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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In Re the)
A.M. and Other John and Jane Does) No. 09-2 21376 3 SEA
Plaintiffs,)
V.) Irvin's Amended Response to
City of Seattle) Temporary Restraining Order
Defendants.)

Philip Irvin (Irvin) made a public disclosure request and Plaintiffs obtained a Temporary Restraining Order blocking the release of the requested information. While Irvin is supportive of the legal analysis and conclusions of Defendant City of Seattle (and will not duplicate them here) he believes that additional issues and analysis is useful to reinforce this conclusion. Additionally he believes that certain assertions made by the parties are incorrect or deficient and need to be corrected.

Statement of Facts and Issues

1 **The Public Disclosure Request contains nothing that should not**
2 **be disclosed.**

3
4 1. Irvin is the author of Public Disclosure Request # 1579
5 which requested, among other things from the SPU Lesbian, Gay,
6 Bisexual, Transgender, Questioning & Friends Group (the "gay
7 group"):

8 (a) Names of those in leadership, their position and the
9 departments each works for.

10 (b) Names of members and the departments they work for.

11 (c) The names of meeting attendees (those who attended any
12 of the last three meetings) who are not members.

13 (d) Sign in sheets/minutes/agenda/list of attendees for the
14 last three meetings

15 (e) E-mail list of names of members or attendees by any
16 leader who sends out meeting notices

17 Except for these items all other items contained in the
18 disclosure request have been provided to Irvin.

19 2. The information requested is not private information and
20 would generally be available to all members of the gay group. To
21 keep this information from being disclosed the gay group is
22 expecting the right to exclude employees from membership and
23 such exclusion would be on the basis of political ideology
24 and/or sexual orientation. As an employer-sponsored group these
25 justifications for exclusion are prohibited and may convey legal
26 liability to the employer. In his Amended Declaration Irvin
27 notes that he has already won damages from the City for being
28 excluded from another gay group.

29 3. Were it argued that some of the requested information
30 would not be available to general members this just changes

1 where the discrimination would need to occur. Rather than
2 excluding non-gays from mere membership it would be necessary to
3 exclude them from leadership which would equally violate
4 discrimination laws.

5 4. If the court allowed an employer-sponsored gay group to
6 receive recognition and resources from one employer and yet
7 exclude non-gays from membership, to be consistent the court
8 would also have to allow another employer the right to establish
9 and provide for an exclusively straight employees group and
10 exclude gays. Such benefits to a straight group might be so
11 great as to functionally exclude gays from employment for lack
12 of ability to join the straight employees group.

13 5. If the gay group is allowed to use City resources but to
14 avoid disclosure of the requested information it would be
15 allowed to use City resources without accountability. As a for-
16 instance, many gays are now working against Referendum 71 which
17 would block the expansion of domestic partnership benefits to be
18 similar to those of marriage. It is entirely plausible that the
19 real reason for opposing disclosure of the requested information
20 is that the gay group is using City resources for direct
21 political action on this Referendum in violation of law. As this
22 is a sexually themed group, could privacy of the gay group not
23 also prevent the disclosure of pornography or even sexual
24 activity on City property with city resources?

25 6. In their brief the Plaintiffs will likely assert that
26 their members are historically subject to harassment, etc. to
27 garner some additional sympathy to their position. A more
28 accurate description is to remember that, until very recently,
29 sodomy was prohibited by law in many jurisdictions. What the
30 Plaintiffs are experiencing is the consequences of a society

1 that has not yet fully adjusted from considering their behavior
2 to be criminal sexual activity to now considering it
3 specifically legally protected sexual activity.
4

5 **The gay group does not support diversity but is an advocacy**
6 **group.**
7

8 7. In organizational documents the gay group states "The
9 mission of this organization is to advocate for a supportive and
10 nondiscriminatory work environment for lesbian, gay, bi-sexual,
11 transgendered, trans-sexual, and questioning employees and to
12 promote positive visibility inside and outside Seattle Public
13 Utilities."

14 8. City of Seattle, through the gay group sponsored the
15 6/5/08 Reel to Real Film and Discussion Series "Mom's Apple Pie:
16 The Heart of the Lesbian Mothers' Custody Movement." The film
17 and discussion focused on women who had had children while in a
18 heterosexual relationship, had left that relationship and had
19 adopted a lesbian lifestyle. They then fought for custody of the
20 children that they had given birth to while heterosexual. The
21 forum only addressed the rights of the lesbian mothers and was
22 dismissive to those of the fathers. The movie and discussion
23 did not objectively weigh the rights, emotional situations and
24 concerns of both the fathers and the now lesbian mothers but
25 only discussed things from the mother's perspective. As such it
26 was thus not intended to provide balanced information but rather
27 was propaganda intended to advocate.

28 9. It is asserted by Defendant City of Seattle that the gay
29 group promotes diversity. Such assertion is false. While
30 traditional sexual values see the sexual behavior of members of

1 the gay group as morally unacceptable, the modernist sexual
2 values sees it as morally acceptable. Both traditional and
3 modernist sexual values and those who hold by them are given the
4 same legal protection from discrimination. By establishing the
5 gay group to promote modernist sexual values the City is
6 creating a hostile work environment for those who support
7 traditional sexual values. Were SPU to support diversity it
8 would create an environment where employees felt just as free to
9 create an employees group to promote traditional sexual values
10 and have the expectation of receiving just as much financial and
11 other support as the gay group has received.

12 10. The gay group does not seek equality with those of
13 opposing or different values pertaining to sex but seeks only
14 advocacy for their own sexual values. As an advocacy group
15 which receives City funds, City facilities, and City paid time
16 it has no right to expect some special right to privacy.

17
18 **Irvin is seeking this information as a Civil Rights Leader**

19
20 Irvin is fighting what he sees as rank hypocrisy; of using
21 discrimination laws to discriminate.

22
23 11. Just as it is not possible for the City or other
24 jurisdictions to both be neutral on religion as well as
25 aggressively promote Buddhism at the same time, so to it is not
26 possible for a jurisdiction to evenly enforce discrimination
27 laws on the basis of sexual orientation and at the same time
28 promote the political objectives of the gay community as shown
29 below.

1 12. Consider some examples: At one time the City of Seattle
2 ejected the Boy Scouts from their Charity campaign because they
3 would not admit homosexuals. But, under the terms of its own
4 discrimination laws the City would have been required to protect
5 the Boy Scouts from discrimination on the basis of its belief
6 that young boys should not be exposed to homosexuals. The City
7 has refused to contract with vendors who did not provide
8 benefits to the domestic partners of their employees but at the
9 same time the City is obligated to protect the non-complying
10 vendors from discrimination for believing that recognition of
11 domestic partnerships is morally wrong. I suspect that the City
12 would not vigorously pursue a discrimination complaint against
13 its own elected officials.

14 13. By demanding the equal rights he is supposed to be
15 entitled to under discrimination law, Irvin is showing such laws
16 to be a sham; that the various jurisdictions had never intended
17 to act in a nondiscriminatory manner and enforce them equally,
18 nor had the gay community, their chief advocate, expected them
19 to be applied equally against them either.

20 14. If Irvin does not demand equal treatment he is
21 accepting that his own sexual values are inferior. If he allows
22 himself to be excluded because of his sexual values he again
23 accepts his inferior status.

24 15. A standard tact by many gays and will likely be used by
25 the Plaintiffs is to label their opponents as "bigots" or
26 "homophobes" and use their alleged "hatred of gays" to justify
27 discounting their position. However, as legal protection on the
28 basis of "sexual orientation" includes protection for a person's
29 "thoughts" and "attitudes" "pertaining to sex" even "homophobia"
30 is a legally protected sexual orientation. It is just as valid

1 to discriminate against homophobes because they "hate gays" as
2 it is to discriminate against gays because they "hate
3 homophobes."

4 16. Another tact used to justify special privileges to the
5 gay community is to allege historical discrimination. However
6 all usual indicators of discrimination and disparate outcome
7 such as per capita income, educational achievement and political
8 power would indicate that affirmative action on behalf of
9 straights were more appropriate.

10
11 **Irvin has a legitimate need for the records.**
12

13 17. As the gay group bills itself as a Seattle Public
14 Employees group, nothing in the organizational documents
15 indicate that it is only for SPU employees. Irvin needs the
16 requested information to document that employees outside of SPU
17 are allowed to attend and to be members so he can also
18 demonstrate his right to attend and be a member. He will then be
19 exercising his right to be treated equally by attending,
20 joining, and even running for office in the gay group.

21 18. From rich past experience he expects the gay group to
22 discriminate against him. Indeed, the gay group is not now
23 meeting at the time and location provided in their
24 organizational documents. Even if the current time and date
25 were disclosed, the gay group could abandon their existing group
26 and start a new organization without him, or in a myriad of ways
27 actively work to make him feel unwelcome and uninvited. Irvin
28 needs the names of leaders, members and attendees so that if he
29 is illegally discriminated against (yet again) he can report the
30 matter to the appropriate managers for disciplinary action. It

1 is likely that if Irvin must wait until after the fact for this
2 information that this information is likely to have been
3 shredded. Remember, the TRO has embedded in it the expectation
4 that the gay group will be able to discriminate to keep the
5 records private.

6 19. Irvin also needs this information to document
7 conditions for an employees group he is forming/resurrecting for
8 former homosexuals and their allies. Former homosexuals are the
9 most vilified and oppressed sexual minority. While they are
10 attacked by the gay community they are not terribly welcomed by
11 the religious community either. By the latter they tend to be
12 shunned and treated as if they had committed the "unpardonable
13 sin." In general the gay community hates them because they are
14 politically inconvenient. If it were accepted that people
15 transition into and out of homosexuality there is less of a case
16 to accommodate their sexual orientation which may seem to be
17 just a phase they are going through. People begin asking
18 questions like, "If homosexuality is genetic, how can two gay
19 men pass this gene to their children when they can't have
20 children?"

21 20. From his rich experience Irvin intends to file a
22 complaint of a hostile work environment against the City. Such
23 complaint is likely to be joined by other complainants and be
24 combined into a class action perhaps costing the City a
25 considerable number of millions of dollars. Irvin needs the
26 requested information to document his claim and to direct the
27 scope of subsequent information requests and investigations.

28 21. Just as the City has sponsored the gay groups "Mom's
29 Apple Pie" forum telling of the problems of women who have gone
30 from heterosexual to homosexual, Irvin intends to demand equal

1 treatment and have the City likewise sponsor a forum on the
2 problems of going from homosexual to heterosexual. Irvin needs
3 the requested information to direct further investigations in
4 his effort to enforce this request.

5 22. Irvin is attempting to form/reform a group of former
6 homosexuals and their allies. He needs to document what was
7 allowed for the gay group so he can demand the same treatment.
8 If the gay group had members/attendees that were not City
9 employees, he would demand the right to the same. If it
10 collected funds for causes, if it had reports on political
11 issues, attendance by public officials, etc. he would demand
12 equal treatment.

13 23. Irvin rejects the notion that his beliefs about sex are
14 inherently inferior and should be quashed. He is demonstrating
15 this belief simply by demanding equal treatment.

17 **Conclusion**

18
19 Plaintiffs were fully aware that the requested information is
20 disclosable by their use of City resources but they chose to do so
21 anyway and thereby waive any right of privacy that they may have
22 had. The gay group does not promote diversity but instead seeks to
23 subjugate the sexual values of others to their own. Their sole
24 basis for maintaining the privacy of these records rests on their
25 assumed ability to illegally exclude Irvin and other
26 "undesirables" from their midst. While Irvin has no obligation to
27 demonstrate a bona fide legally justifiable need for the requested
28 information he has provided it anyway. There is no legal basis
29 whatsoever for delaying or denying the release of the requested
30 information. Were Irvin to accept discriminatory treatment he

1 would be accepting that his sexual values are inferior; a position
2 that Irvin is unwilling accept.

3
4 **PRAYER FOR RELIEF**

5
6 For the same legal reasons as presented in the brief provided by
7 the Defendant City of Seattle, intervener requests that the TSR be
8 lifted, that no further injunctive relief be granted and that the
9 requested documents be immediately delivered to the City for
10 delivery to the Intervener.

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Philip Irvin, INTERVENOR