

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

WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the State of Washington; KIRK H. SCHULZ, in his official capacities as the President of Washington State University and Chair of the Pac-12 Board of Directors; OREGON STATE UNIVERSITY, an institution of higher education and agency of the State of Oregon; and JAYATHI Y. MURTHY, in her official capacities as the President of Oregon State University and Member of the Pac-12 Board of Directors,

Plaintiffs,

v.

THE PAC-12 CONFERENCE; and GEORGE KLIAVKOFF, in his official capacity as Commissioner of the Pac-12 Conference,

Defendants,

and

UNIVERSITY OF WASHINGTON, an institution of higher education and agency of the State of Washington,

Intervenor-Defendant.

No. 23-2-00273-38

INTERVENOR-DEFENDANT
UNIVERSITY OF WASHINGTON'S
NOTICE FOR DISCRETIONARY
REVIEW TO THE WASHINGTON
SUPREME COURT

Date: November 14, 2023
Time: 2:00 p.m.
Judge: Hon. Gary Libey

Date Filed: September 8, 2023

Trial Date: TBD

Filing Fee Exempt per RCW 2.32.070.

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1 The University of Washington, Intervenor-Defendant in this matter, seeks review by the
2 Washington Supreme Court of the attached order granting Plaintiffs Washington State
3 University's and Oregon State University's Motion for Preliminary Injunction and denying
4 Intervenor-Defendant University of Washington's Motion to Dismiss, entered by the Whitman
5 County Superior Court on November 14, 2023. The University of Washington preserves the
6 argument that this matter should be given the same effect as a notice of appeal under RAP 5.1(c).
7 The University of Washington seeks direct review pursuant to RAP 4.2.

8 A copy of the decision is attached to this notice.

9 The names and addresses of the attorneys for each of the parties are as follows:

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11 **official capacities as the President of Washington State University and Chair**
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1 DATED: November 15, 2023

Respectfully submitted,

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3
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Attachment

FILED
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JILL E. WHELCHER
WHITMAN COUNTY CLERK

23-2-00273-38
ORPLINJ 127
Order for Preliminary Injunction
15591601



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

Case No. 23-2-00273-38

**ORDER GRANTING
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

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WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the State of Washington; KIRK H. SCHULZ, in his official capacities as the President of Washington State University and Chair of the Pac-12 Board of Directors; OREGON STATE UNIVERSITY, an institution of higher education and agency of the State of Oregon; and JAYATHI Y. MURTHY, in her official capacities as the President of Oregon State University and Member of the Pac-12 Board of Directors,

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Defendants,

and

UNIVERSITY OF WASHINGTON, an institution of higher education and agency of the State of Washington,

Intervenor-Defendants.

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION

1 This matter came before this Court on the motion for a preliminary injunction brought
2 by Plaintiffs Washington State University (“WSU”) and Oregon State University (“OSU”),
3 and their Presidents Kirk H. Schulz and Jayathi Y. Murthy, acting in their official capacities
4 (collectively, “Plaintiffs”). The Pac-12 Conference and Commissioner George Kliavkoff (the
5 “Conference Defendants”) and Intervenor-Defendant the University of Washington
6 (“Intervenor-Defendant”) opposed Plaintiffs’ motion.

7 Having considered Plaintiffs’ motion and all pleadings and evidence submitted in
8 support of and in opposition to the motion, the arguments of counsel for the parties, and the
9 applicable law, and in order to avoid actual, substantial, and immediate irreparable harm to
10 any party, Plaintiffs’ motion for a preliminary injunction is hereby **GRANTED**.

11 The Court finds that Plaintiffs have satisfied the elements required for issuance of this
12 preliminary injunction. Plaintiffs have a clear legal and equitable right to enforce the Pac-12
13 Conference Bylaws and prevent unauthorized Board action by the Pac-12 Conference, and
14 Plaintiffs have established that they are likely to prevail on the merits of the claim. The Pac-
15 12 Conference Bylaws state unambiguously that if a member delivers a notice of withdrawal
16 to the Conference before August 1, 2024, that member’s representative “shall automatically
17 cease to be a member of the Pac-12 Board of Directors and shall cease to have the right to
18 vote on any matter before the Pac-12 Board of Directors.” Bylaws, Ch. 2, Sec. 3. The Court
19 finds that Plaintiffs are likely to prevail in establishing ten members of the Pac-12
20 Conference—the University of Arizona, Arizona State University, the University of
21 California, Berkeley, the University of California, Los Angeles, the University of Colorado,
22 Boulder, the University of Oregon, the University of Southern California, Stanford
23 University, the University of Utah, and the University of Washington (collectively, the
24 “Departing Schools”)—have delivered notice of withdrawal from the Conference. The
25 Departing Schools have all announced publicly and delivered notice to the Conference of their
26 withdrawal from the Pac-12. Therefore, each Board representative of the Departing Schools

1 “automatically cease[d] to be a member” of the Board and “cease[d] to have the right to vote
2 on any matter before” the Board. *Id.*

3 The plain language of the Bylaws requiring “automatic” removal from the Board of
4 members who have delivered notices of withdrawal is confirmed by the parties’ course of
5 conduct. See *Berg v. Hudesman*, 115 Wash. 2d 657, 677–78 (1990); *Crestview Cemetery*
6 *Ass’n v. Dieden*, 54 Cal. 2d 744, 754 (1960). The evidence shows that, for more than a year
7 before this litigation commenced, the Conference Defendants consistently interpreted the
8 Bylaws to require automatic removal of a Departing School’s representative from the Board.
9 For example, after the University of Southern California (“USC”) and the University of
10 California, Los Angeles (“UCLA”) announced that they would be leaving the Pac-12,
11 Commissioner Kliavkoff attested in a sworn declaration that USC and UCLA automatically
12 “were removed as Board representatives under the Constitution and Bylaws following their
13 notice of withdrawal from the Pac-12.” When the University of Colorado (“CU”) announced
14 that it would be leaving the Conference, the Pac-12 informed CU the very next day that, under
15 Section 2-3 of the Bylaws, “CU’s representation on the Pac-12’s Board of Directors
16 automatically ceases effective immediately, and CU no longer has the right to vote on any
17 matter before the Board.” And after five more schools announced their departures from the
18 Conference, the Commissioner sent a text message to a reporter confirming that “[a]s of today
19 we have 4 board members,” referring to the then-four remaining Pac-12 schools: WSU, OSU,
20 University of California, Berkeley, and Stanford.

21 The Court further finds that the Departing Schools, including Defendant-Intervenor,
22 ratified this application of the Bylaws. For more than a year following USC and UCLA’s
23 notice of their withdrawal, the other Departing Schools (which had not yet announced their
24 departures) participated in Pac-12 Board meetings and voted on Conference matters without
25 USC and UCLA’s representatives. They approved a joint press statement on behalf of the “10
26 Pac-12 Conference Board members”—an acknowledgment that USC and UCLA’s

1 representatives had been removed from the Board. And the Departing Schools participated in
2 numerous Board meetings without USC and UCLA's representatives, where the Board
3 discussed and acted on all manner of Conference business. Accordingly, Plaintiffs have
4 established a clear legal and equitable right to enforce the Pac-12 Conference Bylaws and a
5 likelihood of success on the merits.

6 Additionally, Plaintiffs have demonstrated a well-grounded fear that their rights will
7 be immediately invaded. Absent a preliminary injunction, Plaintiffs will lose their rights to
8 control and govern the Pac-12. As the only members that have not delivered notices of
9 withdrawal, WSU and OSU have the right to control and govern the Pac-12 pursuant to the
10 Bylaws. Before the TRO was granted, the Commissioner called a Board meeting that would
11 have permitted the ten departing members to vote on matters impacting the future of the Pac-
12 12 and its "go forward" governance approach. Since the issuance of the TRO, nothing has
13 changed to suggest that Plaintiffs' rights will not be invaded absent entry of a preliminary
14 injunction.

15 Plaintiffs have also demonstrated that, absent a preliminary injunction, they will suffer
16 actual, substantial, and immediate irreparable harm. Without preliminary injunctive relief,
17 nothing would stop the Conference Defendants and the Departing Schools from calling Board
18 meetings where ineligible representatives of the Departing Schools could purport to take
19 actions on behalf of the Pac-12 Conference that irreparably harm Plaintiffs and would be
20 difficult or impossible to reverse—such as voting to dissolve the Conference or to distribute
21 Conference assets in a manner that would harm WSU, OSU, or the Conference's interests. As
22 the Conference Defendants acknowledged, it would be a "direct conflict and contrary to the
23 best interests of the Pac-12 membership as a whole, to allow" representatives of the Departing
24 Schools to participate in Board meetings in light of their allegiance to competing conferences.
25 Moreover, absent a preliminary injunction, WSU and OSU will lose their rights under the
26 Bylaws to govern the Pac-12 and steer a path forward for the Conference. Such a loss of

1 WSU and OSU's governance rights constitutes irreparable harm. *See Wisdom Imp. Sales Co.*
2 *v. Labatt Brewing Co.*, 339 F.3d 101, 114–15 (2d Cir. 2003); *Alcatel Space, S.A. v. Loral*
3 *Space & Comms. Ltd.*, 154 F. Supp. 2d 570, 584 (S.D.N.Y. 2001); *Davoodi v. Imani*, 2011
4 WL 250392, at *4 (N.D. Cal. Jan. 26, 2011).

5 Finally, the Court finds that the balance of equities weighs in favor of granting a
6 preliminary injunction, and any burden on the Conference Defendants or Intervenor-
7 Defendant is significantly outweighed by the immediate irreparable harm that will befall
8 WSU and OSU without a preliminary injunction.

9 Accordingly, the Court hereby enters the following PRELIMINARY INJUNCTION
10 ORDER: Pending final judgment on the merits or further order of the Court, the Conference
11 Defendants and Intervenor-Defendant, and their officers, directors, members, employees,
12 agents, representatives, successors, and assigns, and all other persons acting in concert with
13 them, shall be prohibited from:

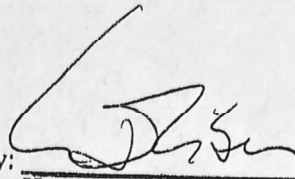
- 14 1. Recognizing any person other than the Pac-12 Board representatives of Washington
15 State University and Oregon State University as members of the Pac-12 Conference
16 Board of Directors;
- 17 2. Holding, or taking any steps to hold, a Pac-12 Conference Board meeting that includes
18 representatives from the ten Pac-12 Conference members who have delivered notice of
19 their withdrawal from the Conference¹; and
- 20 3. Allowing representatives of the ten Pac-12 Conference members who have delivered
21 notice of their withdrawal from the Conference to attend, participate in, or vote in any
22 Pac-12 Conference Board meeting.

23 The Court's September 11, 2023 Temporary Restraining Order is superseded by this Order.

24
25 ¹ For the avoidance of doubt, the ten Pac-12 Conference members that have delivered notice
26 of withdrawal from the Conference are: University of Arizona; Arizona State University;
27 University of California, Berkeley; University of California, Los Angeles; University of
28 Colorado, Boulder; University of Oregon; University of Southern California; Stanford
University; University of Utah; and University of Washington.

1 **IT IS SO ORDERED.**

2 Dated: 11/14/2023

3 By: 
4 Hon. Gary Libey
5 Judge of the Superior Court

- 6 4. The Confume shall be able to operate in its
- 7 normal course of business, but the decision to make distributions shall
- 8 5. Any future meetings of the Board shall be noticed (3 days) ^{be by the Board}
- 9 to all other 10 Reporting Members.
- 10 6. The new Board shall invite all Reported Us
- 11 ~~to~~ to participate, communicate and submit
- 12 their suggestions to the Board
- 13 7. The Order is stayed until Monday at noon November 20
- 14 2023, during which time the TRO of 9/11/23
- 15 will remain in effect pending appeal of this Order.
- 16 The Motions to Dismiss are denied.