without paying a hefty sum and allowing Defendant to perform 80 hours of research to substantiate their claims, further obstructing affected tax preparers from understanding or challenging the rule.

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75.

This complete lack of procedural safeguards constitutes a clear due process violation, as Plaintiff and other tax professionals were deprived of their right to challenge an unlawful regulatory burden before it was enforced.

76.

**Defendant’s Licensing Mandate Constitutes an Unconstitutional Regulatory Taking Without Compensation.** By forcing out-of-state tax preparers to either comply with an unnecessary and costly licensing mandate or cease providing services to Oregon clients, Defendant has effectively seized their right to engage in their profession for the benefit of in-state competitors.

77.

The Takings Clause of the Fifth Amendment prohibits the government from depriving individuals of their property rights without just compensation (*Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005)). Defendant’s actions constitute an economic taking, as affected professionals are forced to either pay a licensing fee under duress or lose their business relationships altogether.

78.

**Injunctive Relief is Necessary to Prevent Further Violations of Procedural Due Process.** Because Defendant’s licensing mandate was implemented without the necessary procedural protections, it is unconstitutional and unenforceable. Courts have repeatedly held that injunctive relief is appropriate where an individual is deprived of a protected property interest without due process (*Fuentes v. Shevin*, 407 U.S. 67 (1972)).

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79.

Unless enjoined, Defendant will continue to enforce an unconstitutional policy, forcing professionals into an unfair and unlawful licensing scheme. Plaintiff has demonstrated a strong likelihood of success on the merits, justifying immediate preliminary injunctive relief.

80.

**Defendant’s Licensing Mandate Imposes Irreparable Harm on Plaintiff and Similarly Situated Professionals.** Plaintiff and similarly situated professionals will suffer irreparable harm absent immediate injunctive relief. Defendant’s licensing mandate imposes immediate and ongoing financial and professional burdens, forcing tax preparers to either comply with an unlawful regulatory scheme or cease serving Oregon clients altogether. These harms cannot be remedied by monetary damages because:

- a) Lost business goodwill and client relationships are difficult, if not impossible, to restore.
- b) Sovereign immunity bars recovery of illegally collected licensing fees.
- c) Ongoing enforcement of an unconstitutional mandate disrupts tax professionals' ability to operate in Oregon, with permanent economic consequences.

81.

**Plaintiff’s Loss of Clients and Business Goodwill Constitutes Irreparable Harm.** Courts have long held that loss of business goodwill and professional relationships constitutes irreparable harm (*Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975)). Plaintiff, or other similarly situated tax professionals have already experienced:

- a) Client attrition due to uncertainty surrounding Oregon’s licensing mandate.
- b) Loss of long-standing business relationships, particularly among out-of-state professionals who cannot easily re-establish their Oregon clientele.

1 c) Reputational harm as clients switch to Oregon-based preparers due to regulatory  
2 confusion and perceived compliance risks.

3 82.

4 Unlike lost income, which could theoretically be recovered through damages, lost  
5 professional goodwill and disrupted client relationships cannot be undone—making injunctive  
6 relief the only meaningful remedy.

7 83.

8 **Sovereign Immunity Prevents Recovery of Illegally Collected Fees, Making the Harm**  
9 **Permanent.** Defendant has already collected nearly \$60,000 in licensing and exam fees from  
10 out-of-state tax preparers under an unlawful policy. However, due to sovereign immunity,  
11 Plaintiff and similarly situated professionals have no legal avenue to recover these fees, even if  
12 Defendant’s actions are later found unlawful.

13 84.

14 Courts recognize that government-imposed financial harm is irreparable when sovereign  
15 immunity prevents compensation (*Ex parte Young*, 209 U.S. 123 (1908)). This principle  
16 underscores the inability to recover funds from the government without its consent, highlighting  
17 the irreparable nature of the financial harm in this case.

18 85.

19 Because Oregon’s sovereign immunity doctrine precludes monetary relief, an injunction is  
20 the only mechanism to prevent further economic harm.

21 86.

22 Every day that this policy remains in effect, out-of-state tax preparers suffer additional  
23 unrecoverable financial losses, reinforcing the need for immediate court intervention.

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87.

**The Licensing Mandate Creates an Immediate and Ongoing Chilling Effect on the Tax Preparation Industry.** Defendant’s policy has already forced many tax professionals to stop serving Oregon clients, reducing competition and limiting consumer choice. Exhibits 5 and 6 contain sworn affidavits from tax professionals who were forced to withdraw from the Oregon market rather than risk noncompliance or pay unnecessary fees. Exhibit 13 is a public survey conducted in a Tax Professional group where at least 49 tax professionals indicated they gave up Oregon clients in response to Defendant’s unlawful, unpromulgated rule. Defendant’s own representations also show that nearly 207 out-of-state tax professionals chose to become licensed, further evidencing the coercive impact of the mandate.

88.

Courts have found that a regulatory scheme deterring lawful professional activity constitutes irreparable harm (*Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This harm extends beyond mere economic loss, impacting the professionals' ability to serve their clients and maintain their practices.

89.

Oregon consumers will face fewer options for tax preparation services, particularly in specialized tax areas requiring Enrolled Agents' expertise. This reduction in choice can lead to higher costs and less personalized service for taxpayers.



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90.

Unless enjoined, Defendant’s unlawful licensing mandate will continue driving professionals out of Oregon, further reducing consumer access to qualified tax preparers. This exodus not only harms the professionals but also limits the options available to Oregon taxpayers.

91.

**Injunctive Relief is the Only Remedy to Prevent Further Irreparable Harm.** Defendant’s licensing mandate forces Plaintiff and others into a regulatory scheme that violates state and federal law. Because:

- a) Lost professional goodwill and clients cannot be restored through monetary damages.
- b) Sovereign immunity bars any potential reimbursement for unlawful licensing fees. This legal principle prevents the recovery of funds from the government without its consent, making the financial harm permanent and unrecoverable.
- c) The chilling effect on tax professionals is ongoing and will worsen over time.
- d) An injunction is the only remedy available to prevent further economic harm, continued constitutional violations, and the unlawful enforcement of an unapproved regulatory policy (*Planned Parenthood Ass’n v. Department of Human Resources*, 297 Or. 562 (1984)). Without an injunction, the cycle of harm will persist, with no recourse for those affected.

92.

**The Balance of Equities Strongly Favors Plaintiff and Justifies an Injunction.** Courts weigh the balance of hardships when deciding whether to issue a preliminary injunction (*Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008)). Here, the burden imposed on Plaintiff and similarly situated professionals is severe and ongoing, while Defendant suffers no

1 legitimate hardship from being enjoined from enforcing an unlawful policy. The balance of  
2 equities overwhelmingly favors Plaintiff, as tax professionals would otherwise be forced into an  
3 unlawful regulatory scheme that restricts their right to engage in a federally authorized  
4 profession.

5 93.

6 **Plaintiff and Other Affected Professionals Face Severe Economic and Professional**  
7 **Hardship.** Defendant’s licensing mandate imposes a significant financial and administrative  
8 burden on tax preparers, particularly federally credentialed Enrolled Agents and PTIN-only  
9 preparers. These professionals must now choose between three costly and unreasonable options:

- 10 a) Pay unnecessary and duplicative licensing fees (with no ability to recover those fees due  
11 to sovereign immunity).
- 12 b) Undertake redundant compliance requirements (exams, continuing education, and  
13 licensing procedures that do not align with federal tax law).
- 14 c) Cease business operations in Oregon altogether, losing clients and revenue.

15 94.

16 The financial burden is compounded by the loss of clientele and business goodwill, which is  
17 not easily restored (*Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975)). Because of the substantial  
18 burden placed solely on out-of-state professionals, the equities clearly weigh in Plaintiff’s favor.  
19 This imbalance underscores the need for injunctive relief to prevent further economic and  
20 professional damage.

21 95.

22 **Defendant Faces No Harm from an Injunction That Maintains the Status Quo.**  
23 Defendant will suffer no harm if enjoined from enforcing the licensing mandate, as an injunction

1 simply prevents Defendant from continuing to enforce an unapproved rule that was not lawfully  
2 enacted.

3 96.

4 Defendant operated without this licensing mandate before June 14, 2024, **for nearly 50**  
5 **years**, without any adverse consequences to the public.

6 97.

7 No evidence exists that Oregon taxpayers were harmed prior to the FAQ-imposed  
8 requirement, further demonstrating that maintaining the pre-FAQ status quo does not harm the  
9 state.

10 98.

11 Agencies suffer no harm from being required to follow proper legal procedures (*Oregon*  
12 *Environmental Council v. Oregon State Board of Education*, 307 Or. 30, 761 P.2d 1322 (1988)).  
13 Enforcing adherence to these procedures ensures transparency and fairness in regulatory actions.

14 99.

15 Stopping the enforcement of an unlawful policy cannot be considered a harm to Defendant.

16 100.

17 **An Injunction Will Benefit the Public by Preserving Consumer Choice and Access to**  
18 **Tax Professionals.** The public interest is always served by ensuring that state regulatory  
19 agencies follow proper legal procedures and do not impose unauthorized restrictions on  
20 professionals.

21 101.

22 Defendant's licensing mandate restricts consumer access to tax preparers by forcing out-of-  
23 state professionals out of the Oregon market.

1 102.

2 A shortage of tax preparers harms Oregon residents—particularly small business owners and  
3 taxpayers with complex tax issues—by reducing competition and increasing costs.

4 103.

5 Courts have found that eliminating unjustified regulatory barriers serves the public  
6 interest (*Nken v. Holder*, 556 U.S. 418 (2009)). By removing these barriers, the public benefits  
7 from increased competition and access to a wider range of services.

8 104.

9 Because Defendant’s policy actively reduces consumer choice and access to tax  
10 professionals, the balance of equities weighs against its continued enforcement.

11 105.

12 **Injunctive Relief Ensures That Defendant’s Rulemaking Authority is Subject to Proper**  
13 **Legal Oversight.** The APA requires public notice, comment, and oversight before implementing  
14 new regulatory mandates. Defendant failed to meet these requirements, and an injunction ensures  
15 that any future changes to tax preparer licensing comply with statutory and constitutional  
16 safeguards.

17 106.

18 Courts routinely grant injunctions when state agencies attempt to impose regulations without  
19 statutory authority (*GTE Northwest Inc. v. PUC*, 321 Or. 458 (1995)). This action ensures that  
20 agencies do not overstep their bounds and that regulations are properly enacted.

21 107.

22 Regulatory agencies must be held accountable for rulemaking overreach, particularly when  
23 enforcement results in financial harm to professionals and consumers.

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108.

Issuing an injunction in this case would uphold the principle that administrative agencies cannot sidestep procedural requirements to impose new restrictions on professionals.

109.

**The Public Interest Strongly Supports an Injunction to Halt Defendant’s Unlawful Licensing Mandate.** Courts consider whether injunctive relief serves the broader public interest when deciding whether to grant a preliminary injunction (*Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008)). Here, an injunction would benefit both tax professionals and Oregon taxpayers by:

- a) Ensuring continued access to qualified tax preparers, particularly those with specialized expertise in complex tax matters.
- b) Preventing state agencies from unlawfully restricting competition and driving professionals out of the Oregon market.
- c) Preserving public confidence in transparent, lawful rulemaking procedures.

110.

**The Licensing Mandate Reduces Consumer Access to Qualified Tax Preparers.**

Defendant’s unlawful licensing requirement has already forced many tax professionals to stop serving Oregon clients, resulting in:

- a) Reduced availability of tax professionals for Oregon taxpayers.
- b) Higher costs for tax preparation services due to decreased competition.
- c) Limited access to federally credentialed tax experts who specialize in certain tax areas.

1 111.

2 Exhibits 5 and 6 contain affidavits from tax professionals who have ceased offering services to  
3 Oregon taxpayers due to the financial and administrative burdens imposed by Defendant's  
4 mandate, as demonstrated in those exhibits. The longer this policy remains in effect, the greater  
5 the long-term damage to consumer choice and access to qualified professionals.

6 112.

7 **The Public Benefits When Regulatory Agencies Are Held Accountable.** The Oregon  
8 Administrative Procedure Act (APA) exists to ensure that state agencies follow proper  
9 rulemaking procedures before imposing new regulatory requirements. Defendant ignored these  
10 requirements entirely, enacting a policy without public input, legislative oversight, or procedural  
11 safeguards.

12 113.

13 The public interest is best served when agencies are held accountable for unlawful  
14 actions, ensuring that future regulatory changes occur through lawful, transparent processes  
15 (*Friends of Yamhill County, Inc. v. Board of Commissioners*, 351 Or. 219 (2011)).

16 114.

17 Granting an injunction will reaffirm the necessity of public participation and procedural  
18 compliance in state rulemaking.

19 115.

20 If Defendant's unlawful mandate is allowed to remain in effect, it sets a dangerous  
21 precedent that enables agencies to impose new regulations without legislative oversight or public  
22 engagement.

23

1 116.

2 **An Injunction Will Prevent Future Unlawful Agency Overreach.** If Defendant is allowed to  
3 continue enforcing an unlawful policy, it will establish a precedent that agencies can impose new  
4 regulatory mandates without statutory authority, as seen in this case. Courts have routinely struck  
5 down unauthorized regulatory actions, recognizing that agency overreach threatens both  
6 economic fairness and constitutional rights (*GTE Northwest Inc. v. PUC*, 321 Or. 458 (1995)).

7 117.

8 Regulatory overreach reduces trust in state agencies and weakens the legitimacy of lawful  
9 administrative rulemaking.

10 118.

11 Halting this licensing mandate will ensure that Oregon’s regulatory agencies remain  
12 accountable to statutory and constitutional constraints.

13 119.

14 The Court should grant an injunction to prevent further harm and ensure that all future  
15 regulatory actions comply with the law.

16 120.

17 **The Court Should Issue a Preliminary Injunction to Maintain the Status Quo and Prevent**  
18 **Further Harm.** Courts routinely grant preliminary injunctions to preserve the status quo while  
19 legal challenges proceed, as was the case in *Planned Parenthood Ass’n v. Department of Human*  
20 *Resources*, 297 Or. 562 (1984).

21 121.

22 The status quo before June 14, 2024, did not require out-of-state Enrolled Agents and  
23 PTIN holders to obtain an Oregon license.

1 122.

2 The sudden and unlawful policy change has already caused significant economic disruption and  
3 regulatory confusion, as evidenced by Exhibits 5 and 6, and Defendant’s own statements about  
4 growing numbers of licensed out-of-state preparers.

5 123.

6 Maintaining the status quo will not harm Defendant, as the state has functioned without  
7 this requirement for decades.

8 124.

9 An injunction will restore regulatory stability, prevent further economic harm to  
10 professionals and taxpayers, and ensure that Oregon agencies do not impose unlawful barriers to  
11 market participation.

12 **VII. CONCLUSION**

13 125.

14 Defendant’s licensing mandate violates the Oregon Administrative Procedure Act (APA),  
15 the Equal Protection Clause, and the Due Process Clause. Defendant imposed new licensing  
16 requirements on out-of-state tax preparers without following APA rulemaking procedures,  
17 created arbitrary classifications that discriminate against federally credentialed tax professionals,  
18 and deprived affected individuals of procedural due process by implementing the policy without  
19 notice or a meaningful opportunity to be heard.

20 126.

21 Plaintiff has demonstrated a strong likelihood of success on the merits, as Defendant’s  
22 actions violate statutory and constitutional protections. Plaintiff and other similarly situated tax  
23 professionals face ongoing irreparable harm, including:



- 1 a) Lost clients and business goodwill that cannot be recovered.
- 2 b) Financial losses from unlawful licensing fees that cannot be reimbursed due to sovereign
- 3 immunity.
- 4 c) Regulatory uncertainty that forces tax professionals to abandon Oregon clients.

5 127.

6 These harms justify immediate injunctive relief.

7 128.

8 The balance of equities strongly favors Plaintiff. Defendant will suffer no harm from an  
9 injunction because it merely prevents enforcement of an unlawful rule that did not exist before  
10 June 14, 2024. In contrast, Plaintiff and other affected professionals will continue to suffer  
11 permanent economic and professional losses if the mandate is not enjoined.

12 129.

13 The public interest overwhelmingly supports injunctive relief. Allowing Defendant to  
14 enforce an unlawful licensing mandate reduces consumer access to tax professionals, increases  
15 costs for Oregon taxpayers, and undermines public trust in lawful regulatory procedures. The  
16 Court has a duty to prevent unlawful agency actions that restrict economic participation and  
17 harm the public interest.

18 130.

19 For these reasons, Plaintiff respectfully requests that this Court issue a preliminary injunction  
20 enjoining Defendant from enforcing the June 14, 2024, licensing mandate until a final decision  
21 on the merits is reached. This injunction will prevent further harm, restore fairness in tax  
22 preparation licensing, and uphold the principles of administrative and constitutional law.

23

1 DATED this 3<sup>rd</sup> day of March, 2025.

2 RESPECTFULLY SUBMITTED,

3 CHAD MANGUM  
4 Plaintiff

5 /s/ Chad Mangum  
6 CHAD MANGUM

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