IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF JOSEPHINE

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| STATE OF OREGON,<br><br>Plaintiff,<br><br>vs.<br><br>CARI LEANNA NORTON,<br>SHERRY SUE BOROWSKI,<br>HOLLY CHRISTIANSEN,<br>CHARLES WILLIAM JACOBS,<br>MARILYN MOOSHIE,<br>LIAM FRANCIS O'REILLY,<br>RYAN NAVICKAS,<br>ERIC C. NAVICKAS,<br>REBECCA SUNDUALL WHITE,<br>BRYAN MICHAEL WIEDEMAN,<br>GEORGE C. SEXTON,<br><br>Defendants. | ) | Case No. 05-0375-M, 05-0307-M, 05-0309-M/05-0333-M, 05-0338-M, 05-0315-M, 05-0310-M, 05-0308-M/ 05-0425-M, 05-0339-M, 05-0342-M, 05-0378, & 05-0311-M<br><br>STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS |

The State, by and through Deputy District Attorney Christopher J. Parosa, hereby submits its response to Defendant's motion to dismiss.

**STATEMENT OF FACTS**

In March, April, and May of 2005, defendants were arrested while protesting at the Fiddler Timber Sale in the Illinois Ranger District of the Siskiyou National Forest, in Josephine County, Oregon. Defendants were on United States Forest Service ("USFS") property while demonstrating to draw public attention to the Fiddler Timber Sale and impede the ability of loggers, hired by contractor Silver Creek Timber Company to fell

and remove trees under USFS contracts, to reach the harvest sites. Those loggers were impeded by defendants' blockage of Forest Service Road 4201. Defendants were then arrested and charged with violating Oregon Revised Statutes section 164.887, "Interfering with Agricultural Operations."

## DISCUSSION

A. Introduction

In 1999, the Oregon legislature enacted a statute that prohibits individuals from obstructing, impairing, hindering or attempting to obstruct, impair or hinder agricultural operations "while on the property of another person." ORS 164.887. The statute exempts from its coverage any person involved in a labor dispute (as defined in ORS 662.010) or any public employee performing official duties. ORS 164.887(3). The clear intent of this statute was to prevent individuals from taking actions designed to block lawful logging, forest management, mining, farming or ranching. Spiking trees, forming a human chain to block a logging truck's access to a road, and cutting a fence where cattle are maintained all fall squarely within the purview of this statute. The statute neither refers to nor proscribes speech, expressive conduct or assembly. Leafleting, picketing, chanting and other expressive acts that do not hinder agricultural operations fall well beyond the statute's reach. Defendant's multi-faceted attempt to invalidate this statute under several provisions of the Federal and Oregon constitutions must fail. The statute is constitutional.

B. Summary

Defendant's attack on the validity of ORS 164.887 can be summarized as follows:

(1) an alleged violation of the Due Process clause of the Federal and Oregon constitutions which includes an analysis of the following:

(a) whether the statute is impermissibly vague relative to providing the public of fair notice of what it was designed to prohibit; and

(b) whether the statute includes sufficient safeguards to guide official discretion;

(2) an alleged violation of the First Amendment and Art. I, Sec. 8 of the Oregon Constitution which includes an analysis of the following:

(a) whether, on its face, the statute targets conduct or speech

(b) whether the statute is impermissibly overbroad;

(3) an alleged violation of the Equal Protection Clause because the statute exempts labor disputes and public employees performing official duties.

First, there is nothing vague about this statute. The words "obstructs, impairs or hinders" appear in numerous state and federal criminal statutes that have survived void for vagueness challenges. The term "agricultural operations" is defined by the statute (ORS 164.887(4)) and this qualifier significantly limits the scope of the statute, distinguishing it from the cases relied upon by the defendant. Further, there is no question that the federal government is a "person" within the meaning of ORS 164.887 because ORS 161.015 specifically includes "government" within the definition of "person."

Second, the statute on its face targets conduct only and the harm that results to farmers, loggers and miners who are prevented from engaging in their business by the

obstructive conduct. To violate the statute, a person must specifically intend to hinder an agricultural operation – incidental or unintended hindrances or mere annoyances will not suffice. Defendant's claim that the statute could be used to preclude leafleting or picketing is false unless the picketer insisted upon marching in the middle of a road to block vehicle access as well as exercise his free speech rights. However, both federal and state cases have repeatedly affirmed the right of a state or municipality to impose reasonable time, place and manner restrictions on such exercise - specifically to preserve free access on public roadways. This statute does nothing more than seek to ensure that agricultural operations are not shut down by conduct that constitutes a hindrance to lawful operations.

Finally, the labor dispute and public employee exception does not create classes of favored and disfavored expression or speech. The statute simply recognizes the existence of a separate, comprehensive statutory scheme governing labor disputes (ORS 662.010, et seq.). The exception was intended only to clarify that nothing within ORS 164.887 should be construed as altering that separate statutory scheme.

C. Due Process: Vagueness

Any constitutional challenge to a duly enacted statute must begin with the recognition that statutes are presumed to be constitutional. Sea River Maritime Financial Holdings, Inc. v. Mineta, 309 F3d 662, 669 (9th Cir. 2002); State v. Tucker, 28 Or App 29, 31 (1977). The burden is on the party attacking legislation to "negative every conceivable basis which might support it." Heller v. Doe, 509 US 312, 320 (1993), citing Lehnhausen v. Lake Shore Auto Parts Co., 410 US 356, 364 (1993); see also State v.

Chakerian, 325 Or. 370, 382 (1997) (noting that to succeed on a claim that a statute is facially unconstitutional, "a party must show that a statute is unconstitutionally vague in all of its possible applications."). A court must make every effort to construe a statute to avoid defects which render it unconstitutional. See United States v. Harris, 185 F3d 999, 1003-04 (9th Cir. 1999); see also State v. Robertson, 293 Or 402, 434-36 (1982) (explaining that court must examine statute to determine if a narrowing construction is possible to save statute from unconstitutional overbreadth). Particularly when confronted with a claim that a statute is facially flawed, courts have noted that "facial invalidation is, manifestly, strong medicine that has been employed by the Court sparingly and only as a last resort." Gospel Missions of America v. City of Los Angeles, 419 F3d 1042, 1047 (9th Cir. 2005)(quoting Cal. Teachers Ass'n v. State Bd. Of Educ., 271 F3d 1141, 1149 (9th Cir. 2001).

The court's analysis of the facial validity and constitutionality of a statute begins by examining the text of the statute. See Exxon Mobil Corp. v. Allapattah Services, Inc., 125 S Ct 2611, 2625 (2005); State v. Ausmus, 336 Or 493, 499 (2004). If the legislature's intent is clear from the text, then the court's inquiry is at an end. See Exxon, 125 S Ct at 2625 (noting that where statute is not ambiguous, court need not resort to interpretive tools such as legislative history that is " often murky, ambiguous and contradictory"); Ausmus, 306 Or at 499.

In interpreting statutory text, common words should be given their plain, natural and ordinary meaning. Ausmus, 336 Or at 499. Absent an express statutory definition, courts derive the plain, natural and ordinary meaning of a term from a dictionary. See

e.g. State v. Li, 338 Or 336, 386 (2005) (using Webster's Third New Int'l Dictionary to define statutory terms); United States v. Wyatt, 408 F3d 1257, 1261 (9th Cir. 2005) (relying upon the Oxford English Dictionary (2d ed. 1989) to construe statutory terms).

"As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 US 352, 357 (1983). When First Amendment rights are implicated, "there must be a greater degree of specificity and clarity." Gospel Missions of America v. City of Los Angeles, 419 F3d 1042, 1047 (9th Cir. 2005). However, "condemned to the use of words, we can never expect mathematical certainty from our language." Id. citing Grayned v. City of Rockford, 408 US 104, 110 (1972). Instead, courts must "reject hypertechnical theories" and use common sense, recognizing that "uncertainty at a statute' s margins will not warrant facial invalidation if it is clear what the statute proscribes in the vast majority of its intended applications." Id. at 1047-48 (internal citations omitted).

The full text of ORS 164.887 reads as follows:

> **164.887. Interference with agricultural operations**
> (1) Except as provided in subsection (3) of this section, a person commits the offense of interference with agricultural operations if the person, while on the property of another person who is engaged in agricultural operations, intentionally or knowingly obstructs, impairs or hinders or attempts to obstruct, impair or hinder agricultural operations.
> (2) Interference with agricultural operations is a Class A misdemeanor.
> (3) The provisions of subsection (1) of this section do not apply to:
> (a) A person who is involved in a labor dispute as defined in ORS 662.010 with the other person; or
> (b) A public employee who is performing official duties.

(4) As used in this section:

(a)(A) "Agricultural operations" means the conduct of logging and forest management, mining, farming or ranching of livestock animals or domestic farm animals;

(B) "Domestic farm animal" means an animal used to control or protect livestock animals or used in other related agricultural activities; and

(C) "Domestic farm animal" and "livestock animals" do not include stray animals.

In this case, the plain text of the statute is unambiguous and, as such, the court need not and should not examine legislative history. First, the terms "obstruct, impair or hinder" adequately define the types of conduct prohibited by ORS 164.887. To "obstruct" is to "block up," "stop up" or "close up" by "obstacles or impediments to passing." Webster's Third New Int'l Dictionary (unabridged ed. 2002). To "hinder" is to "make slow or difficult the course of progress of something." Id. To "impair" is to "make worse" or "to do harm" to something. Id.

Numerous state and federal cases have rejected void for vagueness challenges to these very terms. See Wyatt, 408 F3d at 1261 (rejecting vagueness challenge to federal statute criminalizing obstruction or harassment of timber harvests); United States v. Cassel, 408 F3d 622, 35 (9th Cir. 2005) (upholding statute prohibiting intimidation with intent to hinder bidding on public land sale); United States v. Platte, 401 F3d 117, 1187-88 (10th Cir. 2005) (holding that statute prohibiting injuring, interfering or obstructing missile site was not unconstitutionally vague or overbroad); United States v. Fassnacht, 332 F3d 440, 446 (7th Cir. 2003) (rejecting 6th Amendment vagueness challenge to indictment charging obstruction of justice through influencing, obstructing or impeding); Portland Feminist Women's Health Center v. Advocates for Life, Inc., 859 F2d 681, 685

(9th Cir. 1988) (rejecting challenge to injunction that prohibited "obstructing" free passage to clinic); State v. Horn, 57 Or App 124, 130-31 (1982) (upholding disorderly conduct conviction based upon obstruction of traffic caused by leafleting at a busy intersection). See also State v. Chakerian, 325 Or 370, 380-84 (1997)(upholding statute that prohibits conduct that "creates a grave risk of causing public alarm."); City of Portland v. Chicharro, 53 Or App 483, 491 (1981) (rejecting overbreadth and vagueness arguments raised against municipal ordinance prohibiting "disturbance of the peace" that results in threat of bodily harm or actual violence).

The statute is further narrowed by the express limitation that the acts of obstructing, impairing or hindering must impact or threaten to impact agricultural operations. Agricultural operations are defined by the statute to include physical activities involving the utilization of natural resources. The crime of interfering with agricultural operations is thus defined by terms that expressly limit its reach to behaviors that have a **physical effect** of blocking, slowing and materially damaging the process of logging, forest management, mining, farming or ranching. In addition, the requirement that any violation is predicated upon sufficient proof that a defendant acted "intentionally" or "knowingly," acts to limit the discretion of law enforcement and mitigate any perceived vagueness. See Wyatt, 408 F3d at 1261 (noting that specific intent requirement for charge of obstructing timber harvests mitigates any perceived vagueness).

Finally, the provision of the statute that limits application to defendants "on the property of another person," does not, as defendant suggests, create any ambiguity

regarding application of ORS 164.887 to public lands. Because another statute, ORS 161.015, specifically includes a "government or a government instrumentality" within the definition of "person," ORS 164.887 clearly encompasses agricultural operations that take place on government property.

Based upon the foregoing, the plain text of ORS 164.887 survives a facial void for vagueness challenge under the Due Process clause because it provides adequate notice of the conduct the statute seeks to prohibit and because the agricultural operations and scienter limitations effectively limit law enforcement discretion. Defendants' arguments to the contrary seek to impose an unprecedented level of mathematical certainty on the legislature in how it uses and defines statutory terms of common and ordinary meaning. Defendants fall far short of the high burden placed upon those seeking to overturn legislation under the Federal or Oregon constitutions.

D. ORS 164.887 Does Not Restrain Speech or Assembly in violation of the First Amendment to the United States Constitution or Art.I, Sec. 8 and 26 of the Oregon Constitution

The First Amendment to the U.S. Constitution (applicable to the State of Oregon via the 14th Amendment) provides as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Article I, Section 8 of the Oregon Constitution guarantees the freedom of speech and press: "No law shall be passed restraining the free expression of opinion, or

restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

Article I, Section 26 of the Oregon Constitution protects the freedom of assembly: "No law shall be passed restraining any of the inhabitants of the State from assembling together in a peaceable manner to consult for their common good; nor from instructing their Representative; nor from applying to the Legislature for redress of grievances."

Federal and Oregon courts have recognized that the First Amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." Heffron v. Int'l Soc'y for Krishna Consciousness, Inc., 452 US 640, 647 (1981); see also State v. Chakerian, 325 Or 370, 382-384 (1997) (affirming constitutionality of anti-riot statute); State v. Horn, 57 Or App 124 (1982) (affirming disorderly conduct conviction of leafleters who obstructed traffic). Particularly when addressing the interaction between civil liberties and the government's duty to maintain free access on the public roadways, the United States Supreme Court has stated, "[t]he authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend." Cox v. New Hampshire, 312 US 569, 574 (1941).

If a statute seeks to regulate conduct, rather than speech, defendant bears the burden of establishing that the statute is "substantially" overbroad in its application to free speech or assembly rights. See Gospel Missions, 419 F3d at 1050; Menotti, 409 F3d

at 1128, citing Broadrick v. Oklahoma, 413 US 601 (1973). The U.S. Supreme Court has warned that the application of the overbreadth doctrine is "strong medicine" and it is to be employed "sparingly and only as a last resort." Id. at 13. In examining a First Amendment challenge to a statute, the court must engage in a three-step inquiry: first, the court must determine if the statute in question is content neutral. Menotti v. City of Seattle, 409 F3d 1113, 1128 (9th Cir. 2005). Second, the court must determine if the restriction is "narrowly tailored to serve a significant governmental interest." Id. at 1130. Third, if the other two elements are met, the court must assess whether there are ample alternative channels of communication open to the defendant. Id. at 1138.[1] A statute or ordinance is content neutral if it was not adopted because of a disagreement with a particular message conveyed by the prohibited conduct. See Ward v. Rock Against Racism, 409 US 781, 791 (1989).

On its face, ORS 164.887 is content neutral and is not directed at either speech or assembly. Instead, the statute prohibits only conduct that interferes with lawful agricultural operations. "Application of a facially neutral regulation that incidentally burdens speech satisfies the First Amendment if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction is no greater than is essential to the

[1] The arrest in these cases took place on or around Forest Service Road 4201, which is a public roadway that crosses a river. Defendant was participating in a protest of the Fiddler Timber Salvage just after United States District Judge Michael R. Hogan refused to issue a temporary injunction to halt the sale. Federal courts have held that even though such an area is remote, public forests are treated as a traditional public forum because the area is "critical to the content of the message." Galvin v. Hay, 374 F3d 739, 751-52 (9th Cir. 2004) citing United States v. Griefen, 200 F3d 1256, 1260-62 (9th Cir. 2000). As a traditional public forum, First Amendment protections apply "with particular force." Id. at 747.

furtherance of that interest." United States v. Albertini, 472 US 675, 687-88 (1985) (internal citations omitted).

If and whether ORS 164.887 incidentally impacts speech or assembly to a constitutionally permissive degree depends upon narrow tailoring and whether the restrictions constitute reasonable time, place or manner limitations. See Griefen, 200 F3d at 1260. In this regard, the Ninth Circuit's decision in Griefen is particularly instructive. In Griefen, several individuals protesting a timber operation were arrested for violating a forest closure order when they created a structure over a roadbed and refused instructions to leave the area. Id. at 1259. The defendants claimed that their arrests and prosecution violated their first amendment rights because enforcement of the closure order operated as a prior restraint on speech. Id. The Ninth Circuit held that expressive conduct that takes place on public grounds is legitimately subject to reasonable time, place and manner restrictions. Id. at 1259-60. The court recognized that a citizen's right to express her views "is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order." Id., citing Hague v. Committee for Industrial Organization, 307 US 496, 515-16 (1939). In applying these principles to the road closure order, the court found that the "clear purpose of the order . . . was for reasons of health and safety, and for the protection of property . . . [and] for the specific purposes of honoring contractual obligations." Id. at 1260. The court ultimately rejected defendant's vagueness and overbreadth challenges to the statute and affirmed application of the statute. Id. at 1266.

The Ninth Circuit's decision in United States v. Wyatt, 408 F3d 1257 (9th Cir. 2005), is yet another recent opinion affirming the right of officials to protect rights of way on public lands, even when enforcement incidentally affects free speech and assembly rights. There, the defendants were charged with using injurious devices on federal lands with the intent to obstruct a timber harvest. Id. at 1258. The defendants had strung ropes between several trees making it impossible for a timber contractor to use the area for helicopter removal operations. Id. at 1259. Thus, even though the defendants had "assembled" and engaged in expressive conduct, the fact that their actions intended to (and did in fact) obstruct a timber harvest was sufficient to justify their forcible removal and subsequent criminal sanction.

Recent Oregon cases are not to the contrary. In State v. Ausmus, 336 Or 493 (2003), the Oregon Supreme Court struck down a provision within a disorderly conduct statute that made it a crime for individuals to fail to disperse for failure to comply with a lawful police order. The statute at issue in that case had no limitations in scope of application. Further, the Court observed that the challenged portion of the statute facially fell squarely within the express prohibition on laws restricting assembly as set forth in Art. I, Section 26 of the Oregon Constitution. Id. at 500. Ultimately, because a person who lawfully congregates with others and who causes no harm in doing so fell within the proscriptions of the statute, the court determined that it was unconstitutional. Id. at 507-508. However, in reaching this conclusion, the Court acknowledged that it had an obligation to construe a statute in such a way as to avoid constitutional infirmities if possible within the scope of the legislature's text and intent. Id.

The Court reached a similar conclusion in State v. Robertson, 293 Or 402 (1982), but again, that case involved an explicit statutory proscription on speech (including "demand" within the elements of the offense). Further, as recognized in State v. Illig-Renn, 199 Or App 124 (2005), the Robertson decision "drew an analytic distinction among statutes that prohibit or limit speech per se . . . statutes that focus on the achievement of an unlawful objective but specify that the objective might be achieved through expression . . . and statutes that focus on the achievement of an unlawful objective and do not specify speech as a method of accomplishing the objective." The Oregon Court of Appeals recognized that the third category of statutes, those that focus on an unlawful objective and fail to target speech, may not be challenged facially and are subject only to as-applied challenges. Id. at 139.

Oregon's statutory prohibition on obstructing agricultural operations, to the extent it impacts free speech or assembly rights at all, constitutes a reasonable time, place and manner restriction. While defendant cites portions of the legislative history at some length, she fails to identify anything within the legislative history to suggest that Oregon lawmakers intended to suppress speech or assembly with the passage of ORS 164.887. The statute imposes no restrictions on the timing of protest activities and, like the restrictions affirmed in Griefen and Wyatt, the statute was intended to simply protect the ability of agricultural operators to do their business. In this case, as in Griefen, the proscriptions included in ORS 164.887 are necessary to honor contractual obligations involving timber harvests and not to silence the protesters. The restrictions are narrowly drawn to prohibit only that conduct that actually hinders or attempts to hinder agricultural

operations. Thus, unlike the statute at issue in Ausmus, the state must demonstrate actual harm or an attempt to impose actual harm in order to sustain a conviction. Any activity that does not actually hinder or attempt to hinder (activities such as picketing, chanting or leafleting) will simply not constitute violations of the statute and the availability of such a myriad of options serves to insure that defendant's free speech and assembly are adequately protected.[2] If and when a demonstrator is arrested under this statute for activity that did not hinder an agricultural operation, he or she remains free to raise an as-applied challenge to application of the statute. However, no such arrests have taken place to date nor are they reasonably likely given the unambiguous limitations included within the statute that restrict its application to hindering agricultural operations and require a showing of scienter.

As the Ninth Circuit recently observed, "a statute is not invalid simply because some impermissible applications are conceivable." Gospel Missions, 419 F3d at 1050. Because the statute at issue seeks to regulate conduct rather than speech, defendant bears the burden of showing that the threat of overbroad application is both "real" and "substantial." Id. Defendant has not and cannot meet this burden. Accordingly, because ORS 164.887 does not impermissibly restrict speech or assembly, defendant's

[2] The Ninth Circuit has held that limitations on the volume of speech are permissible so long as the restriction seeks only to preclude yelling or chanting that "substantially interferes" with the conduct of business. Portland Feminist Women's Health Center v. Advocates for Life, Inc., 859 F2d 81, 85 (9th Cir. 1988). The decision as to whether the challenged activity falls within such a proscription ultimately rests with the court, not the business owner. Id.

overbreadth challenges under the First Amendment of the Federal Constitution and Art. I, Sections 8 and 26 of the Oregon constitution should be denied.[3]

E. Equal Protection

The labor dispute exception of ORS 164.887(3)(a) does not create classes of favored and disfavored expression or speech, nor does it act to insulate those engaged in labor protests from liability if they engage in conduct that hinders agricultural operations. Rather, the exception simply acts as a recognition that conduct during labor dispute is governed by other federal and state law and that nothing in ORS 164.887 should be construed to alter or amend those separate statutory provisions.

First, the scope of the labor dispute exclusion is defined by the cross-reference to ORS 662.010. ORS 662.050 forbids a court from restraining any person from performing certain "acts" in cases arising from labor disputes. The statute enumerates nine acts ranging from "ceasing or refusing to perform any work or to remain in any relation of employment," to "advising, urging, or otherwise causing or inducing without fraud or violence or intimidation, the acts specified in subsections (1) to (8) of this section." ORS 662.050(1)-(9). None of the "acts" enumerated in ORS 662.050 shields from injunction an individual who "obstructs, impairs or hinders" agricultural operations as set forth in ORS 164.887. The plain text of ORS 662.010 permits and does not prevent a court from

[3] To the extent defendant maintains that ORS 164.887 acts as a prior restraint that chills the speech of those who may wish to protest in the future, her reliance upon the concept of prior restraint is misplaced because this case does

enjoining conduct that is criminal under ORS 164.887. See Geo B. Wallace et al. v. Int'l Assoc. of Mechanics, 155 Or 652 (1936) (holding that ORS 662.010 does not preclude injunctions that protect against intimidation of non-union employees who wish to work).

For example, a person who adds sugar to the gas tank of a tractor in an attempt to disable it may be enjoined from repeating the conduct despite ORS 662.010 and they may be prosecuted under ORS 164.887 regardless of whether the person is a striking employee intending to injure his employer or someone aiming to halt plowing that uproots native grasses. By contrast, a protester who walks alongside a road in a national forest wearing a sandwich board proclaiming on one side her support for sustainable logging practices and on the other stating objections to her employer's personnel policies is neither exposed to criminal prosecution under ORS 164.887, nor subject to injunction under ORS 662.010.

To the extent there is any uncertainty underlying the labor exception, the legislative history clarifies that the exception does not distinguish between individuals based on the subject matter of their expression. Faced with objections raised by representative of organized labor that ORS 164.887 could be construed to make farm labor disputes illegal, the Senate Judiciary Committee moved amendments that ultimately became the labor-dispute exception, ORS 164.887(3). The exception eliminated any potential conflicts between ORS 164.887 and ORS 662.010, et seq. and demonstrated the Assembly's intent to limit the statute's reach to conduct alone. Nothing within the exception means that the statute creates classes defined by the content of expression or

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not involve licensing or any requirement that a person seek prior government approval. See e.g. Freedman v.

speech. Defendant's reliance upon Police Dept. of Chicago v. Mosley, 408 US 92 (1972) and Carey v. Brown , 447 US 455 (1980) is misplaced since those cases involved statutes that did, in fact, draw arbitrary distinctions between labor picketing and other peaceful picketing.

In sum, nothing within the text or history of ORS 164.887 provides more favorable treatment of those involved in labor protests. The labor exception was included solely to clarify that ORS 164.887 prohibits conduct, not speech, and that the statute does not alter pre-existing legislation governing labor disputes. Most critically, ORS 164.887 applies to anyone who attempts to hinder lawful agricultural operations regardless of whether they are motivated by a desire to influence an employer, a logger, a farmer or a miner. Defendant's equal protection challenge must also be denied.

## CONCLUSION

There is no question that the defendants have a constitutional right to protest logging in a national forest. The issue in this case is whether the State has a right to impose reasonable restrictions upon conduct and activity to insure public safety, maintain the public right of way and help to insure that a lawful timber contract may be fulfilled. Defendants do not have a constitutional right to block a forest service road and the state must be able to remove her and prosecute them to deter others from engaging in similar unlawful conduct. The plain text of ORS 164.887 unequivocally applies to this situation and other situations in which individuals, who may or may not have free speech interests in mind, seek to frustrate lawful agricultural operations by placing sugar into gas tanks,

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Maryland, 380 US 51, 58 (1968).

spiking trees, cutting fences that protect livestock and the like. The law requires that legislative enactments are presumed constitutional and it imposes a heavy burden on those that seek to challenge them. Because ORS 164.887 was enacted for a lawful purpose that did not target speech or assembly, because the statute is unambiguous and includes reasonable limitations on the scope of its coverage, the statute is constitutional. Defendants' arguments must fail and her motion should be denied.