

***Family PAC v. Reed, No. C09-5662RBL
(D. Wash. September 1, 2010)
Transcript of Hearing and Decision***

Exhibit 3

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FAMILY PAC,	}	Docket No. C09-5662RBL
Plaintiff,	}	Tacoma, Washington
vs.	}	September 1, 2010
SAM REED, et al.,	}	
Defendant.	}	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:	JOSEPH E. LARUE Bopp Coleson & Bostrom 1 South Sixth Street Terre Haute, IN 47807-3510
For the Defendant:	NANCY J. KRIER Attorney General's Office WA Public Disclosure Commission P.O. Box 40908 Olympia, Washington 98504-0898
	LINDA ANNE DALTON Attorney General's Office P.O. Box 40100 Olympia, Washington 98504-0100
Court Reporter:	Teri Hendrix Union Station Courthouse, Rm 3130 1717 Pacific Avenue Tacoma, Washington 98402 (253) 882-3831

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1 WEDNESDAY, SEPTEMBER 1, 2010 - 10:00 A.M.

2 * * *

3 THE COURT: Please be seated. Good morning.

4 THE CLERK: This is in Cause No. C09-5662RBL, in the
5 matter of Family PAC versus Reed, et al.

6 Counsel, please make their appearances.

7 MR. LARUE: Joe LaRue for the plaintiff, Your Honor.

8 THE COURT: Good morning.

9 MS. KRIER: Nancy Krier for the State defendants.

10 MS. DALTON: Linda Dalton for the State defendants.

11 THE COURT: Good morning.

12 All right, this matter comes before the Court on a motion
13 for summary judgment by the plaintiff. I have reviewed the
14 memoranda in favor of the motion and the memoranda in
15 opposition. I have read a lot of cases spanning the last 20
16 years on the constitutionality of campaign finance laws and
17 the like. So I think we are ready to go.

18 Mr. LaRue, I will hear from you first.

19 MR. LARUE: Thank you, Your Honor.

20 May it please the Court. I would like to reserve
21 ten minutes of my time for rebuttal.

22 THE COURT: I am not keeping time. My aspiration, as
23 Ms. Dalton knows, is that no one leaves here while they still
24 have something to say. The Chief Justice from Georgia -- not
25 state but country -- Supreme Court is in Seattle, and I have

1 strict scrutiny for contribution limits in ballot measure
2 campaigns.

3 THE COURT: What year was that?

4 MS. KRIER: Of course, I didn't bring the cite here.

5 MR. LARUE: I believe it was 2008, I think.

6 THE COURT: I don't know why I think *Citizens United*
7 is a game changer, but I read *Citizens United* as giving a
8 fairly good dissertation on the development of campaign
9 finance law.

10 And the Ninth Circuit may tell me that I am wrong, but I
11 firmly believe that the law that has evolved and as finally
12 enunciated in *Citizens United* stands for the proposition that
13 bans and limits are bad and disclosure is good.

14 And I recognize that there is certainly a disclosure
15 purpose behind the statute, the 21-day period. I recognize
16 the "push the big money out first," kind of issue. But I have
17 also been a citizen long enough to know that last minute
18 attacks, "October surprises" as we refer to them in
19 presidential elections, are commonplace, and that somebody's
20 ability to respond may be, and probably oftentimes is,
21 impacted by this particular ban.

22 MS. KRIER: If I may suggest in response, even if you
23 couch this as a contribution limit for that provision, which
24 again we would dispute, if indeed *Citizens United* had changed
25 the rules of the game, if you will, for all contribution

1 1. RCW 42.17.090, requiring disclosure of names and
2 addresses of contributors giving more than \$25 to a campaign;

3 2. Washington Administrative Code 390-16-034, requiring
4 disclosure of individuals' occupations and names and addresses
5 of employers when they contribute more than \$100; and

6 3. RCW 42.17.105(8), providing a 21-day time period
7 before a general election, during which time no person may
8 make, and no candidate or political committee may accept, any
9 contribution in excess of \$5,000. That's subject to an
10 exception for a bona fide political party, and that issue is
11 not before the Court here.

12 **The level of scrutiny to be applied:**

13 **Laws that burden political speech are subject to strict**
14 **scrutiny for a violation of the First Amendment, which level**
15 **of scrutiny requires the government to prove that the**
16 **restriction furthers a compelling interest and is narrowly**
17 **tailored to achieve that interest. *Citizens United v. Federal***
18 ***Election Commission*, 130 S.Ct. 876, at 898, a 2010-case,**
19 **citing *Federal Election Commission v. Wisconsin Right to Life,***
20 ***Inc.*, 551 U.S. 449, at 464, a 2007 case.**

21 Disclaimer and disclosure requirements may burden the
22 ability to speak, but they "impose no ceiling on
23 campaign-related activities," and "do not prevent anyone from
24 speaking." The Court has subjected these requirements to
25 "exacting scrutiny" which requires a "substantial relation"

1 between the disclosure requirement and a "sufficiently
2 important governmental interest." *Citizens United* at 914,
3 citing *Buckley v. Valeo*, 424 U.S. 1, at 64 and 66, a
4 1976-case, and *McConnell v. Federal Election Commission*, 540
5 U.S. 93, at 201, a 2003 case.

6 Plaintiff argues that exacting scrutiny and strict
7 scrutiny are the same standard when the burden of a statute on
8 First Amendment rights is high, citing *Davis v. Federal*
9 *Election Commission*, 128 S.Ct. 2759, at 2774-75, a 2008-case.
10 It argues that all three subject statutes and regulations
11 place a high burden on the exercise of First Amendment rights.

12 Defendants argue that the subject laws all relate to
13 run-of-the-mill disclosure requirements that should be subject
14 to the less onerous "exacting scrutiny" standard employed by
15 the Supreme Court in *Citizens United*, when dealing with the
16 disclosure and disclaimer requirements imposed by the
17 Bipartisan Campaign Reform Act of 2002.

18 The Court agrees that those disclosure requirements
19 triggered by contributions greater than \$25 and greater than
20 \$100 are evaluated by the less strenuous "exacting scrutiny"
21 standard most recently enunciated in *Citizens United*. The
22 burden on the ability to speak is modest, and they impose no
23 ceiling on campaign-related activities.

24 The Court sees the 21-day/\$5,000 contribution limit
25 differently than either of the parties. The provision

1 represents a ban on political speech that is subject to strict
2 scrutiny. Although related to the desire to disclose useful
3 information to voters, it is more than a disclosure or
4 disclaimer regulation. In order to "push the big money out
5 first" to enable full disclosure to the voting public, the law
6 imposes a ban on large contributions during the key part of an
7 election. In so doing, it suppresses political speech and
8 therefore must be subjected to strict scrutiny.

9 Now, for the application of these standards. Exacting
10 scrutiny, requires a substantial relation between the
11 disclosure requirement and a sufficiently important government
12 interest.

13 What is the government interest advanced by the disclosure
14 statute and the regulation? It is the informational interest
15 satisfied by allowing voters to "follow the money." The
16 ability for voters to know who it is that is trying to
17 influence their vote. That interest is a vital interest to
18 government and the people it serves.

19 Are the subject laws substantially related to that vital
20 interest? Yes, though the limits may seem low to the
21 plaintiff, small contributions when aggregated by
22 organizations of people ("special interests," as we so often
23 refer to them in the political debate; unions, business
24 interests, occupational guilds or associations) they can have
25 a powerful impact on the debate and voters can benefit from

1 information can be provided to voters without a ban on large
2 donations lasting for as long as 21 days prior to the
3 election. The 21 days prior to an election is a time when the
4 political debate is fully joined and the attention of voters
5 is most focused.

6 Banning large contributions for such a long period during
7 this critical time in the debate cannot now reasonably be
8 described as a narrowly tailored solution to the problem
9 government seeks to address.

10 Such a ban may pass constitutional muster if limited to a
11 time more carefully calculated to reflect the current time
12 necessary to gather and organize and disseminate the relevant
13 information about contributions and contributors that the
14 government legitimately seeks to convey.

15 In the opinion of the Court, RCW 42.17.105(8), as applied
16 to referenda, is not narrowly tailored to meet its compelling
17 State interest. It imposes a significant burden on free
18 speech. Because it does not pass strict scrutiny when applied
19 to referenda, it is unconstitutional.

20 Plaintiff's motion for summary judgment as to that statute
21 is granted.

22 Any questions?

23 MR. LARUE: (Shakes head.)

24 MS. KRIER: One question, Your Honor. Would the
25 Court be willing to entertain a stay of this pending the

1 handwritten remarks so that I think I have given the Circuit a
2 reasoned -- be it be reasonable or not -- a reasoned decision
3 that they can evaluate on the merits, and I don't think that
4 the appellate process ought to be delayed while we wait for
5 some written order.

6 Ms. Krier?

7 MS. KRIER: We can talk.

8 If I may, Your Honor, at some point a written order of the
9 summary judgment motion, I think, would be required. I am
10 not --

11 THE COURT: I think the transcript has sufficed in
12 years past.

13 MS. KRIER: Has it? Thank you.

14 THE COURT: Okay, anything further?

15 Court will be in recess.

16 MR. LARUE: Thank you, Your Honor.

17 (Proceedings concluded.)

18 * * * * *

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above-entitled matter.

22 /S/ Teri Hendrix

September 1, 2010

23 Teri Hendrix, Court Reporter

Date

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