

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

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A brief summary of legal developments relevant to Washington public school districts from the previous calendar month.

Ninth Circuit Court of Appeals

First Amendment/Public Records Act

Boardman v. Inslee

No. 19-35113 (10/22/20)

The Ninth Circuit Court of Appeals held that Initiative 1501 (I-1501) did not violate the First or Fourteenth Amendments by prohibiting the State from releasing certain personal information of vulnerable individuals and their in-home care providers and exempting such information under the Public Records Act (PRA). In 2016, Washington voters approved I-1501, which prohibited state agencies from releasing contact information and other personal information of seniors, other vulnerable individuals, and their state-funded in-home care providers, for the stated purpose of protecting vulnerable individuals from identity theft and other financial crimes. I-1501 also exempted such information from release under the PRA but created an exception allowing such information to be disclosed to a certified exclusive bargaining representative. The plaintiffs—the Freedom Foundation and three individual in-home care providers who are bargaining unit members but not union members, and who did not pay

agency fees—had been campaigning to have a rival union supplant the exclusive bargaining representative of a portion of in-home care providers. The plaintiffs had previously obtained the contact information of in-home care providers from the relevant state departments before the passage of I-1501, but the departments denied all such requests for this information after I-1501 took effect. The plaintiffs sued in federal district court alleging that I-1501 violated the First Amendment by discriminating among viewpoints and impairing their freedom of association. They also alleged that it violated the Equal Protection Clause of the Fourteenth Amendment by burdening fundamental rights. The trial court granted summary judgment in favor of the State, and the Court of Appeals affirmed. The Court held that I-1501 did not violate the First Amendment because the initiative imposed permissible viewpoint-neutral restrictions on the public's access to in-home care providers' information, the individual plaintiffs' associational rights were not implicated by the limited relationship between a certified exclusive bargaining representative and nonmembers who pay no agency fees, and the individual plaintiffs lacked standing to assert the associational rights of other in-home care providers. The Court also held that I-1501 did not violate the Equal Protection Clause because the State's legitimate interest in protecting vulnerable individuals from identity theft and other financial crimes could withstand rational basis scrutiny.

Washington Supreme Court

Recall of Elected Officials

In re Recall of White

No. 98663-1 (10/29/20)

The Washington Supreme Court held that a recall petition seeking the removal of a member of the Yakima City Council was properly dismissed by the trial court because it was factually and legally insufficient. David Briggs filed a recall petition alleging that Councilmember Jason White had committed five acts warranting recall. The trial court dismissed each charge, and the petitioner appealed three of the charges to the Supreme Court. The charges on appeal alleged that White used his position to encourage citizens to disobey COVID-19-related emergency proclamations; that in doing so, he violated his oath of office; and that by refusing to attend city council meetings as a protest against the mayor's comments criticizing White's stance on COVID-19, he unreasonably denied his constituents representation at the meetings. The Supreme Court affirmed the dismissal of the recall petition. First, the Court held that city council members do not have a general duty to enforce public health orders or to abstain from criticizing the actions of other public officials. Second, the Court held that White's oath to support the law does not equate to an obligation not to criticize the law. Third, the Court held that White's failure to attend council meetings did not prevent any meeting from occurring or have other ascertainable consequence for the city's business. As a result, the Court held that the recall charges were factually and legally insufficient and affirmed.

Defamation of a Public Figure

Reykdal v. Espinoza

No. 98731-9 (10/22/20)

The Washington Supreme Court reversed the trial court's ruling that the secretary of state must edit

out a sentence in a voters' guide deemed by the trial court to be defamatory. The candidate statement of Maia Espinoza, who is challenging incumbent Chris Reykdal for the position of Superintendent of Public Instruction, stated in part, "The incumbent ignored parents and educators by championing a policy that teaches sexual positions to 4th graders!" That sentence referred to legislation requested by Reykdal requiring every public school to provide age-appropriate comprehensive sexual health education to students. Consistent with the legislation, the OSPI website provides a list of sexual health education resources. One of the listed resources includes a handout that refers parents to additional external resources, including a book that depicts a couple having sexual intercourse in different positions. Reykdal filed a petition to bar Espinoza and the secretary of state from publishing the sentence on the grounds that it was defamatory. The trial court granted the petition, holding that the candidate statement is untrue and that there is a very substantial likelihood that Reykdal would prevail in a defamation action based on the sentence. The Supreme Court reversed on the grounds that Reykdal could not establish a substantial likelihood of a successful defamation claim. First, the Court held that there is no substantial likelihood that Reykdal could demonstrate that the sentence was false because the information on the OSPI website could inform fourth graders of different sexual positions. Second, the Court held that Reykdal could not demonstrate the "actual malice" required for a public figure to succeed in a defamation action because there is nothing in the record to suggest that Espinoza made her statement knowing it was false or with a reckless disregard of its veracity. As a result, the Court directed the secretary of state to publish Espinoza's original statement in the voters' guide pamphlet.



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