

***Text of Opinion:***

*Oregon Natural Resources Council Fund, dba Oregon Wild v. Port of Portland*  
Multnomah County Circuit Court Case No. 1309-13593

Dear Counsel:

This writ of review case challenges defendant's rejection of a paid advertisement that plaintiff wanted to have displayed at Portland International Airport. The parties have filed cross-motions for summary judgment and agree that the case should be decided as a matter of law. For the reasons set forth below, I grant defendant's motion with respect to the claim based on the First Amendment to the United States Constitution, but grant plaintiff's motion regarding Article I, Section 8 of the Oregon Constitution. As a result, plaintiff is entitled to the relief sought.

**First Amendment**

The First Amendment to the United States Constitution permits a government to ban political advertising in nonpublic forums. A well-developed body of federal case law, some of which is cited in defendant's reply at page 6, supports the type of action taken by defendant with respect to plaintiff's proposed ad. Defendant is not required by the First Amendment to accept all ads for display in the airport. Because defendant accepts no political advertising, its rule and its application here are viewpoint neutral and constitutionally permissible.

**Article I, Section 8**

The protection given to freedom of speech by Article I, Section 8 of the Oregon Constitution has its own body of case law. I am persuaded that this case is controlled by *Karuk Tribe of California v. Tri-County Metropolitan Transportation District of Oregon*, 241 Or App 537, 251 P3d 773 (2011), review granted 351 Or 216 (2011). Defendant argues that, at the time of adoption of the Oregon Constitution in 1857, the framers had in mind an exception to the freedom of speech guarantee for governments to limit speech on premises operated in their proprietary capacity. There is a heavy burden on defendant, which proposes to restrict speech, to demonstrate the existence of this exception. The cases and examples cited by defendant do not satisfy this burden.

Unless the Oregon Supreme Court tells us otherwise when it decides *Karuk Tribe*, defendant's policy regulates the content of speech and not simply its effects. For that reason, plaintiff is entitled to the relief sought under the Oregon Constitution.

**Decision**

Defendant's motion is granted with respect to the First Amendment claim. Plaintiff's motion is granted with respect to the claim based on Article I, Section 8 of the Oregon Constitution. Plaintiff is entitled to an order directing defendant to accept plaintiff's advertisement.

Counsel for plaintiff should prepare an order consistent with this decision and a judgment granting the relief sought. A copy of this message should be attached to the order to explain the basis of the decision.

Thank you again for the excellent advocacy on behalf of your clients.

Eric J. Neiman  
Judge Pro Tem