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CIRCUIT COURT OF OREGON  
FOR LANE COUNTY

BY \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

MARK REED,

Plaintiff,

vs.

STATE OF OREGON, by and through  
the OREGON STATE BOARD OF  
GEOLOGIST EXAMINERS; HARDY  
MYERS, in his official capacity as  
Attorney General of the State of Oregon;  
SUSANNA KNIGHT, Administrator of  
the Oregon State Board of Geologist  
Examiners; and the following members of  
the Board: JOHN BEAULIEU (ex officio  
member), CHARLES W. HESTER,  
DAVID MICHAEL, WILLIAM ORR,  
GARY PETERSON, and EILEEN  
WEBB,

Defendants.

Case No. 16-02-23430

COMPLAINT

(Injunctive and Declaratory Relief)

NOT SUBJECT TO MANDATORY  
ARBITRATION

Plaintiff alleges as follows:

1.

This is an action for declaratory and injunctive relief brought pursuant to Article I, section 8 (Free Speech) and section 26 (Right of Petition) of the Oregon Constitution and 42 USC §1983 and 28 USC §2201 and 2202 and the First and Fourteenth Amendments of the United States Constitution. Plaintiff Mark Reed has no plain, speedy or adequate remedy at law.

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2.

Plaintiff Mark Reed is a resident of Lane County, holds a Ph.D. in geology, and is and has been a professor of geology at the University of Oregon since 1979.

3.

Defendants are the State of Oregon and Oregon public officials and employees whose responsibilities include the enforcement of ORS 672.505 to 672.705 and OAR 809-050-0030; namely Hardy Myers, the Attorney General of the State of Oregon; John Beaulieu, Oregon State Geologist, ex officio member of the Oregon State Board of Geologist Examiners (OSBGE), an entity created by ORS 672.615; the five regular members of the OSBGE, Charles W. Hester, David Michael, William Orr, Gary Peterson, and Eileen Webb; and Susanna Knight, the Administrator of the OSBGE.

4.

About July of 1999 Eugene Sand and Gravel, Inc., filed a land-use application with Lane County for a change in zoning of 575 acres designated for exclusive farm use in the River Road area north of Eugene, to allow industrial mining of gravel and rock products and the development of an asphalt plant, a concrete batch plant, a crushing/screening plant, a truck and equipment maintenance shop, an office, scales, and a recycling plant. Plaintiff Mark Reed and his wife, Karen Reed, own land and a house where they live within one mile of the proposed industrial gravel mine, and have lived within two miles of that site for more than 20 years. Plaintiff Mark Reed reviewed Eugene Sand and Gravel, Inc.'s application and the supporting documents and formed the opinion that the site did not meet state standards for the requested zone change, and that the proposed industrial gravel mine and related development would have harmful economic, environmental and aesthetic effects on the surrounding property, including his own. He testified in opposition to the proposed development at public hearings before the Lane County Planning Commission and the Lane County Board of Commissioners and published an opinion piece in the *Register-Guard*. Plaintiff Mark Reed acted on his own behalf, was not employed by anyone, and received no compensation. He

1 testified that he was a “professor of geology” at the University of Oregon specializing in mineral  
2 resource geology and economic geology, and not a “registered geologist.”

3 5.

4 After Plaintiff Mark Reed testified, the OSBGE informed him that Eugene Sand and Gravel,  
5 Inc., had made a complaint against him charging forty-nine (49) violations of ORS 672.505 to  
6 672.705 by giving oral and written public testimony on geologic issues without first becoming a  
7 registered geologist. The OSBGE appointed a Compliance Committee which held a hearing wherein  
8 it reviewed Eugene Sand and Gravel, Inc’s complaint against Plaintiff Mark Reed. The Compliance  
9 Committee consisted of OSBGE board members Charles Hester, David Michael, and Susanna  
10 Knight, the board’s administrator, and was represented by Christine Chute, the Assistant Attorney  
11 General assigned to advise the OSBGE. The Compliance Committee advised Plaintiff Mark Reed  
12 that it was the committee’s view that in testifying as described above and in publishing an article in  
13 the *Register-Guard* he had violated ORS 672.505 and ORS 672.525 and OAR 809-050-0030 by  
14 engaging in the public practice of geology without being registered. The Committee presented  
15 Plaintiff Mark Reed with a “Consent Order” and advised that if he would sign it and agree not to  
16 provide public testimony on geologic issues without first becoming registered or obtaining the seals  
17 of registered geologists on his work, the OSBGE would dismiss the complaint and potential  
18 assessment of penalties against him.

19 6.

20 In order to become a registered geologist, Plaintiff Mark Reed would have to take an  
21 examination and pay the fees established by OAR 809-010-0001.

22 7.

23 Violation of ORS 672.525 is a Class A misdemeanor and any person who violates the statute  
24 is subject to a civil penalty of \$1,000 for each offense and one year in confinement in jail.

25 8.

26 Plaintiff Mark Reed , through his attorney, provided a letter memo to Attorney General

1 Hardy Myers and to the OSBGE contending that ORS 672.505 and 672.525 and OAR 809-050-  
2 0030 were unconstitutional on their face and as applied to Plaintiff Mark Reed, and requested of the  
3 OSBGE and the Attorney General that the complaint against him be dismissed. The complaint has  
4 not been dismissed, and the matter is on the OSBGE's agenda for December 3, 2002. The result of  
5 Defendants' actions and failure to dismiss is that Plaintiff Mark Reed remains under the threat of  
6 sanctions and legal action against him if he fails to register as a geologist including payment of fees  
7 or obtain the seals of registered geologists on his work and continues to truthfully state his  
8 credentials and qualifications while giving public testimony, even though he states in his testimony  
9 that he is not a registered geologist.

10 FIRST CLAIM FOR RELIEF

11 (For Declaratory and Injunctive Relief under the Oregon Constitution against all Defendants)

12 9.

13 The preceding paragraphs are realleged.

14 10.

15 ORS 672.505(7) and ORS 672.525 provide:

16 “(7) ‘Public practice of geology’ means the performance of geological  
17 service or work for the general public. This includes consultation,  
18 investigation, surveys, evaluation, planning, mapping, and inspection  
19 of geological work, in which the performance is related to public  
20 welfare or safeguarding of life, health, property and the environment,  
21 except as specifically exempted by ORS 672.505 to 672.705. A  
22 person shall be construed to publicly practice or offer to publicly  
23 practice geology, within the meaning and intent of ORS 672.505 to  
24 672.705, who practices any branch of the profession of geology; or  
25 who by verbal claim, sign, advertisement, letterhead, card, or in any  
26 other way purports to be a registered geologist, or through the use of  
some other title implies that the person is a registered geologist or that  
the person is registered under ORS 672.505 to 672.505; or who offers  
to provide any geological services or work recognized as geology for  
a fee or other compensation.”

“672.525 (2) No person shall publicly practice or offer to publicly  
practice geology in this state, and use in connection with the name of  
the person or otherwise assume or advertise any title or description  
tending to convey the impression that the person is a geologist, unless  
such person has been registered or exempted under the provisions of  
ORS 672.505 to 672.705.”

OAR 809-050-0030 provides:

**“809-050-0030**

**Registration Requirement for Public Testimony**

(1) Registration as a geologist in the State of Oregon is required of a person who presents public testimony on geologic issues if the person states or in any way implies that the person is a registered geologist or certified in a specialty, such as engineering geology.

(2) Registration as a geologist in the State of Oregon is required of a person who presents public testimony on geologic issues if:

(a) The testimony is related to public welfare or safeguarding of life, health, property and the environment; and

(b) The person performs any consultation, investigation, surveys, evaluation, planning, mapping, or inspection of geologic work; and

(c) The person uses the title “geologist” or any title or description tending to convey the impression that the person is a geologist.

(3) Registration as a geologist in the State of Oregon is required if, for purposes of public testimony, a person prepares or provides geological maps, plans, reports or documents to a third party so that the third party may testify.

(4) Notwithstanding subsections (1), (2), and (3) of this rule, registration as a geologist in the State of Oregon is not required if a person:

(a) Presents public testimony on geological issues while in compliance with ORS 672.535<sup>1</sup> and states the manner of the compliance; or

(b) Presents public testimony on geological issues while in compliance with ORS 672.545<sup>2</sup> and states the manner of the compliance; or

(c) States personal opinions during public testimony on geological issues, but does not engage in the public practice of geology as defined in ORS 672.505(7) in order to arrive at those opinions, and does not claim to be a geologist.

Defendants construe ORS 672.505(7) and ORS 672.525 and OAR 809-050-0030 to require a person to become a registered geologist in the State of Oregon including the payment of fees

<sup>1</sup> ORS 672.535 exempts the following persons from registration requirements: (1) persons engaged in teaching and research at an accredited university, who are not engaged in the public practice of geology; (2) officers and employees of the United States; (3) subordinates to registered geologists.

<sup>2</sup> ORS 672.545 allows geologists to practice in partnerships and corporations, allows non-geological companies to hire nonregistered geologists to perform nonpublic geological services, states that it does not affect the practice of registered civil and mining engineering, and does not apply in some circumstances to geologists registered in other states.

1 before making truthful statements about his credentials while giving informed oral or written public  
2 testimony on geologic issues before a public decision-making body, even where the person states in  
3 his public testimony that he is not a registered geologist.

4 13.

5 This statutory and regulatory ban on public testimony which encompasses Plaintiff Mark  
6 Reed's truthful statements of his credentials as a geologist and his informed opinions about geologic  
7 issues of public concern violates his rights to freedom of speech and freedom to petition for  
8 grievances under Article I, sections 8 and 26 of the Oregon Constitution.

9 14.

10 Plaintiff Mark Reed desires to give informed public testimony on geologic issues of public  
11 concern while making truthful statements about his credentials as a geologist.

12 15.

13 Plaintiff Mark Reed brings this action to vindicate and protect his rights and the rights of all  
14 the people of Oregon. He is entitled to an award of costs and reasonable attorneys' fees.

15 SECOND CLAIM FOR RELIEF

16 (For Declaratory and Injunctive Relief under the U.S. Constitution  
17 against all Defendants except the State of Oregon)

18 16.

19 Plaintiff realleges the preceding paragraphs.

20 17.

21 In enforcing and attempting to enforce ORS 672.505(7) and ORS 672.525 and OAR 809-  
22 050-0030, Defendants have acted and continue to act under color of State law, and have deprived  
23 and continue to deprive Plaintiff Mark Reed of his right to free speech and his right of assembly as  
24 secured by the Constitution of the United States.

25 18.

26 Plaintiff Reed is entitled to an award of costs and attorneys' fees under 42 USC § 1988.

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WHEREFORE, Plaintiff Mark Reed prays for the following relief:

1. A judgment declaring that ORS 672.525 is unconstitutional as applied by Defendants and violates Plaintiff's rights to freedom of speech and freedom to petition for grievances as secured by the Oregon Constitution;

2. A judgment declaring that OAR 809-050-0030 on its face and as applied by Defendants, violates Plaintiff's rights to freedom of speech and freedom to petition for grievances as secured by the Oregon Constitution;

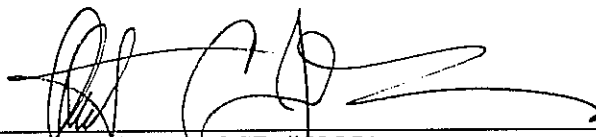
2. A judgment declaring that ORS 672.505(7) and ORS 672.525 and OAR 809-050-0030, on their face and as applied, violate Plaintiff's right to freedom of speech and freedom of assembly as secured by the United States Constitution;

3. A judgment or decree enjoining Defendants from enforcing ORS 672.505(7) and ORS 672.525 and OAR 809-050-0030 insofar as it prohibits Plaintiff testifying about geologic issues in public proceedings while truthfully representing his legitimate experience, training, and qualifications;

4. An award of Plaintiff's costs, disbursements, and reasonable attorneys' fees; and

5. Such further relief as the court deems fair and equitable.

DATED this 20<sup>th</sup> day of November, 2002.



Arthur C. Johnson, OSB #33051  
Garrett Epps, OSB #95175  
Derek C. Johnson, OSB #88234  
Marilyn Heiken, OSB #92330  
Of Attorneys for Plaintiff

## NOTICE OF AVAILABILITY OF MEDIATION SERVICES

Voluntary mediation is available through agencies, non-profit organizations, and private individuals. Some of these services are free; others charge fees that vary in amount. The Court also provides mediation through settlement conferences.

To find out more about mediation, ask your attorney. If you do not have an attorney, ask friends and respected professionals about the mediation process and particular mediators. Your public or university library may have literature on mediation.

Mediators are listed in the Yellow Pages. Mediation directories contain listings of mediators and information on how to select a mediator. Such directories are available in public libraries and through the Oregon Mediation Association (P.O. Box 2952 Portland, OR 97208). In Lane County, directories are available at the Lane County Law Library (Courthouse Basement, 125 East 8th Avenue, Eugene) and from Community Mediation Services (44 West Broadway, Suite 201, Eugene, OR 97401).

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*This information is offered pursuant to ORS 36.185 and does not constitute legal advice. If you have questions or want advice, please contact an attorney.*



11/22/02:

Result of the emergency meeting held today:

1. They will dismiss all claims against Mark Reed.
2. They have repealed the OAR.
3. They will send a letter to Mark Reed.