

In the Appellate Court for the State of Oregon

Anderson, Jacob
Appellant

Vs.

Oregon Board of Parole and Post Prison Supervision
Acting by and through Director Jodi Merritt

Acting by and through Agent James Ryzdewski
Respondent

Appellate Court number: A186490

Respectfully submitted by:

Jacob Daniel Anderson
1259 14th Avenue NW
Salem, Oregon 97304
(503) 551-6909

INDEX

1. Nature of the Action and Relief Sought.....	4
2. Nature of the Judgment.....	4
3. Basis of Appellate Jurisdiction.....	4
4. Effective Date for Appellate Purposes.....	4
5. Questions Presented on Appeal.....	4
6. Summary of Argument.....	4
7. Statement of Facts.....	4,5
ASSIGNMENT OF ERROR.....	5
STANDARD OF REVIEW.....	5
ARGUMENT.....	6,7
CONCLUSION.....	7
SIGNATURE PAGE.....	8

TABLE OF AUTHORITIES

CASES:

- JOSEPH MATAL, INTERIM DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE, PETITIONER v. SIMON SHIAO TAM 582 U. S. ____ (2017)

CONSTITUTIONAL AMENDMENTS:

•United States of America Constitutional Bill of Rights - Amendment 1
Congress shall make no law abridging the freedom of speech, and to petition the Government for a redress of grievances.

- United States of America Constitutional Bill of Rights - Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;
nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;
nor shall private property be taken for public use, without just compensation.

- State of Oregon Constitutional Bill of Rights - Article 1 Section 8

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.

STATUTES:

- ORS 28.130
- ORS 58.015
- ORS 163.730
- ORS 183.417

NATURE OF THE ACTION AND RELIEF SOUGHT

The nature of this action is an agency decision after new special conditions were added relating to No Personal or Unprofessional contact with Probation Officer or Others in the Criminal Justice System. the relief sought is the Removal of Condition due to Unconstitutionality of the Provision, by statutory definition and constitutional provisions that regulate the freedom to Express and Speak.

NATURE OF THE JUDGMENT

The Nature of the Judgment in this case, is relating to the Denial to Remove Conditions though direct defiance of the freedom to speak, when the conditions were requested to be reviewed by the Appellant the Request sent to the Agency Director.

BASIS OF APPELLATE JURISDICTION

The Appellate Court retains jurisdiction under 183.417 (1) Except as provided in ORS 183.417 (Procedure in contested case hearing) (3)(b), any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

EFFECTIVE DATE FOR APPELLATE PURPOSES

The decision was sent via email on 12/31/2024, and that remains the Effectual Date of Review.

QUESTIONS PRESENTED ON APPEAL

- Does the Definition and Statute support the decision made by Agency Director?
- Is there Explicit and Expressly Written Authority to deny a Citizen the Right to Express and Speak freely?
- Does the Appellate fall within the definition of a professional in the state of Oregon?
- Does the Appellant by confinement of the restriction, have permission to have any Personal(Individual) Contact with any Person in the Criminal Justice System Professional Capacity?

SUMMARY OF ARGUMENT

The Appellant followed the Sixth Amendment Due Process of Requesting Agency Review and Enforcement in accordance with the Police Oath of Honor and The Agency and The Agency Director erred in failing to remove the Unconstitutional and Non-Statutory Definitional provisions. Within the scope of Duty provided by Employment to anybody in the Oath of Office, they are to Individually follow all Rules, Regulations, Statutes, and Constitutional Provisions, and that provides them authority to do so when accepting employment.

STATEMENT OF FACTS

• On 11/14/2024, the Appellant was required to report in his Individual Capacity or Personal Capacity, where he was served with Documentation of the Addition of the Conditions and Special Condition of "No Personal or Unprofessional Contact with Probation officer or others in the Criminal Justice System".

- December of 2024, The Appellant Requested Review of Special Conditions and a Final Agency Order was issued December 31st of 2024, by and through the Board of Parole and Post Prison Local Supervisory Authority, the attached Written Document Attached to Notice of Appeal.
- On, 01/09/2025 12:00 PM, the Appellant served Notice of Appeal and filed documentation relating to the Agency Decision.

ASSIGNMENT OF ERROR

- The Supervisory Agent in his Professional Capacity Erred in the Request to for Special Conditions, the condition that caused probation revocation back to probation standards or post prison standards. This is Preserved in Request for review by Agency Director as Objection, and Plain Error.
- The Local Control Supervisory Authority Agent and Director erred in failing to Remove the Special Conditions relating to "No Personal and Unprofessional Contact with Probation Officer or Others in the Criminal Justice System". This is preserved as objection in notice of appeal, and as Plain Error.
- The Local Control Supervisory Authority violated the First Amendment Protections in the Constitution or The United States of America and Oregon when imposing a speech-related condition that is not Criminal in nature. This is preserved as Plain Error.

STANDARD OF REVIEW

"We review for legal error whether the trial court properly construed a statute and applied a correct legal theory of criminal liability." *State v. Chandler*, 293 Or App 705, 707, 430 P3d 186 (2018) (citing *State v. Barboe*, 253 Or App 367, 375, 290 P3d 833 (2012), rev den, 353 Or 714 (2013)).

Agency interpretation of Statutory Terms:

"[O]ur standard of review of an agency's interpretation and application of a statute depends on the nature of the term or phrase at issue. We review an agency's interpretation and application of a nondelegative term for legal error under ORS 183.482(8)(a) without deference to the agency's construction. By contrast, we review an agency's interpretation and application of a delegative term with deference under ORS 183.482(8)(b). That is, we review to determine whether the agency's exercise of discretion is outside the range of discretion delegated to the agency by law, or otherwise contrary to constitutions and statutes or inconsistent with agency rules, formally stated positions, or past practices." *Vaughn v. Marion County*, 305 Or App 1, 7 n 3, 469 P3d 231, 235 (2020) (internal citations, brackets, and quotation marks omitted). We review the interpretation of statutory terms for substantial evidence only if the terms are "exact," meaning the terms impart relatively precise meaning. *Brundridge v. Board of Parole*, 192 Or App 648, 652, 87 P3d 703, rev den, 337 Or 327 (2004)."(1) whether the court has concluded that the term, or one like it, is delegative in another context; (2) whether the term is defined by statute or, on the other hand, susceptible to many different interpretations; (3) whether the term is one that invites a value or policy judgment; and (4) whether other, related provisions suggest a legislative intent that the term be considered a delegation." *Penn v. Board of Parole*, 365 Or 607, 628, 451 P3d 589 (2019); see also *OR-OSHA v. CBI Services, Inc.*, 356 Or 577, 585, 590, 341 P3d 701 (2014) (explaining difference between delegative and nondelagative terms, and factors used to make that determination).

ARGUMENT

In Professional corporations and Enterprises laws the statutory definition which does indeed apply is as follows,

"ORS 58.015

Definitions

(5) "Professional" means:

- (a) Accountants licensed under ORS 673.010 (Definitions for ORS 673.010 to 673.465) to 673.465 (Authority of Oregon Board of Accountancy to require fingerprints) or the laws of another state;
 - (b) Architects registered under ORS 671.010 (Definitions for ORS 671.010 to 671.220) to 671.220 (Civil penalties) or licensed or registered under the laws of another state;
 - (c) Attorneys licensed under ORS 9.005 (Definitions for ORS 9.005 to 9.757) to 9.757 (Retention of client materials) or the laws of another state;
 - (d) Chiropractors licensed under ORS chapter 684 or the laws of another state;
 - (e) Dentists licensed under ORS chapter 679 or the laws of another state;
 - (f) Landscape architects licensed under ORS 671.310 (Definitions for ORS 671.310 to 671.459) to 671.459 (State Landscape Architect Board) or the laws of another state;
 - (g) Naturopaths licensed under ORS chapter 685 or the laws of another state;
 - (h) Nurse practitioners licensed under ORS 678.010 (Definitions for ORS 678.010 to 678.410) to 678.410 (Fees) or the laws of another state;
 - (i) Psychologists licensed under ORS 675.010 (Definitions for ORS 675.010 to 675.150) to 675.150 (Enforcement procedures) or the laws of another state;
 - (j) Physicians licensed under ORS chapter 677 or the laws of another state;
 - (k) Medical imaging licensees under ORS 688.405 (Definitions for ORS 688.405 to 688.605) to 688.605 (Duty to report violation) or the laws of another state;
 - (L) Real estate appraisers licensed or certified under ORS chapter 674 or the laws of another state;
- and
- (m) Other persons providing to the public types of personal service or services substantially similar to those listed in paragraphs (a) to (L) of this subsection that may be lawfully rendered only pursuant to a license."

This clearly evidences that the Appellant is in No Professional Capacity in the State of Oregon relating to the causes of post prison supervision as well as,

"ORS 28.130

"Person" defined

The word "person," wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever."

As to where the included provisions of personal would be the appellants actions in the following,

"ORS 163.730

(3) "Contact" includes but is not limited to:

- (a) Coming into the visual or physical presence of the other person;
- (b) Following the other person;
- (c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

- (d) Sending or making written or electronic communications in any form to the other person;
- (e) Speaking with the other person by any means;
- (f) Communicating with the other person through a third person;
- (g) Committing a crime against the other person;
- (h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
- (i) Communicating with business entities with the intent of affecting some right or interest of the other person;
- (j) Damaging the other person's home, property, place of work or school;
- (k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or
- (L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9."

In, *MATAL v. Cite as: 582 U. S. ____* (2017) The United States Supreme Court in an 8-0 decision, "But no matter how the point is phrased, its unmistakable thrust is this: The Government has an interest in preventing speech expressing ideas that offend. And, as we have explained, that idea strikes at the heart of the First Amendment. Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express "the thought that we hate." *United States v. Schwimmer*, 279 U. S. 644, 655 (1929) (Holmes, J., dissenting)."

In accordance with Statutory Definitions alone, that ultimately leads the Regular and Common person to believe that it is an outright banishment from any and all contact with anybody under the Criminal Justice Context or Oregon Department of Justice standards which includes police court systems lawyers judges judicial assistance and any other capacity that may be involved. That by statutory definition includes any First Amendment Protections are removed. The application of this condition ultimately denies due process by individual filings and instead uses a blanket terminology that assumes every single person that the appellant ever comes in contact with is going to receive the same treatment as any others regardless and irrespective of the types of responses and other matters within the communications. The United States of America fifth Amendment explicitly States "Due process: Citizens cannot be deprived of Liberty property without Due Process of Law." in this context a no contact order under Restraining Provisions, in which the Liberty of civil contact is outright denied. The only legal process remaining is to serve documents on each and every Criminal Justice field or Department of Justice field individual.

The First Amendment Protections of The United States of America states, "Congress shall make no law abridging the freedom of speech; and to petition the Government for a redress of grievances."

The State of Oregon Constitution Protections states, "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."

CONCLUSION

Within this brief the common an average citizen would be able to understand that the condition provided by the local Control Authority buying through the director and the supervisory agent are wholly unconstitutional and have no statutory standing for the definitions related with no explicit context to be imposed upon the appellant, and the Oregon Board of parole and post prison supervision buying through the local Control Authority supervisory agent and director exceeded their capacity and Authority when imposing the special condition that the appellant have "no contact" in his individual and "personal" capacity and no "unprofessional contact" where he is not employed by the state of Oregon or any County within, with "others in the criminal justice field" or his "probation officer", the actual sighted condition " No Personal or Unprofessional Contact with Probation officer or others in the Criminal Justice System."

FILED, AUTHORED AND RESPECTFULLY SUBMITTED BY,

JACOB DANIEL ANDERSON
1259 14TH AVENUE NORTHWEST
SALEM, OR, 97304
(503) 551-6909

1/16/2025

A handwritten signature in black ink, appearing to read 'J. Anderson', written in a cursive style.