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Timothy W. Fitzgerald
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Superior Court of Washington, County of Spokane

PLANNED PARENTHOOD OF GREATER
WASHINGTON AND NORTHERN IDAHO,

Plaintiff,

v.

COVENANT CHURCH & COVENANT
CHRISTIAN SCHOOL; KEN PETERS.
MATTHEW SHEA; CLAY ROY; GABRIEL
BLOMGREN; AND SETH HABERMAN;

Defendants.

No. 20-2-01703-32

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND PERMANENT
INJUNCTION

**Order Granting Summary Judgment
And Permanent Injunction**

1. **Basis:** This matter came before the above-referenced Court on Motion by Plaintiff, PLANNED PARENTHOOD OF GREATER WASHINGTON AND NORTHERN IDAHO (hereinafter "PP") seeking Summary Judgment and Permanent Injunction. Defendants, COVENANT CHURCH & COVENANT CHRISTIAN SCHOOL; KEN PETERS. MATTHEW SHEA; CLAY ROY; GABRIEL BLOMGREN; AND SETH HABERMAN (hereinafter "Covenant Church") opposed the Motion.

2. **Findings:** The Court heard oral argument by counsel, James Grant of Davis Wright Tremaine, LLP, on behalf of Plaintiff, and Tracy Tribbett Samson of Pacific Justice Institute, on behalf of Defendants via Zoom Video Conferencing on July 2, 2021. The Court also reviewed pleadings and papers herein, including without limitation the following:
 - A. Note for Hearing, Issue of Law filed 06/04/2021;
 - B. PP's Motion for Summary Judgment and Permanent Injunction (with legal memorandum incorporated);

- C. Plaintiff's Statement of Non-Washington Authorities (with attached cases);
- D. Second Declaration of Kimberly Schmidt (with exhibits including hard copies and a video clip MP4 file);
- E. Second Declaration of Kim Clark (with exhibits including hard copies and a video clip MP4 file);
- F. Second Declaration of Paul Dillon (with exhibits including three (3) video files);
- G. Declaration of S.S.;
- H. Proposed Order Granting Motion for Summary Judgment and Permanent Injunction;
- I. Opposition to Plaintiff's motion for summary judgment (which was provided to the Court as a bench copy and reportedly served on PP and its counsel, but may not be filed with the Clerk);
- J. Declaration of Tracy Tribbett with exhibits A-G in PDF, jpeg and video format (which was provided to the Court as a bench copy and reportedly served on PP and its counsel, but may not be filed with the Clerk);
- K. Declaration of Seth Haberman with exhibits A-I in PDF, jpeg and video format (which was provided to the Court as a bench copy and reportedly served on PP and its counsel, but may not be filed with the Clerk);
- L. Declaration of Matt Shea with exhibits A-C in PDF format (which was provided to the Court as a bench copy and reportedly served on PP and its counsel, but may not be filed with the Clerk);
- M. Order [sic] on Motion for Summary Judgment (which was provided to the Court as a bench copy and reportedly served on PP and its counsel, but may not be filed with the Clerk);
- N. Reply in Support of Planned Parenthood's Motion for Summary Judgment and Permanent Injunction;
- O. Plaintiff's Statement of Non-Washington Authorities in Support of Summary Judgment Reply Brief;
- P. Note for Hearing, Issue of Law filed June 25, 2021;
- Q. Plaintiff's Motion to Strike Materials Submitted by Defendants in Opposition to Planned Parenthood's Motion for Summary Judgment;
- R. Plaintiff's Statement of Non-Washington Authorities in Support of Motion to Strike Defendants Summary Judgment Submissions; and,
- S. Proposed Order Striking Materials.

The Court being therefore apprised in the matter enters the following findings of fact:

- i. PP provides a variety of health care services to women and men, including without limitation well-woman exams, cancer screening, behavioral health care, and general health care;
- ii. PP also provides infertility care and abortion services;
- iii. Many of the persons to whom PP provides health care services belong to populations that are underserved, marginalized and most likely to be uninsured;
- iv. PP's address in Spokane is 123 E Indiana, presently, and it provides health care services between the hours of 8:00 AM to 6:00 PM (patients sometimes do not leave the facility until 7:00 PM);
- v. Covenant Church and its members/followers believe what happens at PP is evil and that the Church is called to battle against abortion;
- vi. Covenant Church and its members/followers also believe that PP seeks to kill, steal and destroy, then leave the mother's [sic] for dead too;
- vii. Some members/followers of Covenant Church attend worship services outside PP with concealed weapons that they carry legally everywhere they go;
- viii. Covenant Church began to encourage its members/followers to gather on a small strip of public grass immediately adjacent to PP's facility, which contains the examination, treatment and surgical rooms;
- ix. During those gatherings, Covenant Church used a public-address system with large, amplified loudspeakers while denouncing PP's business and pronouncing the group's battle against PP;
- x. Health care examinations and treatments have been interrupted by the gatherings of Covenant Church members/followers described above;
- xi. Staff members and health care providers work and patient care have been interrupted by the gatherings of Covenant Church members/followers described above;
- xii. Covenant Church organized gatherings have been scheduled in the morning, afternoon and evening on occasion;

- xiii. There is a similar public space directly across the street from the PP facility, parallel with PP on East Indiana, where the Covenant Church could continue to gather;
- xiv. State law, RCW 9A.50.020, reads as follows:

“It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by:

 - (1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located;
 - (2) Making noise that unreasonably disturbs the peace within the facility;
 - (3) ...”;
- xv. Spokane modified an ordinance to include similar language as quoted above at Spokane Municipal Code Section 10.07.060(B), making it unlawful “After having been ordered by a law enforcement officer to cease, making noise that can be heard within a building housing a health care facility and which is intended to cause, or actually causes ...: b. interference with the safe and effective delivery of health services within the building. ...”;
- xvi. The Court granted a preliminary injunction in this matter on September 21, 2020 and the Findings of Fact stated therein are incorporated as if fully set forth;
- xvii. Following the grant of a preliminary injunction, Covenant Church’s leaders have advocated and encouraged ways of circumventing or contravening the preliminary injunction by its members/followers;
- xviii. Clinicians working in PP’s health care facility have had calls with patients interrupted and have complained to police about the noise which they hear inside the building; and,
- xix. Covenant Church’s conclusory, speculative and/or argumentative statements do not disclose a genuine issue of material fact and PP is entitled to Summary Judgment and a Permanent Injunction in this matter.

Based upon the above listed Findings of Fact, the Court also concludes as follows:

- a. PP has a clear and equitable right to provide and its patients have clear and equitable rights to seek or obtain health care unimpeded by unlawful acts of others;
- b. Covenant Church, by and through its leaders, members, and followers, have provided sufficient evidence to justify PP's well-grounded fear of immediate invasion of the above rights of its health care providers and patients;
- c. The acts of Covenant Church and its members/followers have resulted in actual and substantial injury to PP;
- d. The time, manner and place of exercise provided in the Preliminary Injunction and as made part of the Permanent Injunction herein, properly balance the constitutionally guaranteed right of Covenant Church and its leaders/members/followers to communicate their views with the rights of the health care providers/staff/patients at PP;
- e. There is no plain, complete, speedy and adequate remedy at law and injunctive relief is necessary and appropriate under the circumstances presented herein;
- f. Under the totality of the circumstances a bond is not provided, however, further violations of this order or failures by law enforcement officers to enforce the laws or limitations of this Permanent Injunction will be grounds for further requests for damages and/or as justification for a bond to issue in this case; and,
- g. Considering the evidence in a light most favorable to Covenant Church and all reasonable inferences therefrom, reasonable minds can only reach one conclusion, that Covenant Church intends to interfere with access to or safe and effective delivery of health care services provided by PP within the facility on East Indiana Avenue in Spokane, WA.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

- I. Covenant Church and its members/followers are permanently enjoined from gathering/meeting/worshiping/protesting/battling against abortion/amplifying sound on the sidewalk or strip of grass adjacent to the south wall of PP's facility, or any other location less than thirty-five (35') feet from PP's facility;
- II. Covenant Church and its members/followers are permanently enjoined from gathering/meeting/worshiping/protesting/battling against abortion/amplifying sound between the hours of 8:00 AM and 7:00 PM, Monday through Saturday;
- III. Covenant Church and its members/followers shall conduct any and all gatherings/meetings/worship/protests/battles against abortion/amplification of sound or other activities in a manner that does not violate Washington State law or the Spokane Municipal Code;
- IV. This injunction is binding upon Covenant Church, as well as any officers, agents, servants, employees ... and those persons in active concert or

participation with them who receive or ought to receive notice of the injunction;

- V. Covenant Church shall provide notice of this injunction to The Church at Planned Parenthood and to any and all other participants, organizers or employees that it knows or ought to know intend(s) to gather/meet/worship/protest/battle against abortion/amplify sound at any location, at any time or in any manner violative of this injunction;
- VI. Violation of this Permanent Injunction is a violation of Washington State law and therefore subject to enforcement and penalties pursuant thereto;
- VII. Violation of this Permanent Injunction is also a violation of The Spokane Municipal Code and therefore subject to enforcement and penalties pursuant thereto;
- VIII. Additional claims for penalties, civil remedies, damages or attorney fees in this case are not decided by the Court pending submission of an appropriate motion and full evidentiary hearing in this case; and,
- IX. This Permanent Injunction and Order shall take effect immediately.

Signed

September 22, 2021 Timothy B. Fennessy
Date Judge Timothy B. Fennessy

DECLARATION OF SERVICE

I, Heather Eustice, certify that on September 22, 2021, I served a copy of this Order Granting Motion for Summary Judgment and Permanent Injunction to:

E-Mail
 US Mail
 Hand Delivery

E-Mail
 US Mail
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I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing Statement is true and correct.

Date: September 22, 2021



Heather Eustice, Judicial Assistant to
Timothy B. Fennessy
Superior Court Judge