



**Mannix Responds to
Supreme Court's Alternative
Writ of Mandamus in Elkhorn
Baptist Church v. Governor
Kate Brown**

On Saturday, May 23, 2020 the Oregon Supreme Court issued an Alternative Writ of Mandamus in the case of Elkhorn Baptist Church, et al v. Governor Kate Brown.

Kevin Mannix is the attorney for 11 intervenors in this case, who support the preliminary injunction issued by the Baker County Circuit Court Judge, the Honorable Matt Shirtcliff. The intervenors take the position that, while the Governor may continue to take steps to deal with the coronavirus pandemic through standard statutes, the lockdowns imposed by the Governor under her declaration of a public health emergency no longer are in effect, because her statutory power to order such lockdowns only exists for 28 days under state law. The initial Executive Order declaring a public health emergency was issued on March 8, 2020, so those 28 days expired on April 6, 2020.

Mannix explained, "We want everyone to be socially responsible and to be careful about what they do in order to deal with the coronavirus pandemic. We recognize that there are standard laws on the books that allow public health authorities to take reasonable steps to deal with this pandemic, including the issuance of guidelines. However, the Oregon laws do not allow the Governor to order activities or prohibit activities under the threat of criminal prosecution once 28 days have passed after her declaration of a public health emergency." Mannix added, "The solution for the Governor, if she believes that she should maintain extraordinary powers, such as locking down businesses and restricting religious worship, is to convene the Legislature in a Special Session and to ask that laws be enacted establishing such authority."

"The Supreme Court Alternative Writ of Mandamus is a middle ground chosen

by the Court. The Court could have denied the State's petition, which would put the preliminary injunction back in place. The Court did not do so. The Court could have issued A Peremptory Writ of Mandamus, ordering Circuit Court to vacate the preliminary injunction. It did not do so. Instead, the Supreme Court issued an Alternative Writ of Mandamus, which keeps the case in play. It calls for the Baker County Circuit Court Judge to take any one of the three following steps:

1. Present information to the Oregon Supreme Court as to why the Judge believes that the preliminary injunction should remain in place (show cause).
2. Vacate the preliminary injunction. This means the case continues in Circuit Court but there is no injunction.
3. Do nothing.

The deadline for Circuit Court action is 5 p.m. on Tuesday, May 26.

“Two of the choices before the Judge would keep this case in play before the Oregon Supreme Court: doing nothing, or presenting information to the Supreme Court showing cause why the Judge believes the preliminary injunction should remain in place,” Mannix explained. “The third option is for the Judge to vacate the preliminary injunction. This does not dismiss the case before the Circuit Court. It continues the Circuit Court litigation because the Supreme Court did not order that the case be dismissed,” Mannix added.

Mannix further explained: “If the Judge does nothing, or files a response explaining why the Judge does not intend to vacate the preliminary injunction,

then the State must file a brief with the Oregon Supreme Court by Thursday, May 28. Mr. Hacke and I are then allowed to file answering briefs no later than Tuesday, June 2, 2020.”

“This means that the Oregon Supreme Court has kept this case on a very short time frame,” Mannix added.

The Memorandum in Opposition filed by Mannix on behalf of the intervenors contains a whole range of arguments in favor of the preliminary injunction. It also points out how state and local governments can still address the coronavirus pandemic without locking down businesses and churches. The Memorandum can be found at:

www.common sensefororegon.org/memorandum in opposition



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