

13-2-10152-7 40755947 ORPLINJ 06-25-13

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

FILED
DEPT. 2
IN OPEN COURT
JUN 21 2013
Pierce County Clerk
By *[Signature]*
DEPUTY

INSTITUTE FOR JUSTICE, et al.,
Plaintiffs,
v.

No. 13-2-10152-7

STATE OF WASHINGTON, et al.,
Defendants.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

This matter having come on regularly for hearing on the 21st day of June, 2013, on
Plaintiffs' INSTITUTE FOR JUSTICE (IJ), ROBIN FARRIS ("FARRIS"), RECALL
DALE WASHAM (RDW), and OLDFIELD & HELSDON, PLLC ("Oldfield & Helsdon")
(and, together, "Plaintiffs") Motion for Preliminary Injunction; and Plaintiffs having
appeared through their counsel, WILLIAM R. MAURER; the Defendants, STATE OF
WASHINGTON, WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION,
AMIT RANADE, BARRY SEHLIN, GRANT DEGGINGER, KATHY TURNER, and
ANDREA McNAMARA DOYLE (together, the "PDC"), having appeared through their
counsel, ROBERT W. FERGUSON, Attorney General, LINDA DALTON, Senior Assistant
Attorney General, and CALLIE A. CASTILLO, Assistant Attorney General; and the Court

Order Granting
Plaintiffs' Motion for Preliminary Injunction - 1

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1 having considered Plaintiffs' Motion for a Preliminary Injunction and Memorandum in
2 Support Thereof, the Complaint, and other pertinent documents; and the Court having heard
3 oral argument;

4 NOW, THEREFORE, the Court makes the following Findings of Fact and
5 Conclusions of Law and enters the following order.
6

7 Contingent upon discovery either side can ask to revisit these items as the process
8 unfolds.

9 FINDINGS OF FACT

- 10 1. IJ is a politically non-partisan, public interest law firm that represents clients free of
11 charge to defend constitutional rights, including the rights of free speech and free
12 association.
13
- 14 2. IJ is a charitable organization as described in 26 U.S.C. § 501(c)(3) and exempt from
15 federal taxation under 26 U.S.C. § 501(a).
16
- 17 3. IJ is registered as a nonprofit corporation and charitable organization in Washington
18 state.
19
- 20 4. Under federal and state law, IJ may not engage in partisan politics, may not support
21 or oppose a candidate for elective office, and may not expend a substantial part of its
22 resources influencing or attempting to influence legislation either through lobbying
23 or participating in ballot measure campaigns.
24
- 25 5. IJ wishes to continue to bring cases in Washington to vindicate First Amendment
26 rights.
27
- 28 6. IJ represents RDW in a constitutional challenge to a Washington campaign finance
law, RCW § 42.17A.405(3), in federal court (the "Recall Cap Case").

- 1 7. RDW is a political committee as defined in RCW § 42.17A.020(39) organized to
- 2 place the question of whether then-Pierce County Assessor-Treasurer Dale Washam
- 3 should be recalled from office on the ballot.
- 4
- 5 8. Farris created RDW and acts as its Chair.
- 6
- 7 9. Farris is plaintiff in the Recall Cap Case and IJ currently represents her.
- 8
- 9 10. RDW registered with the PDC and submits reports to the PDC.
- 10
- 11 11. Another plaintiff in the Recall Cap Case is Oldfield & Helsdon, a Washington
- 12 professional limited liability company and IJ currently represents it.
- 13
- 14 12. Oldfield & Helsdon provided pro bono legal assistance to RDW and Robin Farris in
- 15 the sufficiency hearing required of all recall campaigns under Washington law and
- 16 subsequently, the Washam's appeal to the Washington State Supreme Court.
- 17
- 18 13. Defendants in the Recall Cap Case were and are members and executive director of
- 19 the PDC.
- 20
- 21 14. The Recall Cap Case began during RDW's efforts to recall Washam in June 2011
- 22 and remains ongoing.
- 23
- 24 15. IJ represents its clients in the Recall Cap Case free of charge.
- 25
- 26 16. The complaint in the Recall Cap Case specifically stated, "Plaintiffs bring this civil
- 27 rights lawsuit under the First and Fourteenth Amendments to the U.S. Constitution
- 28 [and] the Civil Rights Act of 1871, 42. U.S.C. § 1983 . . ." and the complaint sought
- attorneys' fees pursuant to 42 U.S.C. § 1988.
- 17. Without pro bono representation, Farris could not have afforded to challenge the
- limit on recall contributions.

- 1 18. IJ's purpose in representing its clients in the Recall Cap Case is to vindicate First
2 Amendment rights and to establish precedent to prevent future violations of the First
3 Amendment.
4
- 5 19. While IJ is the lead counsel in the Recall Cap Case, Oldfield & Helsdon has
6 provided some assistance to this effort and RDW has not reported this assistance as a
7 contribution.
8
- 9 20. On February 7, 2013, the PDC's executive director, Defendant Doyle, sent a letter to
10 RDW and its officers regarding RDW's reports to the PDC.
11
- 12 21. In that letter, Doyle stated, "A review of our database of the committee's filings does
13 not show any reporting of contributed legal services or expenditures made on the
14 committee's behalf by the Institute for Justice, or reporting of any services or
15 expenditures by the Oldfield and Helsdon law firm for the committee since June 10."
16
- 17 22. From May 2011 to present, RDW has not reported IJ's services as a contribution.
18
- 19 23. On March 20, 2013, the PDC's executive director filed a "staff generated complaint"
20 against RDW.
21
- 22 24. The complaint alleged, among other things, that RDW "failed to disclose over
23 \$307,000 in contribution and expenditure activity connected with legal services
24 rendered to the political committee."
25
- 26 25. On April 3, 2013, RDW through counsel, replied to the staff-generated complaint
27 and stated that requiring it to report pro bono legal assistance provided pursuant
28 federal civil rights laws violated the First and Fourteenth Amendments and was
preempted by federal law.

- 1 26. The PDC has also taken the position that state law requires such services are
2 reportable in-kind contributions in pleadings before the federal court.
- 3 27. The PDC has also stated that “legal services provided to registered political
4 committees are disclosable under Washington law, either as expenses or as in-kind
5 contributions where they are provided on a *pro bono* basis,” and that the recall
6 proponents had failed to “demonstrate that they have a right to refuse to comply with
7 political committee disclosure requirements to report the value of legal services
8 received from, and expenditures made by, the Institute [for Justice]. . . .”
- 9 28. The PDC’s view that state law requires disclosure could sharply limit IJ’s ability to
10 represent political committees as clients in First Amendment cases in Washington
11 state.
- 12 29. The PDC’s position, based on their interpretation of the law, threatens IJ’s ability to
13 represent its clients and its overall mission.
- 14 30. Compelling IJ’s clients to report a “contribution” from IJ could associate IJ with a
15 political position it does not hold and convey false information to the public, IJ’s
16 allies and opponents, and its donors and potential donors.
- 17 31. Oldfield and Helsdon have more limited resources and cannot provide pro bono
18 services in either this case or the Ninth Circuit appeal.
- 19 32. Without an injunction, IJ and Oldfield & Helsdon will be effectively prohibited from
20 providing pro bono civil rights representation to a variety of political campaigns in
21 Washington because such representation would exceed any applicable contribution
22 limit.
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1 33. Without an injunction, any state agency can be held unaccountable for violating the
2 civil rights of campaigns that cannot afford to hire a lawyer.

3 **CONCLUSIONS OF LAW**

- 4 1. Plaintiffs have demonstrated a likelihood of prevailing under federal law.
5
6 2. Plaintiffs have demonstrated a clear legal or equitable right.
7
8 3. Plaintiffs have demonstrated a well-grounded fear of immediate invasion of their
rights by Defendants.
9
10 4. Plaintiffs have demonstrated they are suffering, and will suffer, actual and
substantial injury absent an injunction.
11
12 5. Plaintiffs have demonstrated that no other plain, complete, speedy, and adequate
13 remedy at law exists.

14 **ORDER**

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' motion
16 shall be GRANTED and that the Defendants shall be preliminarily enjoined from taking the
17 following actions until a trial can be had on the merits:

- 18
19 1. Requiring the reporting of any pro bono legal services provided by IJ or Oldfield &
20 Helsdon to RDW for failing to report pursuant to 42 U.S.C. § 1983 as in-kind
21 contributions under Washington law; and
22
23 2. Taking any action whatsoever against RDW or Farris for failing to report pro bono
24 legal services provided by IJ or Oldfield & Helsdon pursuant to 42 U.S.C. § 1983 as
25 in-kind contributions under Washington law.
26
27 3. This Order does not preclude IJ or Oldfield and Helsdon from petitioning the court
on behalf of any future clients with a like position.

4. Either side may move for reconsideration of this injunction as the discovery process continues.

This Order shall remain in effect until further notice of this Court. The Plaintiffs shall post a bond of \$10.00 to pay all damages and costs which may accrue by reason of the injunction, as discovery continues either side may petition court to waive or increase the bond.

Dated this 21st day of June, 2013

THE HONORABLE

Katherine M. Stolz
KATHERINE M. STOLZ

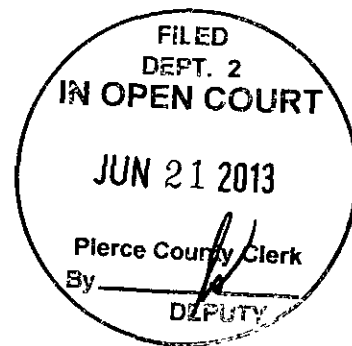
KATHERINE M. STOLZ

Presented By:

INSTITUTE FOR JUSTICE

By:

William R. Maurer
William R. Maurer (WSBA # 25451)
Counsel for Plaintiffs



APPROVED AS TO FORM:

By: *Linda A. Dalton*
Linda A. Dalton (WSBA # 15467)
Counsel for Defendants