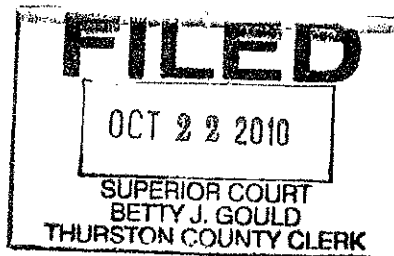


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EXPEDITE
 No Hearing Set
 Hearing is Set
Date: 10/8/2010
Time: 1:30 p.m.
Judge: Paula Casey



STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

MATT ERICKSON, an individual;
STERLING A. HILL, an individual;
CINDY MARSHALL, an individual;
PAT and SANDY TARZWELL,
husband and wife; and JAMES
WOLFE, an individual; individually
and on behalf of the taxpayers of the
State of Washington,

Plaintiffs,

v.

CHRISTINE O. GREGOIRE, Governor
of the State of Washington;
DEPARTMENT OF ECOLOGY, an
agency of the State of Washington;
DEPARTMENT OF
TRANSPORTATION, an agency of the
State of Washington; DEPARTMENT
OF COMMERCE, an agency of the
State of Washington; DEPARTMENT
OF HEALTH, an agency of the State of
Washington; DEPARTMENT OF
NATURAL RESOURCES, an agency
of the State of Washington; and STATE
OF WASHINGTON,

Defendants.

NO. 10-2-01613-6

ORDER DENYING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

On October 8, 2010, this matter came before the court upon the motion of the Plaintiffs
for an order granting a preliminary injunction to enjoin Defendants from further

1 implementation of or actions pursuant to Governor Gregoire's Executive Order 09-05 until
2 final judgment. The basis of the Plaintiffs' claim is that the governor lacked authority to issue
3 the Executive Order and the agencies lacked authority to perform work pursuant to the
4 Executive Order. In addition, the Plaintiffs claim that public funds were misspent by state
5 agencies. The Honorable Paula Casey presided at the hearing. Four of the six Plaintiffs
6 appeared personally (Matt Erickson, Sterling A. Hill, and Pat and Sandy Tarzwell) and through
7 their attorney of record Michael J. Reitz. Defendants appeared through their attorneys of
8 record, Attorney General Robert M. McKenna, Assistant Attorney General Leslie R. Seffern,
9 and Senior Assistant Attorney General Bryce E. Brown, Jr. The court having heard argument
10 of counsel for the parties, and having considered the pleadings and evidence filed in this case,
11 including the following:

- 12 1. Complaint and supporting exhibits;
- 13 2. Answer of the Defendants;
- 14 3. Plaintiffs' Motion and Memorandum for Preliminary Injunction;
- 15 4. Declaration of Michael J. Reitz and supporting exhibits;
- 16 5. Declaration of Matt Erickson;
- 17 6. Defendants' Brief in Opposition to Preliminary Injunction;
- 18 7. Declaration of Leslie R. Seffern in Support of Defendants' Opposition to
Preliminary Injunction and supporting exhibits; and
- 19 8. Plaintiffs' Reply in Support of Motion for Preliminary Injunction.

20 makes the following Findings of Fact, Conclusions of Law, and Order:

21 I. FINDINGS OF FACT

- 22 1. The governor issued Executive Order 09-05 entitled "Washington's Leadership
23 on Climate Change" on May 21, 2009.
- 24 2. The Executive Order included a number of directives to state agencies including
25 the Departments of Ecology and Transportation to take particular actions.
- 26 3. The actions directed in the Executive Order included evaluating strategies and
plans, gathering information, and making recommendations to the governor to reduce
greenhouse gas emissions and address climate change impacts in Washington State.

1 4. Many of the directives involved preparing reports by dates certain including
2 those actions described in paragraphs 1(b) with a deadline of December 1, 2009, and
3 October 1, 2010; 1(e) with a deadline of September 1, 2010; and 1(f) with a deadline of July 1,
4 2010. Those dates have passed. Thus, there is nothing left for the court to enjoin with regard to
5 those directives.

6 5. The governor requested that SB 5735 and its companion bill in the house be
7 introduced in the 2009 legislative session to address climate change. The legislative session
8 closed without the bill (amended as E2SSB 5735) passing.

9 6. The Plaintiffs have delayed bringing their action for over a year from the
10 issuance of the Executive Order.

11 II. CONCLUSIONS OF LAW

12 7. To obtain preliminary relief, Plaintiffs have the burden of showing that (1) they
13 have a clear legal or equitable right to relief, (2) that they have a well-grounded fear of
14 immediate invasion of that right, and (3) that the acts complained of are either resulting in or
15 will result in actual and substantial injury to Plaintiffs.

16 8. Plaintiffs have not demonstrated a clear legal or equitable right to relief and
17 have not demonstrated that public funds have been misspent on implementation of the
18 Executive Order.

19 9. The Executive Order falls within the governor's constitutional and statutory
20 authority to issue policy statements and directives to state agencies.

21 10. There is clear statutory authority for many of the directives in the order.

22 11. In addition, many of the directives in the Executive Order involve the governor
23 directing agencies to take actions that the governor does not need specific authority to direct.
24 These include working with other governments and regional organizations as directed in
25 paragraphs 1(a), 2(a), 2(b), and 6 to develop plans to address climate change; gathering
26 information and developing plans as directed in paragraph 1(c); evaluating potential changes to

1 existing strategies as directed in paragraph 2(a); pursuing federal funds as directed in
2 paragraph 3; working to reach agreement with facilities on approaches to reduce emissions as
3 directed in paragraph 1(d); and evaluating climate change impacts as directed in paragraphs 4
4 and 5.

5 12. Further, the Plaintiffs have not demonstrated that the agencies lack authority to
6 implement any of the directives in the Executive Order.


7 13. SB 5735 did not remove the agencies' existing statutory authority to implement
8 the directives in the order or affect the governor's authority to issue directives to state agencies
9 to move forward with agency priorities.

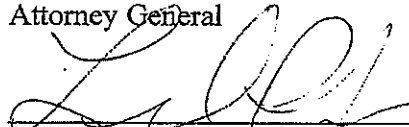
10 14. Based upon the conclusion that Plaintiffs have not met their burden of
11 demonstrating a clear legal or equitable right, it is not necessary for the court to make any
12 further rulings related to the other issues and arguments presented.

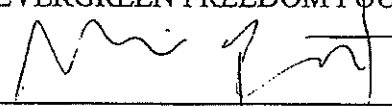
13 15. The Plaintiffs have not met their burden to obtain a preliminary injunction.

14 IT IS HEREBY ORDERED that Plaintiffs' Motion for Preliminary Injunction is
15 DENIED.

16 DATED: Oct 22, 2010

17 
18 HONORABLE PAULA CASEY
19 Judge, Thurston County Superior Court

20 Presented by:
21 ROBERT M. McKENNA
22 Attorney General
23 
24 LESLIE R. SEFFERN, WSBA #19503
25 Assistant Attorney General
26 Ecology Division
Attorneys for Defendants
(360) 586-6770

Approved as to form and
notice of presentation waived:
EVERGREEN FREEDOM FOUNDATION

MICHAEL J. REITZ, WSBA #36159
Attorney for Plaintiffs