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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-

State of Oregon, acting by and through the
State Board of Tax Practitioners,
Defendant.

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

I. INTRODUCTION

1.

Plaintiff, an Out-of-State Tax Preparer appearing pro se, respectfully moves this Court for a preliminary injunction pursuant to ORCP 79. Plaintiff seeks an order enjoining Defendant, the Oregon Board of Tax Practitioners, from enforcing its licensing policy on out-of-state tax preparers. Additionally, Plaintiff seeks an order requiring Defendant to rescind its newly proposed rules expanding its regulatory authority over out-of-state tax preparers until a final determination is made regarding Defendant’s statutory authority to impose such restrictions. Injunctive relief is necessary because Defendant’s original policy (1) was not lawfully enacted under the Oregon Administrative Procedure Act (APA), (2) is causing irreparable harm, and (3)

1 violates constitutional rights under the Equal Protection and Due Process Clauses of the
2 Fourteenth Amendment.

3 II. STATEMENT OF FACTS

4 2.

5 **Timeline of Events.** On June 14, 2024, Defendant published an FAQ stating, "Anyone
6 residing within the State of Oregon or outside of the State must be licensed to prepare any
7 Oregon personal returns" (emphasis added). This FAQ imposed new licensing requirements on
8 out-of-state tax preparers without following Oregon's APA rulemaking process (Exhibit 1)

9 3.

10 Defendant began enforcing this policy without public comment or legislative oversight,
11 leading to 207 new tax consultants being licensed and nearly \$60,000 in fees collected, many
12 from out-of-state applicants (Exhibit 2).

13 4.

14 There are no approved administrative rules stating that out-of-state tax preparers must be
15 Oregon-licensed to prepare Oregon personal tax returns (OAR Chapter 800).

16 5.

17 Plaintiff incurred direct financial harm by paying licensing fees to Defendant under
18 duress due to its published policy explicitly requiring licensure for out-of-state tax preparers.
19 This financial harm includes, but is not limited to, the cost of the license itself, as well as the
20 costs associated with compliance, such as continuing education requirements.

21 6.

22 Declarations from other tax professionals state that they have also incurred direct
23 financial harm by Defendant and chose to forgo clients instead of being forced into licensure

1 (Exhibits 5 and 6). A public survey of tax professionals also indicates at least 49 others chose to
2 give up Oregon clients in response to Defendant's unapproved policies (Exhibit 13).

3 7.

4 On January 17, 2025, Defendant held an emergency public board meeting and voted to
5 approve proposed rule amendments expanding its enforcement authority over out-of-state tax
6 preparers.

7 8.

8 Shortly after, Plaintiff submitted a public records request for the finalized and approved
9 rules.

10 9.

11 Defendant refused to release the records, citing ORS 192.355(1) (advisory
12 communications privilege) and ORS 192.355(9) (attorney-client privilege) (Exhibit 7).

13 10.

14 Defendant offered to provide a redacted copy of the amendments at the cost of \$356,
15 stating that redactions would "take the document back to its current form as it appears on the
16 Secretary of State website... which is freely available to the public."

17 11.

18 Defendant repeatedly stated that Plaintiff's interest in public records was due to "only
19 strong and personal interest," despite Plaintiff's statements about the potential repercussions of
20 Defendant's actions on hundreds of thousands of PTIN holders in the tax professional
21 community.

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12.

The requested proposed rule documents were finalized and already voted upon, meaning they were no longer advisory at the time of the request.

13.

Defendant was already aware of Plaintiff's lawsuit before the records request, contradicting its claim that the request was tied to "intent to file" litigation over the new rules.

14.

Plaintiff responded to the denial with statutory citations, interpretations, and an explanation of why Defendant's denial was unfounded, stating that Plaintiff would have to seek review accordingly. Regardless of whether Defendant wishes to frame the request as "active litigation" or a post-facto mention of a lawsuit, there was no "intent" of a lawsuit when the public records request was denied. This demonstrates that Defendant's denial was not based on a legitimate concern about ongoing litigation, but rather on a desire to avoid transparency.

15.

Public Records Concerns and Delayed Release. On October 3 and 4, 2024, Plaintiff requested supporting information for the legal basis of Defendant's licensing requirements related to the FAQ statement that "anyone within or without Oregon has to be licensed to prepare any Oregon personal returns," as well as records related to the settlement with H&R Block.

16.

After nearly two months, Defendant produced an estimate of 64 hours of Agency time and 16 hours of Attorney time, totaling \$6,000 before Plaintiff could obtain this information (Exhibit 8).

1 17.

2 Defendant prematurely closed the records request, directly violating public records statutes
3 (Exhibit 9).

4 18.

5 During this two-month period, Plaintiff reminded Defendant of its statutory obligation to
6 provide a reasonable estimated date within the prescribed 10 business days per statute (Exhibit
7 10). Defendant didn't comply.

8 19.

9 Defendant failed to provide timely notice for three separate public records requests, forcing
10 Plaintiff to seek administrative appeals through the Attorney General's Office.

11 20.

12 The Attorney General's Office determined that Defendant failed to respond within the
13 required timeframe prescribed by ORS 192.329(5) (Exhibit 11, page 3).

14 21.

15 Defendant made concerning statements regarding public records, such as "It appears that
16 your third request for records was not accompanied by a request for waiver of fees... but... the
17 Board would again deny any request for fee waiver."

18 22.

19 Defendant released the requested records only after the initial public hearing on HB 2338,
20 limiting public input before legislative review.

21

22

23

1 23.

2 **Selective Stakeholder Communication.** On February 28, 2025, Defendant sent an email to
3 "Testifying Members on HB 2338" providing notice of the newly proposed rules, public
4 comment period, and hearing schedule (Exhibit 12).

5 24.

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

8 25.

9 Plaintiff was additionally listed on the Witness Registration for HB 2338, whereas some of
10 the other testifying members were not.

11 26.

12 In the communication, the Defendant stated, "I have delayed posting [the proposed rules]
13 until now," confirming that the delay was deliberate.

14 **III. LEGAL STANDARD FOR A PRELIMINARY INJUNCTION**

15 27.

16 A preliminary injunction is an extraordinary remedy that requires the moving party to
17 demonstrate four elements, as established in *Winter v. Natural Resources Defense Council*, 555
18 *U.S. 7 (2008)*, and applied under ORCP 79:

19 a) **Likelihood of success on the merits** – Plaintiff must show a substantial likelihood that
20 they will prevail on their legal claims. Courts examine whether the challenged action
21 violates constitutional, statutory, or procedural requirements.

22 b) **Irreparable harm absent relief** – Plaintiff must demonstrate that without an injunction,
23 they will suffer harm that cannot be remedied by monetary damages alone. Courts

1 recognize that ongoing constitutional violations and regulatory uncertainty constitute
2 irreparable harm.

3 c) **Balance of equities favors Plaintiff** – The court must weigh the harm to Plaintiff if the
4 injunction is not granted against the potential harm to Defendant if it is. Courts often find
5 that when a state agency enforces an illegal policy, the balance of hardships tips in favor
6 of the challenger.

7 d) **The injunction serves the public interest** – Courts consider whether granting relief
8 benefits the broader public, particularly in cases involving unlawful government action.
9 Enjoining the enforcement of an unpromulgated rule or policy serves the public interest
10 by ensuring regulatory compliance and protecting professionals from unauthorized
11 enforcement actions.

12 28.

13 Oregon courts recognize that when a plaintiff challenges agency action violating statutory
14 or constitutional provisions, an injunction is often appropriate, as supported *Brian v. Oregon*
15 *Government Ethics Commission*, 320 Or 676, 891 P2d 649 (1995).

16 **IV. Argument**

17 29.

18 **Plaintiff is Likely to Succeed on the Merits.** Equal Protection Clause Violation
19 (Fourteenth Amendment): Defendant’s policy discriminates against out-of-state tax
20 preparers by imposing licensing requirements that are not uniformly applied. Specifically,
21 these requirements apply unless the out-of-state tax preparers have specific designations
22 or working relationships that exempt them. Defendant exempts in-state and out-of-state
23 CPAs and CPA firm employees from similar requirements. Attorneys are also exempted,

1 but not the employees of attorneys. These arbitrary distinctions fail the rational basis test
2 under *Romer v. Evans*, 517 U.S. 620 (1996).

3 30.

4 Procedural Due Process Violation: Plaintiff has a protected property interest in
5 their profession, and Defendant's unlawful policy deprived them of that interest without
6 adequate notice or a meaningful opportunity to be heard, violating *Board of Regents v.*
7 *Roth*, 408 U.S. 564 (1972) (which, although not in favor of Roth, established the
8 foundational principle when there is an expectation). The lack of proper rulemaking
9 procedures further exacerbates this violation.

10 31.

11 Oregon APA Violation: Defendant's FAQ meets the legal definition of a rule but
12 was not properly promulgated under ORS 183.310-183.750. This failure to follow proper
13 rulemaking procedures is a direct violation of the APA. Oregon courts have invalidated
14 similar agency actions, as seen in *Friends of Columbia Gorge v. Energy Facility Siting*
15 *Council*, 365 Or 371, 446 P3d 53 (2019).

16 32.

17 **Plaintiff Will Suffer Irreparable Harm Without an Injunction.** Financial
18 Harm: Fees were paid under duress and are non-recoverable due to sovereign immunity,
19 creating a direct and uncompensated financial loss. There are also additional annual costs
20 of additional continuing education that Plaintiff has to incur, further straining their
21 financial resources. Furthermore, Plaintiff is now barred from using secretarial help in the
22 processing of data in conjunction with tax preparation services, increasing operational
23 costs and reducing efficiency.

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33.

Loss of Business and Goodwill: Plaintiff has received Declarations from other tax preparers who have ceased serving Oregon clients, showing permanent financial and reputational harm, and a contraction of available services to Oregonians. One of these tax preparers is a CPA who is supposed to be an exempt individual, which further shows the widespread misunderstanding and harm being incurred by Defendant’s unauthorized rule-making.

34.

Denial of Constitutional Rights: Ongoing constitutional violations (due process and equal protection) inherently qualify as irreparable harm under *Elrod v. Burns*, 427 U.S. 347 (1976), as they represent a fundamental deprivation of rights that cannot be adequately compensated by monetary damages alone.

35.

Balance of Equities Favors Plaintiff. Plaintiff Faces Severe Harm: Financial and additional educational burdens due to forced compliance with an illegal rule, resulting in quantifiable economic damages and potential loss of professional opportunities.

36.

Defendant Faces No Harm: Defendant suffers no financial loss by being prevented from enforcing an illegal policy. Injunction merely maintains the status quo. Defendant has also strongly profited from the illegal rule, allowing them to have gained a reserve to maintain 12+ months of operating expenses, which represents an unjust enrichment at the expense of tax preparers. Defendant was meant to be a self-funded

1 agency since its inception in 1973, with licensing fees and examination fees coming from
2 the Oregon tax preparer community.

3 37.

4 **Public Interest Strongly Supports Injunction.** Preserving Rule of Law: Oregon
5 law requires that agencies follow proper rulemaking procedures, and failure to comply
6 should not be tolerated, as it undermines the integrity of the regulatory process and public
7 trust in government.

8 38.

9 Protecting Oregon Taxpayers: Defendant's policy reduces access to qualified tax
10 professionals, potentially increasing costs and reducing the quality of tax preparation
11 services available to taxpayers and small businesses.

12 **V. Security Requirement Under ORCP 82 A(1)**

13 39.

14 Request for Bond Waiver: Under ORCP 82 A(1)(b), a bond is not required when an
15 injunction merely prevents illegal action rather than imposing obligations on the Defendant.
16 Alternative: Nominal Bond: If the court does not waive security, Plaintiff requests a nominal
17 bond of \$1, as courts often impose minimal security when the Defendant faces no financial harm.

18 **VI. CONCLUSION**

19 40.

20 Plaintiff has met all four elements for a preliminary injunction. The court should issue an
21 order prohibiting Defendant from enforcing its unlawful policy and order Defendant to rescind
22 its newly proposed rules until a final determination is made on Defendant's statutory authority.
23 This action benefits not only Plaintiff and the community at large, but also Defendant by

1 proactively reducing the risk of future litigation related to these rules. By ensuring compliance
2 with statutory authority before implementation, Defendant can avoid unnecessary legal
3 challenges, administrative reversals, and financial liabilities that could arise if the rules are
4 ultimately deemed unenforceable. Addressing these concerns at this stage upholds the rule of law
5 and provides clarity for all impacted parties.

6 **VII. PRAYER FOR RELIEF**

7 41.

8 WHEREFORE, PLAINTIFF prays the court for a judgment as follows:

- 9 A. Issue a preliminary injunction preventing Defendant from enforcing, condoning,
10 or spreading its out-of-state licensing policy.
- 11 B. Declare that Defendant’s prior FAQ constituted an unpromulgated and
12 unenforceable rule, and that its removal from posting does not cure past
13 enforcement deficiencies.
- 14 C. Require Defendant to rescind its newly proposed rules (filed with SOS 2/28/2025)
15 pending judicial determination of statutory authority.
- 16 D. Waive the security requirement or impose a nominal bond.
- 17 E. Award Plaintiff costs and disbursements, and attorney’s fees under ORS 183.497.
- 18 F. Grant any other relief the court deems just and proper.

1 DATED this 3rd day of March, 2025.

2 RESPECTFULLY SUBMITTED,

3 CHAD MANGUM
4 Plaintiff

5 /s/ Chad Mangum
6 CHAD MANGUM
7 Plaintiff

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