



IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KIRK ROBINSON; JEAN ROBINSON;
PATRICIA CARLISLE; OSCAR EASON,
JR.; KAREN JENSEN; JOHN JUNKER;
DON MORELAND; CHARLES ROYER,
taxpayers,

Plaintiffs,

v.

CITY OF SEATTLE,
a municipal corporation,

Defendant.

97-2-22567-1 SEA
NO. SEA

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

I. INTRODUCTION

1.1 This lawsuit challenges the City of Seattle's mandatory preemployment drug testing policy. (SMC 4.77.040, hereinafter referred to as "the Policy".) Specifically, this suit seeks to enjoin enforcement of the Policy and asks for a declaratory judgment that the Policy violates both the Washington Constitution and the United States Constitution. The City of Seattle ("the City"), through the Policy, requires drug testing of all successful job applicants without regard to the nature of the position for which employment is sought. Thus, the Policy does not focus on safety-sensitive jobs or other jobs with respect to which there might exist some special need to test for drug use, but mandates that every person selected for employment undergo drug testing. Less intrusive and more effective means could be utilized to achieve the same desired result. In short, the City's drug testing Policy is not only illegal, but it is ineffective and wasteful of public funds.

II. PARTIES

2.1 Plaintiffs Kirk Robinson, Jean Robinson, Patricia Carlisle, Oscar Eason, Jr., Karen Jensen, John Junker, Don Moreland, and Charles Royer are residents of the City of Seattle.

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1 During all relevant times, Plaintiffs have paid and continue to pay taxes to the City of Seattle.
2 Plaintiffs have standing as taxpayers to challenge implementation of the City's unconstitutional
3 Policy.

4 2.2 The City of Seattle is a municipal corporation. Effective July 1, 1996, the City of
5 Seattle implemented a mandatory drug testing policy requiring all persons offered City
6 employment to submit to a urine test as a precondition of hire. SMC 4.77.040 (Ord. 117418).
7 The only exception is for the City's youth employment program.

8 III. FACTUAL BACKGROUND

9 3.1 The Policy was approved by the City Council without adequate notice to permit
10 the public debate that was appropriate to such a measure. In approving the Policy in 1996, the
11 Council purported to rely upon Ordinance 117418. Ordinance 117418, in fact, had been
12 passed by the Council in December 1994 in response to specific federal regulations of the U.S.
13 Department of Transportation which required drug and alcohol testing for drivers of
14 commercial motor vehicles. Ordinance 117418 referred only to these employees, and to the
15 fact that federal regulations required the drug testing of this limited group of employees.

16 3.2 In July 1996, without any advance public notice and hidden in the context of a
17 Budget Proposal, the City adopted the Policy, and applied it to all prospective employees on a
18 City-wide basis. The City now incorrectly asserts that Ordinance 117418 authorized this broad-
19 based Policy.

20 3.3 The Policy requires that all City departments engage in preemployment drug
21 testing of external job applicants following a conditional job offer. The Policy excepts only
22 summer youth enrollees and high school interns. The Policy also extends to intermittent
23 employees who have not worked consecutively for six months or more.

24 3.4 While the City pays for testing costs, the applicant is responsible for
25 transportation to the testing site and the time required for the test.

26 3.5 A job applicant is disqualified from employment for 12 months if he/she: (a) tests
27 positive for drugs; (b) fails two integrity checks of the urine sample; (c) fails to provide adequate
28 urine for drug testing without a valid medical explanation; (d) engages in conduct that clearly

1 obstructs the testing process; or (e) fails to appear for a drug test within 12 hours after
2 consenting to the test. SMC 4.77.040.

3 **IV. THE PRIVACY INTERESTS OF THE** 4 **PROSPECTIVE EMPLOYEES ARE SUBSTANTIAL**

5 4.1 Government-ordered collection and testing of urine intrudes upon expectations of
6 privacy that society has long recognized as reasonable. The Policy involves an invasion of
7 personal privacy in at least two regards, in the collection of urine samples and the subsequent
8 chemical analysis of the urine.

9 4.2 The process of collecting the sample to be tested, which may involve visual or
10 aural monitoring of the act of urination, itself implicates privacy interests. There are few
11 activities in our society more personal or private than the passing of urine. Most people
12 describe it by euphemisms if they talk about it at all. It is a function traditionally performed
13 without public observation; indeed, its performance in public is generally prohibited by law as
14 well as social custom.

15 4.3 The process of testing urine involves a second level of intrusion into the
16 prospective employees' private affairs. Chemical analysis of urine can reveal a host of private
17 medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic.

18 **V. THERE IS NO SPECIAL NEED THAT JUSTIFIES** 19 **A MANDATORY DRUG TEST OF ALL PROSPECTIVE** 20 **CITY EMPLOYEES WITHOUT ANY REASON TO** 21 **SUSPECT DRUG USE ON THEIR PART**

22 5.1 The City has not demonstrated a significant City-wide problem of drug abuse
23 among its employees.

24 5.2 The Policy will be applied to require drug testing of individuals with respect to
25 whom the City has no reasonable suspicion of drug use.

26 5.3 The Policy will be applied to require drug testing of individuals who seek jobs that
27 will not involve any of the following:

- 28 1) safety-sensitive functions that involve physical risk to the public, the
prospective employee or co-workers;
- 2) drug-interdiction; or

1 6.5 The Fourth Amendment to the United States Constitution protects individuals
2 against unreasonable searches and seizures conducted by government officials. The Fourth
3 Amendment's protections apply when government officials act in their capacity as employers.

4 6.6 The Policy's mandatory urine testing of job applicants for evidence of drug use
5 constitutes a search or seizure within the meaning of the Fourth Amendment.

6 6.7 There is no special need for drug testing all City job applicants. The Policy does
7 not provide adequate procedures to protect against deprivations of liberty. The Policy violates
8 the Fourth Amendment.

9 6.8 Plaintiffs ask for an injunction requiring the cessation of said deprivations and
10 unlawful acts.

11 **THIRD CAUSE OF ACTION: 42 U.S.C. § 1983**

12 Plaintiffs reallege and incorporate by reference the allegations contained in
13 Paragraphs 1.1 through 6.8.

14 6.9 The Policy has been implemented and enforced by the City under color of State
15 law.

16 6.10 The Policy has subjected and continues to subject job applicants to deprivations of
17 rights, privileges and/or immunities secured by the U.S. Constitution and the Washington
18 Constitution.

19 6.11 Plaintiffs ask for an injunction requiring the cessation of said deprivations and
20 unlawful acts.

21 **FOURTH CAUSE OF ACTION: DECLARATORY RELIEF**

22 Plaintiffs reallege and incorporate by reference the allegations contained in
23 Paragraphs 1.1 through 6.11.

24 6.12 Plaintiffs seek a declaration that the Policy is unconstitutional and violates the
25 United States Constitution and/or the Washington Constitution.

26 6.13 There is a justiciable controversy between the parties arising out of the Policy. An
27 actual dispute exists between the parties as they have genuine and opposing interests that are
28 direct and substantial. A judicial determination of this dispute will be final and conclusive.

1 Under CR 57 and RCW 7.24.120, a declaratory judgment as to the constitutionality of the
2 Policy is appropriate and necessary.

3 **VII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for the following relief:

5 A. An injunction, both preliminary and permanent, requiring cessation of the Policy.

6 B. A declaratory judgment that the Policy is unconstitutional under the Washington
7 Constitution and/or the United States Constitution.

8 D. An award of Plaintiffs' costs and expenses, including reasonable attorneys' fees,
9 pursuant to 42 U.S.C. § 1988 and any other applicable law.

10 E. Such other relief as the Court may deem just, equitable and appropriate.

11 DATED this 9 day of September, 1997.

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13 
14 Michael E. Kipling (#07877)
Alexander J. Higgins (#20868)

15 COOPERATING ATTORNEYS FOR THE AMERICAN
16 CIVIL LIBERTIES UNION OF WASHINGTON

17 On behalf of the Plaintiffs
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