

1 EXPEDITE
2 No hearing set
3 Hearing is set
4 Date: September 17, 2021
5 Time: 9:30 a.m.
6 Judge/Calendar: Honorable Sharonda D.
7 Amamilo

8 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

9 FISHERIES ENGINEERS, INC., a
10 Washington Corporation, PAUL TAPPEL, an
11 individual and professional engineer,

12 Petitioners,

13 v.

14 THE STATE OF WASHINGTON,
15 GOVERNOR JAY INSLEE, in his official
16 capacity, ATTORNEY GENERAL BOB
17 FERGUSON, in his official capacity, and
18 BOARD OF REGISTRATION FOR
19 PROFESSIONAL ENGINEERS & LAND
20 SURVEYORS, an agency of the State of
21 Washington,

22 Respondents.

NO. 18-2-04658-34

[PROPOSED] ORDER GRANTING
PETITIONERS' MOTION FOR SUMMARY
JUDGMENT AND DENYING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT

23 THIS MATTER having come before the Court on Petitioners' Motion for Summary
24 Judgment, and the Court having considered the following:

- 25 1. Petitioners' Motion for Summary Judgment;
- 26 2. Declaration of Paul Tappel in Support of Petitioners' Motion for Summary
Judgment, with exhibits thereto;
3. Declaration of Alan Schuchman in Support of Petitioners' Motion for Summary
Judgment, with exhibits thereto;

ORDER GRANTING PETITIONERS' MOTION FOR
SUMMARY JUDGMENT - 1

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1 4. Respondents' Response in Opposition to Petitioners' Motion for Summary
2 Judgment;

3 5. Petitioners' Reply in Support of Their Motion for Summary Judgment;

4 6. Declaration of Alan Schuchman in Support of Petitioners' Reply in Support of
5 Their Motion for Summary Judgment, with the exhibit thereto;

6 7. Respondents' Motion for Summary Judgment, with appendices thereto;

7 8. Petitioners' Opposition to Respondents' Motion for Summary Judgment;

8 9. Respondents' Reply in Support of their Motion for Summary Judgment;

9 10. Declaration of I. Vandewege in Support of Respondents' Reply in Support of
10 Motion for Summary Judgment;

11 11. Declaration of S. Nicholson in Support of Respondents' Reply in Support of Motion
12 for Summary Judgment;

13 12. Petitioners' Surreply and Motion to Strike Respondents' Reply in Support of
14 Motion for Summary Judgment and Related Declarations in Whole or Part;

15 13. Respondents' Amended Reply in Support of Respondents' Motion for Summary
16 Judgment;

17 14. Respondents' Response to Petitioners' Surreply and Motion to Strike;

18 15. Petitioners' Supplemental Brief in Support of Motion for Summary Judgment;

19 16. Respondents' Supplemental Briefing on Statutory Immunity under RCW
20 18.235.190;

21 17. Petitioners' Response to Respondents' Supplemental Briefing on Statutory
22 Immunity under RCW 18.235.190;

23 18. Respondents' Response to Petitioners' Supplemental Brief in Support of Motion
24 for Summary Judgment;

25 19. The pleadings filed in this action;

26 20. The files and records herein; and

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1 21. Oral argument by all parties.

2 **I. FINDINGS OF FACT & CONCLUSIONS OF LAW**

3 The Court, being fully advised, and based on the undisputed material facts submitted,
4 hereby enters the following Findings of Fact and Conclusions of Law:

5 1. Petitioners sought declaratory and injunctive relief against Respondents Board of
6 Professional Engineers & Land Surveyors (the “Board”), the Attorney General, and the State of
7 Washington. (Petitioners no longer seek relief against Respondent Governor Jay Inslee.)
8 Specifically, Petitioners brought claims under common law, the Uniform Declaratory Judgment
9 Act (“UDJA”), and/or the Administrative Procedures Act (“APA”) for declaratory and injunctive
10 relief against the Board and the State of Washington. Petitioners sought declaratory relief against
11 the Attorney General under common law and the UDJA.

12 2. As a licensed professional engineer, Petitioners Paul Tappel and his engineering
13 firm Fisheries Engineers, Inc. have a recognized interest in ensuring that others in their profession
14 abide by the same rules and requirements. *See Day v. Inland Empire Optical, Inc.*, 76 Wn.2d 407,
15 416–17 (1969). Petitioners fall within the zone of interest contemplated by Chapter 18.43 RCW
16 (the “Act”) which governs their profession. Petitioners have also sustained an injury-in-fact as a
17 result of Respondents’ undisputed actions as set forth herein. Accordingly, this Court finds that
18 Petitioners have standing under common law, the APA, and the UDJA to bring this challenge
19 against the Board and the State of Washington, and Petitioners have standing under common law
20 and the UDJA to bring this challenge against the Attorney General.

21 3. RCW 18.235.190 does not confer immunity upon the Board, or any of the other
22 Respondents, in this dispute. Per its plain terms, RCW 18.235.190 provides immunity to individual
23 board members related to disciplinary actions and other officials acts; it does not apply to the
24 Board, the State of Washington, or Attorney General for this type of challenge under the common
25 law, APA, and UDJA.

1 4. RCW Chapter 18.43 (the "Act") sets forth the law upon which the qualifications,
2 testing, licensure, and regulation of professional engineers and land surveyors in the State is based.

3 5. The Act delegates authority to the Board and Attorney General of Washington (the
4 "Attorney General") to interpret and enforce the Act.

5 6. The Act provides in relevant part that "In order to safeguard life, health, and
6 property, and to promote the public welfare . . . it shall be unlawful for any person . . . to use in
7 connection with his or her name or otherwise assume, use, or advertise any title or description
8 tending to convey the impression that he or she is a professional engineer or a land surveyor, unless
9 such person has been duly registered under the provisions of this act." RCW 18.43.010.

10 7. The Act also defines the Practice of Engineering as including representing "himself
11 or herself to be a professional engineer, or through the use of some other title implies that he or
12 she is a professional engineer." RCW 18.43.020 (8)(b). Unlicensed individuals are not permitted
13 under the Act to engage in the Practice of Engineering as defined. RCW 18.43.010 and .120.

14 8. The Act also defines the term "engineer" to mean a "professional engineer" as
15 thereafter defined by the Act. RCW 18.43.020(3). The terms "professional engineer" and
16 "engineer" are used interchangeably in the Act itself, in other legislation, in the Washington
17 Administrative Code, and by the Respondents and advertisements with the public.

18 9. Accordingly, per the plain language of the statute, it is unlawful for an unlicensed
19 person to use the title "Engineer" when doing so "tend[s] to convey the impression" or "implies"
20 that he or she is a professional engineer. *See* RCW 18.43.010, .020.

21 10. While the use of the title "Engineer" may not tend to convey the impression of
22 licensure in every context, this Court finds that the use of the title "Engineer," or any variation
23 thereof, necessarily tends to convey the impression of licensure when it is used by someone who
24 either engages in the practice of engineering (as it is defined under RCW 18.43.020(8)(a)), or who
25 works within an agency, organization, or business that engages in or offers engineering services
26 and is not a registered professional engineer. Under those circumstances, there is no meaningful

1 way to distinguish between the licensed engineers and the unlicensed individuals who work under
2 them, if both are permitted to use the professional title "Engineer."

3 11. The Court finds that at one point both the Board and Attorney General properly
4 interpreted the Act.

5 12. The Court finds that the Board's and Attorney General's current adopted
6 interpretation and enforcement policy violates the Act.

7 13. The Court further finds that Respondent State of Washington has violated the Act
8 by advertising and providing Engineer titles to its employees who are not duly licensed under the
9 Act.

10 II. ORDER & JUDGMENT

11 It is, therefore, ORDERED, ADJUDGED AND DECREED that:

12 1. Respondents' Motion for Summary Judgment is DENIED.

13 2. Petitioners' Motion for Summary Judgment is GRANTED as follows:

14 a. Respondents' affirmative defenses, asserted on the grounds of mootness,
15 standing, common law immunity and/or immunity under RCW 18.235.190, and lack of jurisdiction
16 under the APA, are hereby DISMISSED with prejudice;

17 b. Declaratory Judgment is hereby entered against Respondents Board of
18 Professional Engineers and Land Surveyors and the Attorney General of Washington, adjudging
19 that: (i) the Board's and Attorney General's enforcement policy and de facto rule regarding the
20 unlicensed use of the title "Engineer" is unlawful and inconsistent with the plain text of the Act,
21 and (ii) that the use of the title "Engineer," or any variation thereof, is unlawful when used by
22 someone who engages in the practice of engineering (as it is defined under RCW 18.43.020(8)(a))
23 or who works within an agency, organization, or business that engages in or offers engineering
24 services if that person is not a registered professional engineer, because under such circumstances,
25 the title necessarily tends to convey the impression of licensure, which is prohibited under the Act;
26 and

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SUMMARY JUDGMENT - 5

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1 c. Judgment for Injunctive Relief is hereby entered against the State of
2 Washington, enjoining the State from allowing its employees to use the title "Engineer" in a
3 manner that violates the Act's requirements as set forth herein.

4 3. Petitioners shall submit a separate post-judgment motion related to their entitlement
5 to costs under RCW 7.24.100 within 30 days of this Order and Judgment.

6 4. This matter is otherwise hereby CLOSED, and all remaining trial dates shall be
7 stricken.

8 ORDERED this 29th day of September, 2021.

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11 
12 HONORABLE SHARONDA D. AMAMILO

13 Prepared and Presented By:

14 CAIRNCROSS & HEMPELMANN, P.S.

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26 Inc. and Paul Tappel

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