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OP-ED: Consider the power of TROs and preliminary injunctions

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Litigating a dispute in court can oftentimes be time-consuming. Depending on the matter, it is not uncommon for a case brought in state or federal court to last for months, or even years. However, there are certain times, either before or during a case, when a party needs immediate judicial action before a final resolution is reached.

For these unique situations, both state and federal court procedural rules allow parties to pursue temporary restraining orders (TROs) and preliminary injunctions. In a nutshell, a TRO or preliminary injunction is a court order that preserves a status quo. One can either prohibit a party from taking certain actions, or force a party to take an action, or continue a certain action, prior to the final resolution of a case.

TROs and preliminary injunctions can be sought in a wide variety of disputes. For example, they can be sought by employers to prevent a departing employee from stealing clients or sensitive competitive information in violation of a non-compete agreement. They can be sought by property owners seeking to stop imminent development that could interfere with their own land use or seeking to stop a foreclosure sale. In fact, the use of TROs and preliminary injunctions goes beyond business disputes. They can be used in disputes concerning civil rights, constitutional rights, and the power of governmental entities.

Indeed, over the past year and a half, TROs and preliminary injunctions have been granted in the following legal disputes that made headlines:

- TikTok obtained a preliminary injunction against the former Trump administration's order banning the viral video app on U.S. app stores;
- a Texas state judge granted a TRO prohibiting an anti-abortion group from filing lawsuits regarding a new Texas abortion law; and
- health care workers in New York obtained a preliminary injunction seeking religious exemptions for vaccinations.

While the scope of disputes in which TROs and preliminary injunctions can be pursued is broad, caution is advised when deciding whether to pursue them. In Oregon state and federal court, a party seeking a TRO or preliminary injunction is required to meet a high proof threshold. Pursuit of a TRO or preliminary injunction requires a lot of time. Even then, the decision to issue a TRO or preliminary injunction ultimately rests in the sole discretion of the judge deciding the case.

The rules regarding TROs and preliminary injunctions are incredibly technical and do not lend themselves to an easy summarization. On a big-picture level, however, a TRO can be considered the shorter-term option of these two, while a preliminary injunction can be considered the longer-term option.

A TRO is an emergency order with limited duration. A TRO does not require the court to hold a full evidentiary hearing in order to grant it. Instead, a TRO may be obtained when the party seeking it presents an application and supporting documents to the court, and the court determines that legal requirements are met and the TRO is warranted under the circumstances. The law even allows a TRO to be obtained without notice to the other party under very specific, limited circumstances. However, a TRO lasts for only 10 days in Oregon state court and 14 days in federal court, unless extended for good cause by the court or by agreement of the adverse party.

A preliminary injunction may last until the final determination of a case. Unlike a party seeking a TRO, a party seeking a preliminary injunction must give notice to the other side, and a preliminary injunction may be granted only after a full evidentiary hearing. In both Oregon state court and federal court, a defining characteristic of these hearings is that the burden of proof imposed by the law is high. In Oregon state court, a preliminary injunction is considered an extraordinary remedy that is granted only upon clear and convincing proof of the legal requirements. In federal courts in the Ninth Circuit (in which Oregon federal court sits), a party is required to prove, among other things, a "likelihood of success on the merits" of the underlying case. The end result is that preliminary injunction hearings often end up being "mini-trials" in which the parties seek to prove or disprove the entire case.



In summary, TROs and preliminary injunctions are extraordinary avenues available to parties seeking to preserve a status quo. TROs can be considered a short-term tool; they can be sought by submitting an application and supporting documentation to a court, but have limited duration. Preliminary injunctions can be considered a longer-term tool; they can last until the end of the case, but require a full hearing and often become “mini-trials.” If a party can meet the stringent requirements for TROs and preliminary injunctions set out by law, these tools can potentially provide significant relief.

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