

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

FRIENDS OF RENE GONZALEZ F/K/A
RENE FOR PORTLAND AND RENE
GONZALEZ,

Petitioner,

vs.

OFFICE OF THE AUDITOR, CITY OF
PORTLAND

Respondent,

Case No. 24CV59662

DECISION AND ORDER ON PETITION
FOR WRIT OF REVIEW

Friends of Rene Gonzalez F/K/A Rene for Portland and Rene Gonzalez (“Petitioner”) filed a Request for Writ of Review seeking review of the Office of the Auditor, City of Portland’s (“Respondent”) determination that Petitioners violated campaign finance laws and the imposition of civil penalties in Redetermination No. 2024-01-RG (“Wikipedia Matter”) and Determination 2024-09-RG (“Serial Contributions”). The parties have agreed to consolidate the matters.

Petitioner alleges in Petitioners’ Opening Brief (“Opening Brief”) (1) legal error in the Serial Contributions matter; (2) that the decision in the Wikipedia Matter was not supported by substantial evidence; and (3) that Portland City Charter Section 3-305 violates the due process clause of the 14th Amendment to the United States Constitution. Respondent filed Respondent’s Answering Brief on Writs of Review (“Answering Brief”), and Petitioner filed Petitioner’s Reply Brief (“Reply Brief”).

For the reasons that follow, the Court finds City of Portland Charter Section 3-305 denied Petitioner due process required under the 14th Amendment of the United States Constitution and is therefore unconstitutional. Accordingly, Redetermination No. 2024-01-RG and Determination 2024-09-RG are **REVERSED**.

Motion to Strike and Judicial Notice

Petitioner has asked the Court to take judicial notice of the applicable city laws and regulations attached to the Declaration of Peter M. Gabriel. Respondent raised no objection to the Court taking judicial notice of those laws and regulations. The Court will therefore take judicial notice of the applicable city laws and regulations.

Respondent has moved to strike from the record the Declaration of Rene Gonzalez, Amy Wood, and Peter M. Gabriel, citing among other cases *Alt v. City of Salem*, 306 Or 80 (1988) and

arguing that the Court is limited to the record in the underlying proceeding and cannot take new evidence. *See* Respondent’s Motion to Strike Declaration of Rene Gonzalez, Amy Wood, and Peter M. Gabriel at 1. Petitioner filed a response noting exceptions to the general rule recognized in *Alt* and other cases. Petitioners’ Opposition to Respondent’s Motion to Strike.

The Court considers the effort to supplement the record as a motion to remand for a factual determination. *See Alt. City of Salem, supra* at footnote 7.¹ Given the Courts ruling on the constitutional issue, the motion is **MOOT**.

Standard of Review

ORS 34.040 allows for writs of review of city administrative decisions in certain situations. The statute provides in relevant part:

(1) The writ shall be allowed in all cases in which a substantial interest of a plaintiff has been injured and an inferior court including an officer or tribunal other than an agency as defined in ORS 183.310 (1) in the exercise of judicial or quasi-judicial functions appears to have:

* * *

(c) Made a finding or order *not supported by substantial evidence* in the whole record;

(d) Improperly construed the applicable law; or

(e) Rendered a decision that is unconstitutional. * * *

ORS 34.040(1) (emphasis added).

Petitioner has alleged each of these as a basis for their appeal. The Court having determined the decision rendered is unconstitutional, the issues of legal error and lack of substantial evidence will not be addressed.

Denial of Due Process

Petitioner argues Portland City Charter Section 3-305 violates the Due Process Clause of the 14th Amendment to the United States Constitution. Opening Brief at 32. They argue this is the case for two reasons. First, it fails to provide procedural protections because a violation subjects the accused to substantial fines and fees. *Id.* Second, “the mandatory broadcast of any adverse determination in the midst of a political campaign.” *Id.* They argue the base requirement of the Due Process Clause is that a person deprived of property be given an opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* at 33. They argue, moreover, two aspects of the Auditor’s process raise due process concerns: “(a) it calls for extremely narrow timelines for respondents to respond and low barriers for complaints; and (b) it lacks either pre- or post- deprivation hearings,” which, they argue “creates substantial risk of

¹ “A plaintiff may attempt to supplement the record by affidavit attached to the petition. The defendant or opposing party may seek to supplement the record by attachments to the return. If any supplement is controverted, the reviewing court cannot decide the facts, but can only remand for a factual determination.” *See Alt. City of Salem, supra* at footnote 7.

‘erroneous deprivation.’” *Id.* at 35.

Section 3-305 outlines the process for processing complaints in connection with campaign finance. It provides the following:

- (a) The provisions of this Article shall be implemented by ordinance to be operative not later than September 1, 2019.
- (b) *Each violation of any provision in this Article shall be punishable by imposition of a civil fine which is not less than two nor more than twenty times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue.*
- (c) Any person may file a written complaint of a violation of any of the Provisions with the City Auditor.
- (d) The City Auditor, otherwise having reason to believe that a violation of any provision has occurred, shall issue a complaint regarding such violation.
- (e) Upon receipt or issuance of a complaint, the City Auditor:
 - (1) Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
 - (2) Within two business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.
 - (3) *Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.*
 - (4) *Shall render a decision on the complaint within 10 business days of the close of the material submission period.*
- (f) If the complaint is received or issued within 30 days of the date of the election involving the object of the complaint, then all time periods stated in subsections (e)(3) and (e)(4) above shall be reduced by one-half.
- (g) The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Article.
- (h) Upon finding a violation of the requirement for timely disclosure set forth in Section 3-303 above, the City Auditor shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested

parties and news organizations containing all of the information about the involved donor(s) required by Section 3-303 above.

(i) The complainant or any person who is the object of the complaint may, within 30 days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.

(j) The *decision in the matter shall be deemed final, following completion of any judicial review*. Such decision shall be enforced by the City of Portland. If the decision is not enforced within thirty (30) days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of Portland, and for any appropriate equitable relief.

City of Portland Charter Section 3-305 (emphasis added).

The process outlined in Section 3-305 does not purport to provide a “hearing”, pre- or post-imposition of civil penalties. Respondent does not argue that it does.² Instead, Section 3-305 provides for an *investigation* whose result can be the imposition of civil penalties. See Section 3-305(e). The subject of a complaint is entitled to (1) a notice within 2 days of the complaint; and (2) the option of submitting materials opposing the complaint within a period of 10 days following receipt of the notice. See Section 3-305(e) 2 and 3. There is no allegation the Auditor did not follow the prescribed process.

Whether a process complies with the Due Process Clause of the 14th Amendment to the United States Constitution is based on the application of a three-part balancing test to the particular case, as outlined in *Mathews v. Eldridge*, 424 US 319 (1979). The 9th Circuit Court of Appeals in *Yagman v. Garcetti*, 852 F3d 859 (9th Cir 2017) explained the application of the balancing test. They write:

* * * there are no ‘hard and fast’ rules for determining the requisite timing and adequacy of pre- and post-deprivation procedures. See *Brewster*, 149 F.3d at 984. Rather, once this court has concluded a protected interest is at stake, it must apply the three-part balancing test established in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1979), to determine ‘whether a pre-deprivation hearing is required and what specific procedures must be employed at that hearing given the particularities of the deprivation.’ *Shinault*, 782 F.3d at 1057. The *Mathews* factors are: ‘(1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used, and the value of additional procedural safeguards; and (3) the government’s interest, including the burdens of additional procedural requirements.’ *Id.* ‘By weighing these concerns, courts can determine whether a State has met the fundamental requirement of due process—the opportunity to be heard at a meaningful time and in a meaningful manner.’

Yagman v. Garcetti, supra at 864.

² Respondent does point to Petitioner’s right to seek a writ of review, which the Court will address in due course.

Respondent argues Petitioner was not denied due process. *See* Answering Brief at 23. Acknowledging the *Matthews* balancing test, Respondent first argues that Petitioner had notice and an opportunity to be heard. Answering Brief at 23. Further, they argue Petitioner’s private interests were minimally affected by the decision. *Id.* at 24 (“The imposition of relatively small fines minimally affects private interests and accordingly requires less process.”). To be clear, the interest at issue is the imposition of *potential* civil penalties of “*not less than 2 nor more than 20 times the amount* of the unlawful Contribution.” Depending on the amount at issue in any given case, that amount could indeed be substantial. Here that amount turns out to be \$11,580.00 in civil penalties. Indeed, Petitioner argues they could have potentially been as high as \$60,000 for the Serial Contributions matter alone. *See* Opening Brief at 33. The Court finds the private interest at stake is substantial as Petitioner argues. It may not amount to a person’s livelihood. Nevertheless, it is, at least potentially, a significant sum of money.³

Addressing the second factor (“the risk of erroneous deprivation through the procedures used, and the value of additional procedural safeguards”), Respondent argues the Auditor’s Office’s procedures are more than adequate to provide due process. *See* Answering Brief at 26. As noted by Respondent, that process allows an opportunity to submit written materials after a notice of complaint. *Id.* They also note Petitioner was also afforded the opportunity to submit written materials. *Id.* at 28. In addition, they note Petitioner failed to take advantage of an opportunity to seek reconsideration pursuant to Respondent’s administrative rules, ARA-13.03(D)(5). *Id.* Indeed, reconsideration is allowed under the Auditor’s Administrative Rules.⁴ Respondent, however, does not address the fact that the process simply fails to provide for an actual hearing. Instead, they point to the writ of review process—a process they elsewhere note does not afford an opportunity for consideration of new evidence⁵.

In response to Petitioner’s suggestion that a pre- or post-deprivation hearing is required, with the presentation of evidence and witnesses subject to cross examination, Respondent argues such requirements are not universal. *Id.* at 27. Respondent relies on the hearing via the writ of review process to suggest that it, in combination with the investigation, provides due process. *Id.* at 28. They argue that “confrontation and cross-examination are not rights universally applicable to all hearings.” *Id.* at 29. Indeed, they point to two cases where access to the writ of review was deemed sufficient to meet the hearing requirement of due process. *See Ester v. City of Monmouth*, 322 Or 1 (1995)(finding that a statutory right to writ of review to challenge a tax

³ Respondent cites a number of appellate cases involving parking tickets and traffic citations, each of those cases, it should be noted, included a process that afforded the complainant an actual hearing. *See Knutson v. Village of Lakemoor*, 932 F3d 572, 575 (7th Cir 2019) (issue was defenses that could be raised in red light camera hearing before a hearings officer); *see also Rector v. City & Cnty. of Denver*, 348 F3d 935, 938 (10th Cir 2003) (“Recipients who appear at the parking referee’s office are advised of the procedures relevant to the hearing and are then given an opportunity to seek a fine reduction.”)

⁴ “The Auditor’s Office may, on its own discretion or on request of an interested party, withdraw a decision for reconsideration within the earlier of 30 days from issuance of the decision or until the decision is appealed.” ARA-13.03(D)(5).

⁵ *See* Respondent’s Motion to Strike Declarations of Rene Gonzalez, Amy Wood, and Peter M. Gabriel at 1 (“In a writ of review proceeding, the record is limited to that which was before the lower tribunal whose decision is being reviewed; the Court cannot take new evidence.”)

assessment provided due process where a “10-taxpayer” statutory requirement prevented tax court jurisdiction); *see also Citizen's Ass'n of Portland v. International Raceways, Inc.*, 833 F2d 760, 762 (1987) (finding that the hearing requirement of due process was met where a party was represented at a variance hearing, but failed to exercise their right to file a writ of review).

Petitioner argues the process is inadequate to avoid error. *See* Opening Brief at 35. They argue the narrow timelines and lack of a pre- or post-deprivation hearing create a substantial risk of “erroneous deprivation.” *Id.* With respect to the writ of review, they argue it does not provide them an opportunity to present new evidence and does not address the gaps in Respondent’s process. *Id.* at 37. Among other things, they highlight that in the Wikipedia Matter, the initial notice of investigation makes no mention of what language was problematic. *Id.* at 37. They also point to the October 2, 2024, withdrawal of the prior determination in the Wikipedia Matter that found no violation being reconsidered based on “new information that bears on the determination.” *Id.* Petitioner notes the withdrawal failed to explain what constituted new information. *Id.* Moreover, they note Petitioner was not afforded an opportunity to respond to the new evidence. *Id.* at 38. The Court agrees such defects in process allows for errors, particularly in situations where there was nothing provided to Respondent as to what new information bore on Respondent’s prior determination.

As to the third factor, the government’s interest (including burdens the government would face in providing additional procedural protections, such as an actual hearing where witnesses testify under oath and subject to cross-examination), Respondent failed to address it.⁶ There is no indication what the burden is of providing a hearing within the Respondent’s process, or to allowing for witness testimony with an opportunity for cross examination. They do not argue any time constraints requiring the quick imposition of civil penalties. The Court cannot imagine there would be any. Nor do they argue a workload burden. Instead, they simply argue nothing more is required, and Petitioner had an opportunity to be heard. They write:

Petitioner was provided with notice of the campaign finance complaints and an opportunity to present ‘written materials* * *opposing the complaint[s]’ And Petitioner took full advantage of that opportunity, presenting his side of the story in extensive written responses to both complaints.* * * Moreover, in the Wikipedia Matter, Petitioner sat for a lengthy interview in which he was given a further opportunity to present evidence in support of his position, and further made his case in email communication with the Auditor’s Office.

Respondent’s Answering Brief at 28.

Petitioner, on the other hand, indicates that the government’s interest is in the “proper use of public dollars and transparency in election finance.” Opening Brief at 38. They point to the procedure currently available in the Small Donor Program under PCC 2.16.170, which provides access to a hearings officer. *Id.* at 39. That code provision incorporates the procedure for hearings before the Code Hearings Officer. *See* PCC 2.16.170 G.6. (“The hearings will be conducted in accordance with the provisions of Chapter 22.10, except as otherwise provided in

⁶ On that point, they simply say, “Of course, conducting a contested case hearing involving live expert and lay witnesses *is no small burden.*” Respondent Op. Brief at 30 (emphasis added).

this Section.”).

PCC 2.16.170’s stated purpose is explained as follows:

The purpose of this Section is *to provide persons or political committees adversely affected by administrative determinations* made under this Chapter with a *timely, effective, and impartial appeal and review of the determination* by a Hearings Officer or entity, to be recommended by the Commission and appointed by the Director.”

PCC 2.16.170A (emphasis added).

It provides for several hearing types: (1) certification hearings; (2) matching fund hearings; and (3) *penalty hearings*. PCC 2.16.170D (emphasis added). PCC 2.16.170D.3 provides:

A candidate, person or political committee who has received a notice of proposed penalty from the Director *may challenge the proposed penalty* by filing a written request for reconsideration as outlined in Subsection 2.16.170 F. and, if still dissatisfied, *a written request for a hearing* as outlined in Subsection 2.16.170 E.

PCC 2.16.170D.3 (emphasis added).

PCC Chapter 22.10 provides for a hearing. *See* PCC 22.10.050. Appeals are reviewed de novo by the Code Hearings Officer. *Id.* Parties are allowed to be represented by counsel and are allowed to present evidence and argument on all issues. *See* PCC 22.03.050. Witnesses testify under an oath administered by the Code Hearings Officer. *Id.* There are rules of evidence. *See* PCC 22.03.080A (“Objections to evidence may be received in written form or orally at the hearing on the record.”). And, to Petitioner’s point, witnesses are subject to cross-examination. PCC 22.03.08C (“Every party will have the right of cross examination of witnesses who testify and will have the right to submit rebuttal evidence.”).

Considering the process afforded *some* other participants in the Small Donor Program, it is difficult to accept Respondent’s argument that the process under Section 3-305 is adequate to avoid error. There is no indication that the particulars in this case are different from civil penalties assessed in cases processed under PCC 2.16.170 and PCC Chapter 22.10. In fact, the penalties under the Small Donor Program are potentially less. *See* PCC 2.16.160A.3. (“A civil penalty imposed under this Section *will not exceed \$10,000* for any violation except as otherwise provided in this Section or as permitted by the Commission and published in administrative rules.”)

Respondent fails to provide any reason the process afforded *other* participants in the Small Donor Program⁷ would create such a substantial burden that it could not be part of the

⁷ “For candidates participating in the Small Donor Elections program (*which Gonzalez is*), * * *” Notice of Determination, Complaint NO. 2024-09-RG, page RG09-1 (emphasis added).

process due Petitioner under Section 3-305 of the City Charter. In fact, the opposite is true: the City of Portland has determined for itself that in some situations indistinguishable from the present one—where civil penalties are being assessed for violation of City campaign finance laws—a process substantially similar to a court trial is the process due.

What PCC Chapter 22.10 shows is that a pre-deprivation hearing is indeed feasible. The 9th Circuit Court of Appeals explain in *Yagaman, supra*,

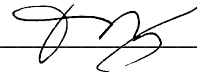
The Supreme Court has held, however, that usually ‘the Constitution requires *some kind of ... hearing* before the State deprives a person of liberty or property. *
* * Thus, in ‘situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation ...remedy to compensate for the taking.’

Yagaman v. Garcetti, supra at 864.

Respondent has a process that provides a pre-deprivation hearing that is not overly burdensome and minimizes the risk of error that has been denied to Petitioner in this case. As such, the Court finds Petitioner was denied due process in violation of the Due Process Clause of the 14th Amendment to the United States Constitution. Accordingly, Redetermination No. 2024-01-RG and Determination 2024-09-RG are **REVERSED**.

IT IS SO ORDERED.

7/31/2025 8:30:28 AM



Circuit Court Judge Melvin Oden-Orr