

FILED

NOT FOR PUBLICATION

MAR 28 2013

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MANY CULTURES, ONE MESSAGE, A
Washington Unincorporated Association;
RED STATE POLITICS, A Washington
not-for-profit corporation, DBA
Conservative Enthusiasts,

Plaintiffs - Appellants,

v.

JIM CLEMENTS, Chair; DAVE
SEABROOK, Vice Chair; JANE
NOLAND; BARRY SEHLIN; JENNIFER
JOLY, in Their Official Capacities as
Officers and Members of the Washington
State Public Disclosure Commission;
DOUG ELLIS, in His Official Capacity as
Interim Executive Director of the
Washington State Public Disclosure
Commission,

Defendants - Appellees.

No. 11-36008

D.C. No. 3:10-cv-05253-KLS

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Karen L. Strombom, Magistrate Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Argued and Submitted November 9, 2012
Seattle, Washington

Before: W. FLETCHER and FISHER, Circuit Judges, and QUIST, Senior District Judge.**

Appellants Many Cultures, One Message (“MCOM”), and Conservative Enthusiasts (a.k.a. Red State Politics) appeal the district court’s dismissal of their suit challenging as unconstitutional two portions of the Washington Revised Code, Wash. Rev. Code §§ 42.17.200 and 42.17.160. These two provisions of state law together require certain grassroots citizen-to-citizen lobbying organizations to register with the state and to disclose information about financial contributions they receive. The district court held that appellants lack Article III standing. In the alternative, it held that the statute was constitutional on its face and as applied. We affirm the district court’s holding that both parties lack Article III standing to challenge the constitutionality of Washington’s grassroots lobbying law.

To determine whether a party has sufficient injury to support Article III standing in the First Amendment context, we look to “whether the plaintiffs have articulated a ‘concrete plan’ to violate the law in question, whether the prosecuting

** The Honorable Gordon J. Quist, Senior United States District Judge for the Western District of Michigan, sitting by designation.

authorities have communicated a specific warning or threat to initiate proceedings, and the history of past prosecution or enforcement under the challenged statute.” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc); *see also Canatella v. California*, 304 F.3d 843, 854 n.14 (9th Cir. 2002) (looking to a party’s “history” and “continuing activities” in the area, as well as to the “nature” of the party’s legal challenge). “[P]laintiffs may carry their burden of establishing injury in fact when they provide adequate details about their intended speech.” *Lopez v. Candaele*, 630 F.3d 775, 787 (9th Cir. 2010), *cert. denied* 131 S. Ct. 2456 (May 16, 2011). “[T]he Constitution requires something more than a hypothetical intent to violate the law.” *Thomas*, 220 F.3d at 1139.

Neither party here has standing to challenge the constitutionality of the Washington grassroots lobbying law because neither has demonstrated that it actually intends to undertake activities that come within the scope of the challenged statute. Conservative Enthusiasts has not provided evidence of concrete plans to pursue activities that qualify as grassroots lobbying under the statute, nor has it even identified specific areas of state policy advocacy in which it would like to engage.

MCOM has specified state legislation in the area of eminent domain about which it proposes to lobby, and has named specific activities it might undertake to

achieve those goals. But it has not demonstrated that it actually “intend[s]” to undertake these activities. *Lopez*, 630 F.3d at 787. MCOM admits that its website has been taken down and that it has not been holding regular meetings. Further, MCOM does not show sufficient “continued activities” in the area of eminent domain to support standing. *Canatella*, 304 F.3d at 854 n.14. To the extent that any lobbying on eminent domain has been undertaken in recent years, it has been performed by MCOM members as individuals, rather than in their organizational capacity. Most important, MCOM acknowledges that it has not actually decided whether to lobby the state; rather, MCOM’s founder has filed this challenge “[b]ecause *if* we start lobbying the State, I don’t want to be fined for not doing something” (emphasis added).

Because we affirm the district court’s dismissal for lack of Article III standing, we do not reach appellants’ other contentions. Because we affirm for lack of standing, we also “vacate the district court’s order and remand with instructions to dismiss without prejudice.” *Fleck & Assocs. v. City of Phoenix*, 471 F.3d 1100, 1106 (9th Cir. 2006).

AFFIRMED in part, VACATED, and REMANDED with instructions.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ West Publishing Company; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Kathy Blesener, Senior Editor);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

Note: If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED Each Column Must Be Completed				ALLOWED To Be Completed by the Clerk			
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* Costs per page may not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page.

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("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

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By:

, Deputy Clerk