SUPREME COURT OF THE STATE OF WASHINGTON

NO. 1033222

Review of Division II Cause 57601-5
22-2-02306-34
Before the Honorable Judge Wilson
Thurston County

Joe Patrick Flarity, a marital community
v.
Unknown Officials, in their official and personal capacities,
State of Washington, Et Al.

MOTION TO INCLUDE

SUPPLEMENTAL AUTHORITY DEFINING FIRST AMENDMENT VIOLATIONS ON FREE SPEECH

PLANNED PARENTHOOD GREAT NORTHWEST
V
LABRADOR, No. 23-35518

---

1. IDENTITY OF PETITIONER

Joe Flarity, a marital community, hereafter Flarity, residing at:

101 FM 946 S

Oakhurst, TX 77359

piercefarmer@yahoo.com

2. AUTHORITY TO INCLUDE

Supplements are allowed for recent decisions that influence the outcome by RAP 10.8(b). The decision was filed December 4, 2024. All emphasis is added.

3. APPLICABILITY

Flarity's Brief: P16, 24. In the Appendix: AP2-9, 14-18, 49, 110, 135-152, 228, 237-239, 260-261, 275, 280, 297-298. Flarity's Reply to State, P7, 13.

4. REASONS

Official attacks on free speech rights present a *clear and present danger* to our experiment with democracy. We are now entering the "anticipatory obedience"[1] phase as demonstrated by the extraordinary settlement on December 13, 2024, of *Trump v ABC News*, 1:24-cv-21050-CMA, S.D. Fla., before any discovery. Pundits speculate that ABC considers their capitulation a public service, because recent

1 Timothy Snyder, *On Tyranny*, "Do not obey in advance."

SCOTUS opinions threaten to overturn landmark *New York Times Co*. *v*. *Sullivan*, 376 U.S. 254 (1964).

The success of Senior AAG Comfort's not served Motion to Sanction is likewise from **"**the autocrat, oligarch playbook"[2] intended to chill the people's obligation to come forward per Art. 1 Sec. 32. If allowed by this Panel, that success presents a similar FEDERAL QUESTION. Per *Labrador:*

Per No. 23-35518, **AP-3**:

> ...under the First Amendment, "'unique standing considerations' . . . 'tilt dramatically toward a finding of standing.'" *Id*. at 1066–67 (quoting *Lopez v. Candaele*, 630 F.3d 775, 781 (9th Cir. 2010)). That is because "**a chilling of the exercise of First Amendment rights is, itself, a constitutionally sufficient injury.**" *Libertarian Party of L.A*. *Cnty. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013).

Per No. 23-35518, **AP-4**:

> Ripeness, like standing, is evaluated **"less stringently in the context of First Amendment claims.**

2 Brant Houston, the University of Illinois Knight Foundation Chair in Investigative and Enterprise Reporting.

5. CONCLUSION

For the reasons stated, No. 23-35518 should be included in the decision because Div. II has authorized similar "chilling" of Flarity's 1st amendment rights by promoting official retaliation on a clearly stated claim immediately obvious to any jury.

CERTIFICATION OF WORD LIMIT. The Word Count is 315 words and is within the limit of the RAP for Supplemental Authorities.

CERTIFICATION AND SIGNING:

Per RCW 9A.72.085, I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and I have followed the RAP 13 to the best of my knowledge for this Motion.

Date of Signing: December 23, 2024

Signature of plaintiff: */S/*

Joe Flarity
101 FM 946 S.
Oakhurst, TX 77359
piercefarmer@yahoo.com

APPENDIX TABLE OF CONTENTS

DESCRIPTION PAGE NUMBER

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAII, ALASKA, INDIANA, KENTUCKY, On Behalf of Itself, Its Staff, Physicians and Patients; CAITLIN GUSTAFSON, On Behalf of Herself and Her Patients; DARIN WEYHRICH, On Behalf of Himself and His Patients, *Plaintiffs-Appellees*, v. RAUL R. LABRADOR, In His Official Capacity as Attorney General of the State of Idaho, *Defendant-Appellant*, and MEMBERS OF THE IDAHO STATE BOARD OF MEDICINE; IDAHO STATE BOARD OF NURSING, In Their Official Capacities; COUNTY PROSECUTING ATTORNEYS, In Their Official Capacities; CODY BROWER, Oneida County Prosecutor;	No. 23-35518 D.C. No. 1:23-cv-00142-BLW OPINION

III. Discussion

A. Justiciability

1. Article III Standing

The "irreducible constitutional minimum" of Article III standing has "three elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Article III "requires a plaintiff to have [1] suffered an injury in fact, [2] caused by the defendant's conduct, that [3] can be redressed by a favorable result." *Tingley v. Ferguson*, 47 F.4th 1055, 1066 (9th Cir. 2022) (citing *Lujan*, 504 U.S. at 560–61) (bracketed numbers added). Where, as here, plaintiffs bring a pre-enforcement challenge under the First Amendment, "'unique standing considerations' . . . 'tilt dramatically toward a finding of standing.'" *Id.* at 1066–67 (quoting *Lopez v. Candaele*, 630 F.3d 775, 781 (9th Cir. 2010)). That is because "a chilling of the exercise of First Amendment rights is, itself, a constitutionally sufficient injury." *Libertarian Party of L.A. Cnty. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013).

On appeal, the Attorney General argues that the two physician plaintiffs have not established an Article III injury with respect to their First Amendment claims. Specifically, he argues the Opinion Letter does not convey "a credible threat of prosecution." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)); "Pre-enforcement injury is a special subset of injury-in-fact," where "the injury is the anticipated enforcement of the challenged statute in the future." *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 487 (9th Cir. 2024). However, "neither the mere existence of a proscriptive statute nor a generalized threat of prosecution" satisfies the injury requirement.

"communicat[ing] a specific warning or threat to initiate proceedings" against them. *Thomas*, 220 F.3d at 1139.

2. Ripeness

"The ripeness doctrine is 'drawn from both Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.'" *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003) (quoting *Reno v. Cath. Soc. Servs, Inc.*, 509 U.S. 43, 57 n.18 (1993)). The doctrine is intended to prevent "premature adjudication" and judicial entanglement in "abstract disagreements." *Portman v. County of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) (quoting *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 148 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977)). Ripeness, like standing, is evaluated "less stringently in the context of First Amendment claims." *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173–74 (9th Cir. 2022) (quoting *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010). But ripeness, unlike standing, takes into account events that have occurred after the filing of the complaint. *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 140 (1974) ("[S]ince ripeness is peculiarly a question of timing, it is the situation now rather than the situation at the time of the District Court's decision that must govern.").

a. Constitutional Ripeness

"For a suit to be ripe within the meaning of Article III, it must present 'concrete legal issues, presented in actual cases, not abstractions.'" *Colwell v. Dep't of Health & Hum. Servs.*, 558 F.3d 1112, 1123 (9th Cir. 2009) (quoting *United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947)). In many cases, the constitutional component of ripeness "is synonymous with the injury-in-fact prong of the standing inquiry." *Twitter*, 56 F.4th at 1173 (quoting *Cal. Pro-Life*

Council, Inc. v. Getman, 328 F.3d 1088, 1094 n.2 (9th Cir. 2003)). But "[w]hile standing is primarily concerned with *who* is a proper party to litigate a particular matter, ripeness addresses *when* that litigation may occur." *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997).

The Attorney General argues this case is constitutionally unripe for the same reasons he contends the physician plaintiffs lack injury-in-fact. But as is apparent from our discussion above, the physician plaintiffs' First Amendment claim is a concrete rather than abstract challenge to the Attorney General's interpretation of § 18-622(1) in the Opinion Letter. The ripeness requirement of Article III is therefore satisfied.

b. Prudential Ripeness

Unlike Article III standing and ripeness, "[p]rudential considerations of ripeness are discretionary." *Thomas*, 220 F.3d at 1142. The Supreme Court has stated that the prudential ripeness doctrine is "in some tension" with "the principle that 'a federal court's obligation to hear and decide' cases within its jurisdiction 'is virtually unflagging.'" *Driehaus*, 573 U.S. at 167 (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014)). However, we need not address this tension because both prongs of the prudential ripeness test—"the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration"—are easily satisfied here. *Thomas*, 220 F.3d at 1141 (quoting *Abbott Lab'ys*, 387 U.S. at 149).

With regard to the fitness of the issues for judicial decision, "pure legal questions that require little factual development are more likely to be ripe." *San Diego County*, 98 F.3d at 1132. The Attorney General argues that plaintiffs'

extraordinary circumstances.'" *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015) (quoting *Krechman v. Cnty. of Riverside*, 723 F.3d 1104, 1112 (9th Cir. 2013)). We may reassign when the judge "'has exhibited personal bias,' or when 'reassignment is advisable to maintain the appearance of justice.'" *Id.* (citations omitted) (quoting *In re Ellis*, 356 F.3d 1198, 1211 (9th Cir. 2004) (en banc) and *United States v. Kyle*, 734 F.3d 956, 967 (9th Cir. 2013)). The Attorney General has not come close to meeting that standard.

No "reasonable outside observer" could conclude that the district judge harbors personal bias against the defendants or that reassignment is warranted to preserve the appearance of justice. *See id.* at 1046. The Attorney General charges that the district judge ignored relevant materials, mischaracterized the record, and unfairly denied supplemental briefing. This charge is patently false. The thorough preliminary injunction order shows that the district judge carefully considered the record, the Attorney General's arguments, and the parties' timely filings. The compressed briefing schedule reflects the emergency nature of the relief plaintiffs requested. The decisions to deny supplemental briefing and reject untimely filings were well within the district judge's broad discretion to manage his docket.

Conclusion

We affirm the grant of a preliminary injunction and deny the request for reassignment.

AFFIRMED.

FLARITY FARM

December 23, 2024 - 6:38 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,322-2
Appellate Court Case Title:	Joe Patrick Flarity v. State of Washington, et al.
Superior Court Case Number:	22-2-02806-5

The following documents have been uploaded:

- 1033222_Motion_20241223063321SC850952_8332.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was Planned Parenthood 1st Amendment with Appendix.pdf

A copy of the uploaded files will be sent to:

- Andrew.Krawczyk@atg.wa.gov
- danielle.anderson@atg.wa.gov
- matthew.kernutt@atg.wa.gov
- revolyef@atg.wa.gov

Comments:

Request supplemental Authority for No. 23-35518 be included in the decision because of 9th Circuit protection of 1st Amendment Rights "Chilled" by Div. II. Flarity has standing on a Federal Question.

Sender Name: Joe Flarity - Email: piercefarmer@yahoo.com
Address:
249 Main Ave S. STE 107 #330
North Bend, WA, 98045
Phone: (253) 951-9981

Note: The Filing Id is 20241223063321SC850952