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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF WASHINGTON

6 BEAVERTON GRACE BIBLE CHURCH,  
7 an Oregon non-profit organization; and  
8 CHARLES O'NEAL, an individual,

9 Plaintiffs,

10 v.

11 JULIE ANNE SMITH, HANNAH SMITH,  
12 KATHY STEPHENS, JASON  
13 STEPHENS, and MEAGHAN VARELA,  
14 individuals;

15 Defendants.

No. C121174CV

PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO SPECIAL  
MOTION TO STRIKE

16 INTRODUCTION

17 Plaintiffs submit the following memorandum of opposition to both of the pending  
18 special motions to strike the complaints. It should be noted that the amended complaint  
19 which added additional specifications of defamation against Julie Anne Smith addressing  
20 postings which were published after the original complaint was served upon her, and also  
21 added Meaghan Varela as a new defendant, has not yet been served upon Ms. Varela.

22 It appears to be appropriate to address both motions in a single memorandum  
23 because both motions raise the same legal arguments only in different sequences. It  
24 should also be noted that only the Smith defendants have asserted that their publications  
25 are protected by the Oregon Constitution as well as the federal constitution while the  
26 Stephens rely solely upon the federal constitution for their church autonomy argument.

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1 As we perceive it, the first question to be answered should be whether the  
2 published statements and accusations are protected by the First Amendment to the U.S.  
3 Constitution (separation of church and state and freedom of speech) referred to by Mr.  
4 Grey as the "church autonomy doctrine." If the answer to this question is "yes" the case  
5 goes no further. If the answer is no, the court must determine whether the complaints were  
6 filed as a SLAPP (Strategic Lawsuit Against Public Participation) and the publications are  
7 subject to ORS 31.150(2) (c). If they are subject publications, which plaintiffs deny, the  
8 burden of persuasion shifts to plaintiffs to persuade the court that there is a probability that  
9 plaintiffs will prevail on the merits.

10 **KATHY STEPHENS / STATUTE OF LIMITATIONS**

11 Kathy Stephens asserts that the claims against her should be dismissed arguing  
12 that the one-year statute of limitations for actions for defamation expired before this action  
13 was filed. While plaintiffs concede that the applicable statute of limitations is one year, we  
14 ask the court to note the allegations in the complaint against Ms. Stephens. The complaint  
15 alleges that each of the defamatory statements published by Kathy Stephens continues to  
16 exist on the internet up to the present, being "still published."

17 Plaintiffs assert that this constitutes republication or continuing publication of the  
18 allegations. Kathy Stephens reasonably foresaw that her statements would remain on the  
19 internet indefinitely and be accessible by the public throughout their existence. The fact  
20 that they continue to exist on the internet constitutes the same thing as republishing or  
21 continuing publication. Oregon law holds that the original publisher is liable for  
22 republication whenever the possibility of republication is reasonably foreseeable. [*Wheeler*  
23 *v. Green*, 286 Or. 99; 593 P.2d 777 (1979); *Kraemer v. Harding*, 159 Or.App 90, 976  
24 P.2d 1160 (1999)] The court's conclusion denotes a policy supporting plaintiffs' position.  
25 Posting comments on the internet is tantamount to republishing them every day.

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1 **CHURCH AUTONOMY**

2 In order to constitute protected speech based upon the doctrine of separation of  
3 church and state (church autonomy) defendants have to convince the court that the  
4 publications are “rooted in religious belief” [*Wisconsin v. Yoder*, 406 US 205 (1972)] or  
5 else conclude that they involve church discipline; faith; internal organization; or  
6 ecclesiastical rule, custom or law. [*Bryce v. Episcopal Church in the Diocese of*  
7 *Colorado*, 289 F3d 648 (10<sup>th</sup> Cir. 2002).] Do the publications relate solely to religious  
8 beliefs, or behavior of church members in compliance with the teachings of the  
9 denomination or sect of which they are members?

10 We submit that even a cursory reading of the allegations of defamation  
11 demonstrates that the publications complained of here go far beyond what constitute  
12 protected expressions of religious belief or comments upon religious or church matters.

13 Specific Allegations of Defamation

14 Plaintiffs have been accused of “cherry-picking” defendants’ statements as set forth  
15 in the complaint, allegedly to create the impression that plaintiffs are trying to either avoid  
16 or hide the total context of the publications. ORCP 18A requires that a plaintiff plead “A  
17 plain and concise statement of the ultimate facts constituting a claim for relief without  
18 unnecessary repetition.” If we had attempted to reproduce the totality of each publication  
19 which contains defamatory allegations, the complaint in this action would have consumed  
20 hundreds of pages. It was simply not possible to do so and still comply with Oregon rules  
21 on pleading and practice.

22 The following is an examination of each individual specification of defamation as  
23 they appear in Paragraph 10 of plaintiff’s amended complaint.

24 a) The comment that pastor Charles O’Neal destroys relationships does not relate to  
25 church teachings or doctrine, but rather to personal behavior and predilections of  
26 the pastor. Calling him a “narcissist” arises from the same personal vendetta, which  
has nothing to do with the church itself.

- 1 d) Julie Anne Smith accuses Pastor O'Neal of lying and being a "wolf" for lying. These  
2 comments definitely have nothing to do with church teaching or doctrine. They  
3 relate to comments made to the congregation relative to Julie Anne Smith's  
4 reasons for leaving the church and accuse the pastor of vilifying her by  
5 misrepresenting her motivation for leaving.
- 6 e) See d) above.
- 7 f) See d) above.
- 8 g) Julie Anne Smith falsely accuses the pastor and the elders of turning "a blind eye to  
9 known sex offenders in the church." This statement cannot be viewed as anything  
10 other than defamatory.
- 11 i) Here, Julie Anne Smith expands upon her prior allegation about a sex offender in  
12 the church, stating that the alleged sex offender had access to the nursery and  
13 children on a weekly basis without any safeguards. This statement is false, as  
14 demonstrated by the declaration of Charles O'Neal as well as that of the mother of  
15 the alleged sex offender. It constitutes one of the worst things that can be published  
16 about a church pastor.
- 17 j) Julie Anne Smith republishes messages about a sex offender being free to mingle  
18 with the children in the church.
- 19 k) Another expansion of the allegations about the sex offender, alleging that he had  
20 "free reign in children's areas" with no control. "This is not a safe place" does not  
21 relate to church teaching or doctrine, but rather to the risk of children being sexually  
22 assaulted by a sex offender.
- 23 l) Stating that people have "suffered at the hands of the pastor" goes far beyond  
24 commenting upon church doctrine or teachings.
- 25 n) Julie Anne Smith restates her allegation that Charles O'Neal lied about the reasons  
26 that she left the church. Calling a church pastor a liar is not a comment upon  
religious doctrine or church teachings.

- 1 o) Julie Anne Smith accuses Charles O'Neal of abusing her. This is clearly not an  
2 opinion and has nothing to do with church teaching or doctrine.
- 3 q) How does an accusation that Charles O'Neal is interfering in your life relate to  
4 church teachings or doctrine?
- 5 t) Hanna Smith's allegation was published immediately following her mother's  
6 publication about a known sex offender having free reign at the church. Taken in its  
7 full context, it is clear that Hanna Smith intended that her comments support and  
8 reaffirm her mother's allegations about sex offenders in the church. It is obvious that  
9 "dangerous activities" relates to the sex offender allegation. Also stating that the  
10 pastor bullies people does not relate to church doctrine or teachings.
- 11 u) Kathy Stephens is calling Charles O'Neal a "wolf." Only a small percentage of  
12 people searching the internet would infer that this is a biblical reference as  
13 defendants allege. In light of defendant's claim that these comments relate to a  
14 matter of public interest, the perception of the public at large has to be taken into  
15 consideration. The large majority of people who read this comment are going to  
16 view it as defamatory.
- 17 v) See u) above.
- 18 w) Kathy Stephens' comment that Beaverton Grace Bible Church is a "hell whole" (*sic*)  
19 does not represent fair comment about church teaching or doctrine.
- 20 x) Meaghan Varela's comments about what happened at her house are demonstrably  
21 false. Allegations that there was a mob "yelling reviling remarks" with "hatred in  
22 their faces" and alleging that she was being blindly persecuted has nothing to do  
23 with church teachings or doctrine. These are definitely not statements of personal  
24 belief or opinion.
- 25 y) Meaghan Varela's comment that she was being harassed by church members  
26 does not represent commentary about church teachings or doctrine.

1 z) Meaghan Varela's allegation that her children were abused during their attendance  
2 at Beaverton Grace Bible Church does not relate to church teaching or doctrine.

3 **ORS 31.150**

4 Defendants have attempted to employ Oregon's Anti-SLAPP statute as a vehicle  
5 for avoiding the consequences fo their defamatory publications. It should also be noted  
6 here that the facts of this case do not reflect or relate to the legislature's purposes in  
7 enacting this legislation. The actual words that are reflected by the acronym denote the  
8 objective. They are Anti-Strategic Lawsuit Against Public Participation. The statute was  
9 intended to deal with situations where plaintiffs filed lawsuits against publishers of  
10 derogatory comments the objective of which was to scare the publishers into submission  
11 and/or retraction even if the comments constituted protected speech on matters of public  
12 interest.

13 ORS 31.150 (2) provides:

14 (2) A special motion to strike may be made under this  
15 section against any claim in a civil action that arises out of:

16 (a) Any oral statement made, or written statement or other  
17 document submitted, in a legislative, executive or judicial  
18 proceeding or other proceeding authorized by law;

19 (b) Any oral statement made, or written statement or other  
20 document submitted, in connection with an issue under  
21 consideration or review by a legislative, executive or judicial  
22 body or other proceeding authorized by law;

23 (c) Any oral statement made, or written statement or other  
24 document presented, in a place open to the public or a public  
25 forum in connection with an issue of public interest; or  
26

1 (d) Any other conduct in furtherance of the exercise fo the  
2 constitutional right of petition or the constitutional right of free  
3 speech in connection with a public issue or an issue of public  
4 interest.

5 The only question before the court is whether the allegations in paragraph 10 of the  
6 complaint can be viewed as comments on "an issue of public interest." Defendants have  
7 essentially conceded that subsection (2)(c) of ORS 31.150 is the only provision of the  
8 statute that arguably applies here. So, do defendants' publications relate to an issue of  
9 public interest? Does a small church in Beaverton, Oregon, command or attract the  
10 interest of a substantial portion of the public on a nation-wide or world-wide basis?

11 It is more than interesting to note defendants' attempt to place this little church on  
12 the world stage by referring to alleged origins in Germany and asserting alleged  
13 connections to other churches world-wide and nation-wide in a futile effort to ascribe wide-  
14 spread interest in its activities and those of its members and former members.  
15 Defendants have produced no evidence to support their position only statistics and  
16 historical facts. There is no evidence from which the court can conclude that anyone  
17 outside of the congregants at Beaverton Grace Bible Church, the former congregants and  
18 future potential congregants have any interest in what is occurring here. This does not  
19 make it a matter of "public interest." It has to be noted that "newsworthy" and "public  
20 interest" are not synonymous. Many occurrences are newsworthy which do not involve  
21 matters or issues of public interest.

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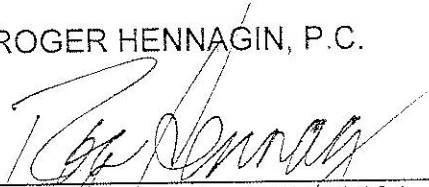
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1 Defendants have not produced any admissible evidence to demonstrate that there  
2 was an actual sex offender attending Beaverton Grace Bible Church. The allegation that  
3 this individual had access to the nursery does not support the substance of the allegation.  
4 It is a non-sequitur. The publication states that Chuck O'Neal "allowed" a known sex  
5 offender to have access to the church's nursery. The declaration of Dawn Haggerty  
6 demonstrates that this allegation is false. Thus, it is clear that there is a probability that  
7 plaintiff's will prevail on their claims.

8  
9 DATED this 14<sup>TH</sup> day of May, 2012.

10  
11 ROGER HENNAGIN, P.C.

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15 Roger Hennagin, OSB 73134  
16 Attorney for Plaintiffs  
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17 Defendants.

No. C121174CV

DECLARATION OF DAWN  
HAGGERTY

18 I, Dawn Haggerty, declare as follows:

- 19 1. I am a competent adult over the age of 18.
- 20 2. Unless otherwise indicated, all statements contained in this declaration are based  
21 upon my personal, first-hand knowledge.
- 22 3. My son, Kevin Haggerty, was diagnosed with a constitutional growth delay at age 6.  
23 At age 15, when the behavior took place, he weighed only 80-85 pounds and was a  
24 little over five feet tall. My husband, Matt, and I have attempted to determine the  
25 cause of Kevin's condition but nobody in the medical or psychological professions  
26 has been able to help.
1. Kevin is very behind in what is considered normal development. He is very  
immature both intellectually and emotionally. He has always been extremely slow in  
understanding and comprehending abstract thoughts.

1 - DECLARATION OF DAWN HAGGERTY

- 1 5. Many people, both professional and laymen, have told Matt and me that speaking to  
2 Kevin is like speaking to a child 8 to 10 years of age.
- 3 6. As an adolescent Kevin enjoyed playing with Hot Wheels and Legos and enjoyed  
4 watching cartoons, things usually only entertaining to very young children.
- 5 7. Schooling Kevin was extremely difficult so Matt and I placed him in a "Private  
6 Development Plan" through the homeschoolers assistance program.
- 7 8. On a Saturday in April of 2008, our family returned home from a conference in  
8 Washington state. The evening of our return, as I was getting our daughter ready for  
9 bed, she told me that Kevin had touched her inappropriately.
- 10 9. Matt and I took immediate measures and isolated Kevin from our other children.
- 11 10. The next day at church, Matt met with Elder Dave Loynes and Pastor Charles  
12 O'Neal to explain to them our situation with Kevin.
- 13 11. The following evening, which was a Monday, Pastor Charles O'Neal, Elder Dave  
14 Loynes and Elder Dale Weaver came to our home to discuss the situation. They  
15 helped Matt and I come up with a safety plan for our home and while Kevin was at  
16 church with us.
- 17 12. The Elders and Pastor O'Neal made it very clear that, while they were willing to  
18 support our decision to keep Kevin at home, if they ever believed that we were not  
19 being diligent in the safety plan, they would report Kevin to the State.
- 20 13. Under our plan I kept a daily journal of all of Kevin's activities from the time he woke  
21 up in the morning until he went to bed at night.
- 22 14. Matt and I had doors installed in our family room that closed it off from the rest of the  
23 house. The doors were equipped with an alarm system that could not be tampered  
24 with from inside the room. These precautions insured that Kevin could not leave the  
25 family room without our knowledge.

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2 - DECLARATION OF DAWN HAGGERTY

- 1 15. After that Kevin was never left alone with our children or any other children.
- 2 16. While Kevin was at church he stayed with Matt or myself at all times. If Kevin had to  
3 use the restroom Matt went with him.
- 4 17. A strict rule was imposed that, under no circumstances, was Kevin ever allowed in  
5 the nursery or the annex at church. Kevin never entered these areas.
- 6 18. At no time did Kevin ever attempt to bend or stretch any of these rules.
- 7 19. In early November 2008, Meaghan Varela offered to watch our children and pay for  
8 a hair appointment for me at Aveda Institute Salon as a gift. Kevin was at work with  
9 Matt, which had been our routine since April.
- 10 20. My daughter later informed me that while I was at the hair appointment Ms. Varela  
11 questioned her as to why Kevin was not at home. My daughter told her that Kevin  
12 had touched her inappropriately.
- 13 21. Ms. Varela called me later that day and told me what my daughter had said. I  
14 explained to Ms. Varela that Matt and I have been handling the situation for several  
15 months and we had a safety plan in place.
- 16 22. During the phone conversation Ms. Varela told me that she had turned people in to  
17 the child protective services in the past. I assured her that we had taken care of the  
18 situation. At the end of the conversation she stated that she was satisfied with our  
19 careful measures to ensure the safety of our children and the safety of the children  
20 at the church.
- 21 23. Ms. Varela never came to Matt or myself with concerns about Kevin again.
- 22 24. Later in November, 2008, Ms. Varela came over to our house to give me a gift and  
23 then began talking about Pastor O'Neal and his son. Ms. Varela was babysitting for  
24 Pastor's O'Neal's children while he was in Texas with his wife for a funeral.
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3 - DECLARATION OF DAWN HAGGERTY

1 25. Ms. Varela was very angry with Pastor O'Neal and other people at Beaverton Grace  
2 Bible Church. Ms. Varela tried to convince me to leave the church and go to the  
3 new church that her and her husband were attending.

4 26. During this visit Ms. Varela did not express any concern for the safety of our children  
5 or the children at the church or our handling of the situation with Kevin.

6 27. On December 26, 2008, Ms. Varala called the Department of Human Services,  
7 Child Protective Services, concerned about my children. She informed them she  
8 believed there was sexual abuse going on.

9 28. Two DHS workers and two police officers came to our home. We let them in and  
10 cooperated with their questioning. They would not tell us who had made the call, but  
11 when we asked if it was Ms. Varela, they confirmed that it was her.

12 29. We explained to the DHS workers and to the police officers the situation with Kevin  
13 and showed them all of the safety precautions that we had in place. They spoke to  
14 our other children and commended us on our actions. Kevin had to leave our home  
15 that night but was not arrested nor were any charges brought against him.

16 30. Kevin stayed with relatives until mid April, 2009. At that time he was allowed back  
17 into our home by DHS Child Protective Services.

18 31. One week later police officers came to our home and arrested Kevin for charges of  
19 sexual abuse against his siblings.

20 32. Kevin was taken to the Oregon Youth Corrections Facility and later moved to the  
21 Department of Corrections in Washington County.

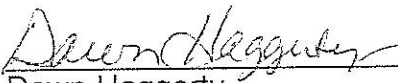
22 33. On July 21, 2009, Kevin was charged and sentenced. Kevin is serving his time at  
23 the Tillamook Youth Correctional Facility. Kevin is now an adult but will finish his  
24 sentence at the Youth Correctional Facility because of his developmental  
25 impairments.

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1 34. I am aware that Meaghan Varela, Julie Anne Smith and other prior members of the  
2 Beaverton Grace Bible Church are using our family situation in an attempt to  
3 damage the reputation of the Beaverton Grace Bible Church and Pastor Charles  
4 O'Neal.

5  
6 I hereby declare that the above statements are true to the best of my  
7 knowledge and belief, and that I understand they are made for use as evidence in  
8 court and are subject to penalty for perjury.

9  
10 DATED this 14<sup>th</sup> day of May, 2012.

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13 Dawn Haggerty

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