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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**Marc Thielman, Senator Dennis
Linthicum, Senator Kim Thatcher, Jeff
Kropf, Mark Anderson, Chuck Wiese,
Janice Dysinger, Steven McGuire, Rick
Riley, Gabriel Buehler, Don Powers, Ben
Edtl,**

Plaintiffs,

v.

Tina Kotek, in her official and personal
capacities as Governor of Oregon;
LaVonne Griffin-Valade, in her official
and personal capacities as Oregon Secretary
of State; **Molly Woon**, in her official and
personal capacities as Elections Director,

Defendants.

Case No.: 3:23-cv-1639

**COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND
DAMAGES FOR VIOLATION OF
FREE SPEECH**

Demand for Jury Trial

Once a government is committed to the principle of silencing the voice of opposition, it has only one place to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all of its citizens and creates a country where everyone lives in fear.¹

It is a bedrock principle of our constitutional system that the government does not get to decide what speech is acceptable or true. Under the First Amendment, Americans have a right to speak freely regardless of whether their speech upsets the preferred narrative. In fact, that's when it needs the most vigorous protection.²

1. The State of Oregon does not like criticism of its election system.

Unfortunately, the State of Oregon's response shows that it is "committed to the principle of silencing" its critics.³ Oregon signed a contract on October 27, 2023 with a UK artificial intelligence surveillance company named Logically AI Inc. ("Logically AI"). The purpose of the contract is "identify and mitigate harmful information online as it relates to elections (mis-, dis-, and mal- information, or "MDM")."⁴ Oregon is hiring Logically AI to detect, trace, and target those deemed to be spreading "misinformation, disinformation, and mal-information." This dystopian censorship project defines

¹ President Harry S. Truman, *Special Message to the Congress on the Internal Security of the United States* (Aug. 8, 1950) (<https://www.trumanlibrary.gov/library/public-papers/207/special-message-congress-internal-security-united-states>) (viewed October 24, 2023).

² Hearing on the Weaponization of the Federal Government Before the Select Subcommittee on the Weaponization of the Federal Government of the Committee on the Judiciary, U.S. House of Reps., 118th Cong., No. 118-7 (March 9, 2023) (statement of Representative Mike Johnson, Louisiana).

³ See Truman Message to Congress.

⁴ Exhibit A.

“misinformation, disinformation, and mal-information” as whatever information the government asserts is not true or misleading. The government has no proper role in deciding what speech is true. The government is prohibited from detecting, tracing and targeting those whose speech it does not like.

PARTIES

2. Marc Thielman is the former Superintendent of Alsea School District and was a candidate for the Republican nomination for Governor in 2022. Thielman is the lead plaintiff in *Thielman v. Fagan*, 3:22-cv-1516 (D. Or.) and lead appellant in the appeal of that case styled *Thielman v. Griffin-Valade*, 23-35452 (9th Cir.). Thielman lives in Linn County.

3. Senator Dennis Linthicum represents District 28 in the Oregon Senate. His district covers all or part of Klamath, Jackson, Lake, Deschutes, and Crook counties. Senator Linthicum is also a plaintiff and appellant in *Thielman v. Fagan*. Senator Linthicum resides in Klamath County.

4. Senator Kim Thatcher represents District 11 in the Oregon Senate. Her district covers the western portion of Marion County. Senator Thatcher resides in Marion County.

5. Jeff Kropf is a radio talk show host, former State Representative for District 17, and resident of Linn County.

6. Mark Anderson is a writer, editor, and radio talk show host of The I Spy Radio Show and resident of Polk County, Oregon.

7. Chuck Wiese is a retired meteorologist and retired airline pilot. Wiese is also a plaintiff and appellant in *Thielman v. Fagan*. Wiese lives in Washington County.

8. Janice Dysinger is a long-time election integrity advocate who resides in Multnomah County. Dysinger is co-chair of the Election Integrity Committee of the Oregon Republican Party.

9. Steven McGuire is a retired businessman living in Washington County.

10. Rick Riley is the Chair of the Clackamas County Republican Party. On November 7, 2023, Riley sent the Oregon Secretary of State a letter demanding that she rescind the contract with Logically AI and resign from her position for her breach of the citizen's trust.

11. Gabriel Buehler is the Chair of the Washington County Republican Party and resides in Washington County.

12. Don Powers is a businessman and co-chair of the Election Integrity Committee of the Oregon Republican Party. Powers is a plaintiff and appellant in *Thielman v. Fagan*. Powers resides in Clackamas County.

13. Ben Edtl is the founder of Free Oregon, a non-partisan public interest organization dedicated to defending and restoring civil rights in Oregon. Edtl was a Republican Candidate for State Senate District 19 which includes portions of Clackamas, Multnomah, and Washington Counties. Edtl is a plaintiff and appellant in *Thielman v. Fagan*. Edtl lives in Washington County.

14. Defendant Tina Kotek is the Governor of Oregon. Kotek is sued in her official and personal capacities.

15. Defendant LaVonne Griffin-Valade is the Oregon Secretary of State. Griffin-Valade is sued in her official and personal capacities as Oregon Secretary of State.

16. Defendant Molly Woon is the Oregon Elections Director. Woon is sued in her official and personal capacities as Oregon Secretary of State.

JURISDICTION

17. Plaintiffs bring this action under 42 U.S.C. § 1983 to challenge government officers' violations of the United States Constitution. Plaintiffs seek damages and injunctive relief.

18. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action seeks to protect civil rights under the First Amendment which applies to Oregon through Fourteenth Amendment to the United States Constitution.

19. This Court has personal jurisdiction over each Defendant because each Defendant is located in the State of Oregon.

CAUSE OF ACTION

Violation of Freedom of Speech (42 U.S.C. § 1983)

20. Plaintiffs incorporate and reallege all paragraphs in the Complaint.

21. On September 21, 2023, bidding on Bid Solicitation S-165000-00007470 ("RFP 7470") opened. The organization offering RFP 7470 was the Oregon Secretary of State, Elections Department. The title of RFP 7470 was "Elections False Information

Solution.” The high-level description of RFP 7470 is “The Oregon Elections Division is seeking a solution to address the spread of mis-, dis-, and mal-information.”

22. On information and belief, RFP 7470 was initiated by Woon and approved by the Secretary of State and the Governor. The scheduled date for signing a contract was October 27, 2023. Numerous media outlets reported that the Secretary of State signed the contract on October 27, 2023. On information and belief, the Governor authorized the signing of the contract on October 27, 2023.

23. The overview of RFP 7470 ironically states: “The Oregon Secretary of State is one of three constitutional offices created at statehood. As an independent constitutional officer, the *Secretary of State answers directly and solely to the people of Oregon.*” (emphasis added.) Through this very contract, the Secretary of State is violating her obligation to the people of Oregon with her plan to surveil and combat the free speech of Oregonians.

24. The purpose of RFP 7470 states:

The purpose of this RFP is to contract with a vendor to help provide a suite of products to identify and *mitigate* harmful information online as it relates to elections (mis-, dis-, and mal- information, or “MDM”). (emphasis added).

25. RFP 7470 includes the following descriptions:

Misinformation is false, but not created or shared with the intention of causing harm.

Disinformation is deliberately created to mislead, harm, or manipulate a person, social group, organization, or country.

Malinformation is based on fact, but used out of context to mislead, harm, or manipulate.

26. This censorship project places unelected government officials and an out-of-country artificial intelligence censorship company as the arbiters of each of these judgments (e.g., whether a statement is true or false, whether a statement is deliberately created to manipulate, whether a statement causes harm, whether a statement is used out of context).

27. The “harm” mentioned in these definitions is harm to the Secretary of State’s narrative about its purported safe and secure election system. Since the Secretary of State proclaims that she reports “solely to the people of Oregon,” a project to protect *her narrative* from its own citizen’s right to free speech is a violation of the public trust.

28. In the scope of work, RFP 7470 states:

The Elections Division is seeking . . . a suite of products to identify, advise, and *methods to combat* harmful MDM information online. This includes:

- media monitoring and *threat detection* services to offer a comprehensive view of the landscape;
- Providing *early notification systems* to identify MDM and *target MDM activity*; and
- Guidance on effective measures to ensure the most effective possible promotion of accurate information.⁵

29. The RFP further provides:

The Elections Division is seeking a vendor to help provide a suite of products to identify and *disarm* harmful, MDM information online. The Elections Division is seeking media monitoring and threat detection services to offer a comprehensive view of the media landscape, early

⁵ Exhibit A p. 7 (emphasis added.)

warning systems to *identify* MDM and *target* MDM activity and allow access to effective *countermeasures*.⁶

30. In an MDM Solution Pre-Proposal Conference, Nikki Fisher, an Elections Division taxpayer-funded employee, gave a chilling description of what the Elections Division was planning. She said that the Elections Division was looking for an early warning system to identify MDM and identification of effective countermeasures. Fisher further states the Elections Division's plan to share information with the relevant partners such as the FBI, Oregon State Police, National Guard, Oregon TITAN Fusion Center (a crimes clearing house aimed at terrorist activity), National Guard, CISA, and the US Attorneys' Office.

31. RFP 7470 refers to Plaintiffs' fundamental right to free speech with war-like rhetoric and a bunker mentality. Thus, not only are Oregon taxpayers being forced to fund this surveillance and censorship project without their consent, they are being characterized with war-like rhetoric for exercising their fundamental right to free speech.

32. Plaintiffs are each educated, deeply researched, vocal critics of Oregon's election system. Several plaintiffs are also plaintiffs in *Thielman v. Fagan*, challenging the constitutionality of Oregon's election system, now on appeal in the 9th Circuit. Senators Linthicum and Thatcher represent citizens who would be targeted by this censorship project. Kropf and Anderson are professional communicators of free speech. RFP 7470 specifically targets radio and podcasts such as those broadcast by Kropf and

⁶ Exhibit B p. 1.

Anderson.⁷ Riley and Buehler are political party leaders. Dysinger and Powers are leaders in their political party's election integrity efforts. Due to their prominence, Plaintiffs will each be targeted for exercising their First Amendment right to free speech by Defendants with their new artificial intelligence platform.

33. Plaintiff Janice Dysinger has prior experience with Oregon's antagonism towards criticism of its election system. Former Oregon Elections Director, Deborah Scroggin, once telephoned Dysinger ordering her not to speak about elections in public anymore. Imagine the mindset of a government employee telling a citizen that they do not have the right to speak. Having not been successful in silencing Dysinger with a phone call, Oregon now endeavors to employ artificial intelligence tools to "target," "combat," and "disarm" Dysinger, Plaintiffs, and other critics with "countermeasures."

34. Defendants' actions also serve to interfere with the upcoming elections. Candidates who speak about election issues can be "targeted" and "disarmed." Suppression of free speech will prevent the wider public from hearing contrary points of view thereby skewing their opinions and their votes. The express intent of the Oregon Secretary of State is to target, combat, disarm the free speech of its critics with countermeasures which include the possibility of referring a Plaintiff to law enforcement authorities.

35. It is Oregon's sacred duty to protect the right of free speech and that includes, especially, speech with which the State disagrees and is critical of the State. The

⁷ Exhibit 2 p. 2.

State is prohibited from stigmatizing those with whom it disagrees with a “yellow star” of “disinformation.”

36. At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.

37. It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas from which the truth will ultimately prevail. Truth is obtained thorough the free exchange of ideas—not by the suppression of ideas that are contrary to the government narrative. Freedom of speech is an indispensable condition of nearly every other form of freedom.

38. Plaintiffs’ speech may not be surveilled, targeted, or suppressed by government—not in the United States of America. Plaintiffs have the right to speak and listen freely without government interference. Oregon is not permitted to interfere whatsoever in Plaintiffs’ speech.

DEMAND FOR JURY TRIAL

39. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs respectfully demand a jury trial of all issues triable to a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- A. A declaration that Oregon is violating Plaintiffs' free speech rights;
- B. A preliminary and permanent injunction against Defendants;
- C. A judgment of damages against Defendants;
- D. A judgment of punitive damages against Defendants;
- E. Attorney's fees pursuant to 42 U.S.C. § 1983; and
- F. Such other and further relief that the Court deems just.

Respectfully submitted,

Dated: November 7, 2023

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