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**STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER**

*In the Matter of*

**ARMED CITIZENS' LEGAL DEFENSE  
NETWORK, INC.,**

Appellant.

Docket No. 20-0257

**MOTION TO STAY CEASE AND  
DESIST ORDER**

COMES NOW Appellant Armed Citizens' Legal Defense Network, Inc. (hereinafter "ACLDN"), by the through its counsel, Spencer Freeman, Freeman Law Firm, Inc., and pursuant to RCW 48.04.020 seeks an Order to Stay the Cease and Desist Order pending resolution of this action.

**I. INTRODUCTION, PROCEDURE, AND FACTS**

ACLDN is a membership-based organization for gun owners across the United States. ACLDN provides its members with meaningful resources focused on the education and protection of lawful and constitutional possession and use of firearms. To this end, ACLDN provides its members: (1) Nine full-length videos and a 235-page book providing education regarding lawful and justifiable use of force; (2) guidance from an Advisory Board comprised of leaders of self-defense training; (3) access to a nationwide network of attorneys and legal experts specific to lawful use of force; (4) monthly education and updates via an online journal;

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1 and (5) access to *potential* assistance with legal fees should a member be involved in a lawful  
2 use of force situation. *Declaration of Marty Hayes ISO Motion to Stay (“Decl. M. Hayes”)*, p1-  
3 2, ¶¶ 3-4.

4           The potential assistance with legal fees is just that, a potential. ACLDN reviews all  
5 requests on an individual basis, decides each on an individual basis, and does so at its sole  
6 discretion. There is no contractual obligation for ACLDN to provide any member with funds to  
7 assist with legal fees. If a member is turned down, that member has no legal right or ability to  
8 force ACLDN to provide monetary assistance. In essence, the membership comes with it the  
9 ability to apply for what amounts to a charitable contribution from ACLDN for assistance and  
10 knowledge that ACLDN sets aside money for potential contributions. *Decl. M. Hayes*, p 2, ¶¶  
11 5-7.  
12

13           To assist in the funding of legal fees should a member be involved in a lawful use of  
14 force situation, ACLDN directs 25% of membership fees to the fund. In addition, ACLDN  
15 donates other monies to the fund and holds corporate sponsored auctions to donate to the fund.  
16 ACLDN has no duty to either reserve funds nor provide funds to a member upon request.  
17

18           Given the prevalence of guns in our society, an organization dedicated to the education  
19 of the lawful use of force should not only be viewed as good, but necessary. It is such  
20 organizations that help protect the citizens of the country against the unlawful use of firearms.  
21 Nevertheless, on March 26, 2020, the Office of Insurance Commissioner (“OIC”) issued a  
22 Cease and Desist Order (“Order”) preventing ACLDN from selling memberships in  
23 Washington.<sup>1</sup>  
24

25  
26 <sup>1</sup> OIC does not issue with any of the teachings, information, or education provided by ACLDN but only the  
availability of funds for assistance to members lawfully engaged in use of force.

1 In the Order, OIC ordered ACLDN to:

2 . . . immediately cease and desist from:

- 3 A. Engaging in or transacting the unauthorized business of insurance in the  
4 state of Washington; and
- 5 B. Soliciting Washington residents to induce them to purchase any insurance  
6 contract or service contract.

7 Order, p 1.

8 OIC, as outlined in the Order, determined that ACLDN's sale of memberships  
9 constitutes the sale of insurance in the State of Washington. Without warning or opportunity to  
10 be heard on this issue, OIC issued the Order, effectively prohibiting the sale of ACLDN's  
11 memberships in Washington.

12 In the spring of 2019, OIC began its investigation into ACLDN.<sup>2</sup> Specifically, OIC sent  
13 ACLDN a notice of investigation dated April 15, 2019. *Decl. M. Hayes*, p 2, ¶ 11. Thereafter,  
14 ACLDN is listed on an internal OIC executive summary memo in May 2019, wherein it is  
15 stated that OIC will issue a subpoena to ACLDN. *Decl. M. Hayes*, p 3, ¶ 15, Ex. B.

16 In late June 2019, OIC served a subpoena duces tecum ("SDT") on ACLDN demanding  
17 ACLDN produce certain enumerated documents, including member benefits, the legal defense  
18 fund, member identities, members receiving legal defense funds and bank accounts specific to  
19 the legal defense fund.<sup>3</sup> The SDT explicitly cited RCW 48.02.060, RCW 34.05.446(1)-(2),  
20

21  
22  
23 <sup>2</sup> In August 2018, Superintendent of New York Department of Financial Services sent Washington State Insurance  
24 Commissioner Kreidler a letter warning of NRA's Carry Guard insurance programs and asserting that such  
25 insurance policies were illegal. Thereafter, OIC began to investigate other firearms organizations in Washington,  
including USCCA, CCWSafe, US Law Shield, and ACLDN. There was no citizen complaint regarding ACLDN.  
Moreover, that the NRA or others sold insurance policies in violation of insurance statutes does not mean that  
ACLDN does also.

26 <sup>3</sup> There is no statutory authority whatsoever that grants OIC authority or power to issue a subpoena duces tecum  
against citizens of the State of Washington outside the context of litigation or an actual administrative proceeding.  
The authority listed on the Subpoena Duces Tecum does not provide such authority, contrary to the express  
statements of OIC. The Subpoena Duces Tecum was issued unlawfully.

1 WAC 10-08-120 and WAC 284-02-070 as the basis for OIC authority to issue the subpoena.<sup>4</sup>  
2 The subpoena threatened ACLDN with court action and contempt proceedings if ACLDN did  
3 not comply with the subpoena. *Decl. M. Hayes*, p 2-3, ¶ 12, Ex. A.

4 Under threat of court action and contempt, ACLDN complied with the subpoena and  
5 presented all requested documents in late July 2019. *Decl. M. Hayes*, p 3, ¶ 13. On March 26,  
6 2020, one year after initiating an investigation and eight months after receipt of documents from  
7 ACLDN, OIC issued its Order. *Decl. M. Hayes*, p 3, ¶ 14.

9 In the six weeks since the Order, ACLDN has been substantially damaged and the  
10 damage will continue. Regarding renewal memberships in Washington, ACLDN has lost  
11 \$8,250 in the last six weeks. On a national level, as confidence in the network is waning due to  
12 OIC's Order (i.e. whether ACLDN will be in business at the end of the year), a loss of over  
13 \$200,000 is anticipated based upon current trends.<sup>5</sup> *Decl. M. Hayes*, p 3, ¶¶ 16-17.

## 14 II. ARGUMENT

15 A stay of an action by the Insurance Commissioner is both contemplated by state  
16 statute and mandated by the Due Process Clause of the United States Constitution. RCW  
17 48.04.020 states:  
18

- 19 (1) Such demand for a hearing received by the commissioner prior to the  
20 effective date of action taken or proposed to be taken by him or her shall  
21 stay such action pending the hearing, except as to action taken or proposed  
22 (a) under an order on hearing, or  
23 (b) under an order pursuant to an order on hearing, or  
24 (c) under an order to make good an impairment of the assets of an insurer,  
or  
25 (d) under an order of temporary suspension of license issued pursuant to  
26 RCW 48.17.540 as now or hereafter amended.

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25 <sup>4</sup> As will be explained herein, there is no such authority and the statutes are cited incorrectly.

26 <sup>5</sup> These trends become even more alarming as the rate of gun ownership has significantly increase during and due to COVID-19 fears and shut-downs.

1 (2) In any case where an automatic stay is not provided for, and if the  
2 commissioner after written request therefor fails to grant a stay, the person  
3 aggrieved thereby may apply to the superior court for Thurston county for  
4 a stay of the commissioner's action.

(3) A stay of action is not available for actions taken by the commissioner  
under RCW 48.13.475.

5 The only reason an automatic stay is not provide for in the instant action is because OIC  
6 issued the cease and desist order “effective immediately” upon signing/service of the Order.

7 Thus, ACLDN did not have the chance to demand a hearing prior to the effective date of the  
8 action as provided in RCW 48.04.020. Of significance, the statute provides for a request to stay  
9 and immediate access to the superior court if the request is denied.

10 The Due Process Clause of the United States Constitution prohibits the government from  
11 depriving a person of life, liberty, and property rights without first undertaking an adequate  
12 process. *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L.Ed.2d  
13 494 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).  
14 Generally speaking, the fundamental requirement of due process is the “opportunity to be heard  
15 at a meaningful time and in a meaningful manner.” *Mathews*, 424 U.S. at 333.

16 In the absence of extraordinary circumstances, procedural due process requires notice  
17 and opportunity to be heard *before* any governmental deprivation of a liberty or property  
18 interest. *Zinermon v. Burch*, 494 U.S. 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990); *Tom*  
19 *Grownney Equip., Inc. v. Shelley Irr. Dev., Inc.*, 834 F.2d 833, 835 (9th Cir. 1987) (citing *Boddie*  
20 *v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)). The opportunity to  
21 present reasons why a proposed action should not be taken, before the action is effective, is a  
22 fundamental due process requirement. *Loudermill*, 470 U.S. at 546.

23 Property interests protected by procedural due process extend well beyond ownership of  
24 real estate, chattels, or money. *Bd. Of Regents of State Colleges v. Roth*, 408 U.S. 564, 571-72,  
25 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Property interests protected by due process can also  
26

1 include an expectancy of obtaining some right or interest in the future. *Hillman Flying Serv.,*  
2 *Inc. v. City of Roanoke*, 562 F.Supp 1142, 1148 (W.D. Va. 1987), and aff'd sub nom. *Hillman*  
3 *Flying Serv., Ins. V. Piedmont Aviation*, 846 F.2d 71 (4<sup>th</sup> Cir. 1988).

4 The constitutional elements of procedural due process, and a fair hearing, are notice, an  
5 opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted  
6 to the nature of the case, an opportunity to know the claims of the opposing party and to meet  
7 them, and a reasonable time for preparation of one's case. *Rody v. Hollis*, 81 Wn.2d 88, 92-3,  
8 500 P.2d 97 (1972); *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617  
9 (1968). Absent exceptional circumstance, such is required *before* the deprivation of a right.  
10 *Zinermon*, 494 U.S. at 127.

11 Here, OIC issued a cease and desist order against ACLDN effectively immediately upon  
12 signing and service of the Order. The Order prohibits ACLDN from selling memberships in  
13 Washington. There is no question that the Order was issued without notice and opportunity to  
14 be heard on the action prior to the effectiveness of the action. There is also no question that the  
15 Order deprives ACLDN from liberty and property rights. ACLDN is prevented from the  
16 liberty of engaging in commerce and engaging with other like-minded individuals and is  
17 preventing from acquiring future anticipated monies from the sale of memberships.

18 Courts have consistently found that government agency issuing a cease and desist order  
19 without providing the subject of the order an opportunity to be heard prior to the effectiveness  
20 of the order may violate constitutional due process requirements. In *Duarte Nursery, Inc. v.*  
21 *United States Army Corps of Eng'rs*, 17 F. Supp 3d 1013 (E.D. CA 2014), the U.S. Army Corps  
22 of Engineers issued a cease and desist order to owners of a nursery, alleging discharge of dredge  
23 or fill material into U.S. waters without a permit and ordering to stop all work in waters of U.S.  
24 until the violation was resolved. *Id.* at 1015. The effect of the order was to force the  
25 landowners to sit idly by without use of the property until the issue was resolved. The court  
26 found that such presented a proper claim under the Due Process Clause. *Id.* at 2013-24.

1 In *Nicholson v. County of Stanislaus*, 2010 U.S. Dist. LEXIS 23424, the county issued a  
2 cease and desist order for Nicholson to stop operating an iris farm, asserting that such violated  
3 county zoning ordinances. The cease and desist order provided Nicholson 30 days to comply.  
4 The right to notice and opportunity to be heard attached at the time the notice was delivered.  
5 Since there was no opportunity to be heard before effectiveness of the order, the claim for a  
6 violation of due process occurred at that time. *Id.* at 13-14.

7 In *Gregory v. Fresno Cty.*, 2018 U.S. Dist. LEXIS 152327, the court determined that a  
8 valid due process claim was presented. There, the county issued cease and desist letters  
9 effective 30 days from issuance. The letters provide an appeal process, which plaintiffs asserted  
10 objections to the county findings and letter fulfilled the request for hearing but none was  
11 provided. *Id.* at 78-79. The court found that due to the failure to being provided a hearing prior  
12 to effectiveness of the orders, the plaintiff presented a valid due process claim. *Id.*

13 Here, OIC issued the Order on ACLDN effective immediately and without the  
14 opportunity to be heard. RCW 48.04.020 contemplates compliance with the due process clause.  
15 It allows for an *automatic* stay of any action where a demand for hearing is made before the  
16 effective date of the action. However, OIC circumvented the ability to obtain an automatic stay,  
17 and thus the opportunity to be heard before being deprived of rights, by issuing the Order  
18 effective immediately.

19 The circumstances here do not rise to the level of exceptional circumstances warranting  
20 the deprivation of rights before an opportunity to be heard, as unambiguously illustrated by  
21 OIC's own actions. First, OIC took more than 8 months to act after receipt of documents from  
22 the SDT, and over a year of investigation. The length of time for the investigation, given the  
23 sparse facts relevant to the action shows that the circumstances were and are not emergent.  
24 Second, the Order explicitly permits ACLDN to continue providing all member benefits to  
25 Washington members paid before the Order, including access to the fund. Again, this action  
26 establishes that OIC's concerns regarding ACLDN is truly not emergent.

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1 It is noteworthy that OIC's Order comes after OIC improperly served ACLDN a  
2 subpoena for documents (with which ACLDN complied under threat of court action and  
3 contempt). OIC served the subpoena without actual authority to do so. In the subpoena, OIC  
4 cites RCW 48.02.060<sup>6</sup>; RCW 34.05.446(1)-(2)<sup>7</sup>; WAC 10-08-120<sup>8</sup>; and WAC 284-02-070<sup>9</sup> as  
5 authority. None provides such authority. There is no authority extant permitting OIC to issue  
6 subpoenas on unlicensed citizens.

7 RCW 48.03.070 grants the commissioner the power to subpoena documentary evidence  
8 from anyone that is relative to the subject of any hearing or investigation. However, RCW  
9 48.03.005, the preamble to Chapter 48.03 RCW, says that the chapter applies "to the financial  
10 analysis and examination of *insurers and other regulated entities*." Thus, this stated subpoena  
11 power does NOT apply to unlicensed citizens (those not regulated via license by OIC). The  
12 administrative procedures act explicitly permits subpoenas. However, such power is only  
13 specific to adjudicative proceedings. At the time the SDT was issued, there were no  
14 adjudicative proceedings. RCW 34.05.588 (a provision of the administrative procedure act  
15 specific to judicial review and civil enforcement) addresses the enforcement of agency  
16 subpoenas. Subsection (1) is specific to an agency issued subpoena *in an adjudicative*  
17 *proceeding* and seeking enforcement in superior court. Subsection (2) is specific to  
18 investigative subpoenas but is limited to when agencies have "statutory authority to issue  
19 investigative subpoenas." Unless OIC can point out to other statutory authority for investigative  
20 subpoena, such does not apply.

21 \_\_\_\_\_  
22 <sup>6</sup> RCW 48.02.060 is titled General Powers and Duties – State of Emergency. The statute allows for investigations  
but does NOT mention anywhere subpoena authority.

23 <sup>7</sup> RCW 34.05.446 – Administrative Procedures Act – Adjudicative Proceedings – Subpoenas, Discovery, and  
24 Protective Orders. This expressly allows the Presiding Office to issue subpoenas – in the context of an adjudicative  
proceeding. The subpoena was NOT issued by a Presiding Officer and there was no adjudicative proceeding.

25 <sup>8</sup> WAC 10-08-120 – Adjudicative Proceedings – subpoenas. This code discusses issuing subpoenas, but again, this  
is specific to during adjudicative proceedings.

26 <sup>9</sup> WAC 284-02-070 – Insurance Commissioner's Office – Generally – Hearings. Not only is this code specific to  
hearings (there was none at time of SDT), but "subpoena" is not mentioned even once in the text.



1 OIC is attempting to wield power that it does not have. It did so improperly in the  
2 investigative process and now again by issuing a cease and desist order depriving ACLDN of  
3 liberty and property. OIC's Order violates the Due Process Clause by failing to provide  
4 ACLDN the opportunity to present its case before a competent tribunal before the Order  
5 deprived ACLDN of liberty and property rights.

6  
7 **III. CONCLUSION**

8 OIC's cease and desist order dated March 26, 2019 prevented ACLDN from engaging in  
9 business and earning money in Washington without notice and an opportunity to be heard. The  
10 action deprived ACLDN of liberty and property rights. As such, due process requires that  
11 ACLDN be afforded an opportunity to be heard *before* the deprivation of these rights.  
12 Accordingly, a stay should be applied to the cease and desist order while this matter proceeds to  
13 hearing.  
14

15  
16 Dated this 26<sup>th</sup> day of May 2020.

17  
18 **FREEMAN LAW FIRM, INC.**

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