

MALHEUR ENTERPRISE

The Voice of Malheur County

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WRITTEN TESTIMONY

Les Zaitz, publisher, Malheur Enterprise

HOUSE BILL 3399

Oregon House Committee on Judiciary

For readers of the Malheur Enterprise, we wanted to answer an important question: How was a man found guilty except for insanity freed by the state into the community to then be accused of two vicious murders. Our pursuit of the truth resulted in a startling development that a state agency ordered to disclose records instead sued the Enterprise to block its access to those records.

Let me set the stage for you.

The Malheur Enterprise is a 100-year-old, family owned weekly newspaper serving the most impoverished county in Oregon. We are one of the smallest newspapers in the state. We make payroll, and pay our light bills. We rely on a 73-year-old retiree to deliver our papers to stores each week.

Behind the state's lawsuit was one of the most powerful law firms in Oregon, putting \$400-an-hour lawyers to work on behalf of the state against us.

So, a little newspaper with no attorney suddenly found itself faced with the deep pockets of the state. Even if we had given up and let the state keep its secret, we faced the prospect of paying the state's legal costs because it sought an award for those as part of its lawsuit against the Enterprise.

We didn't surrender, and Gov. Kate Brown spared us uncertain financial pounding by directing the lawsuit be dropped. She thought it was outrageous that the requester of public records could be hauled into court by the government that wants to keep its secret.

I have been a journalist in Oregon for more than 45 years, and have used the Oregon Public Records Law extensively and at all levels of government. I have the benefits of decades of experience facing the range of government responses to records requests, from cheerful openness to defiant secrecy. Nothing is as stunning to me as a government agency fighting a lawful order that it disclose public records by using taxpayer money to sue.

House Bill 3399 would protect those seeking government information from the potent and deep pocketed force of government. Otherwise, the possibility of legal costs will chill pursuit of the truth, is a price too high for open government.

I support House Bill 3399 also because it stages the right combatants for any legal fight over disclosure. The proposal would require a government agency to sue the author of a public disclosure order, either district attorneys or the Oregon attorney general. Requesters don't participate in writing those orders, don't choose the factors justifying disclosure, and don't pick the legal precedents supporting disclosure. Under the current law, requesters face the legal cost of defending an order they did not write.

The Malheur Enterprise was fortunate to have the governor step in. That is all that spared us potentially enormous legal fees for a fight we did not seek. Government agencies should not have the ability to use the power of their pockets full of public money to suppress disclosure of records the citizens deserve to see.

Respectfully,

Les Zaitz, editor and publisher
Malheur Enterprise