

1 as members of Columbia in promoting open and democratic governance of that cooperative
2 member-owned credit union. SaveCCU was formed in early 2004 to oppose the conversion of
3 Columbia to a bank and to promote open and democratic governance by its members.

4 SaveCCU has been successful in the 2004 and 2005 elections for Columbia's board of
5 directors and its supervisory committee in causing the election to those positions of individuals
6 based upon their past support of and by SaveCCU. Plaintiff Marbet was elected to Columbia's
7 supervisory committee on September 15, 2004, for a two-year term that will expire with the
8 election of his successor at the 2006 annual membership meeting. Chudy and Edgecomb were
9 elected to Columbia's board of directors on June 29, 2005, for three-year terms that will expire
10 with the election of their successors at the 2008 annual membership meeting.

11 During 2006, a five-member majority of Columbia's nine-member board of directors that
12 opposes SaveCCU's positions on corporate governance matters has amended its bylaws and
13 taken other actions designed to thwart the election at the 2006 annual meeting of candidates who
14 share SaveCCU's positions on corporate governance matters. In January 2006, that board
15 majority amended Columbia's bylaws to delete a requirement that its elections be conducted by
16 an "impartial process." In the spring, that board majority determined that in the 2006 election,
17 (1) Columbia would endorse and campaign for the election of candidates chosen by the board's
18 nominating committee, consisting of the three members of the board's majority who were not
19 themselves candidates seeking re-election, and (2) the voters' pamphlet, unlike those in the 2004
20 and 2005 elections, would not include candidate statements, but would include only candidates'
21 biographic information (*e.g.*, education, employment, and community involvement). The board
22 majority on April 25, 2006, amended the bylaws to delete a passage that had required candidates
23 to file "Voters Pamphlets Statements" at least 75 days before the annual meeting.

24 On May 14, 2006, SaveCCU placed a newspaper display ad in *The Columbian*,
25 Vancouver's daily newspaper, that urged readers to run for election to Columbia's board of
26 directors and its supervisory committee. That ad expressed the opinion of a majority of
27 SaveCCU's members who approved it that the actions taken by the majority of Columbia's

1 board were “an attempt to control the outcome of the upcoming election.” The full ad is Exhibit
2 18 in the Complaint Appendix.

3 On June 30, 2006, a majority of Columbia’s then 4-member supervisory committee,
4 including plaintiff Marbet, voted to call a special meeting of the membership pursuant to RCW
5 31.12.195(1) to vote on three questions, pursuant to RCW 31.12.255(1)(i) which provides that a
6 credit union’s board of directors shall “[p]erform such other duties as the members may direct.”

7 The questions submitted to the membership for direction to the board were:

- 8 1. Should candidates be permitted to make 500 word statements in the Columbia
9 Community Credit Union Voters Pamphlet and on the website for annual
10 elections?
- 11 2. Should Columbia Community Credit Union be prohibited from endorsing and
12 promoting candidates for elective credit union positions?
- 13 3. Should credit union officials be prohibited from expending credit union funds
14 to promote their preferred candidates for credit union elective positions?

15 A copy of the supervisory committee’s notice to Columbia’s corporate secretary calling the
16 special membership meeting is Exhibit 19 in the Complaint Appendix.

17 On July 5, 2006, three of Columbia’s minority directors, including plaintiffs Chudy and
18 Edgecomb, filed in Clark County Superior Court an action against Columbia’s five majority
19 directors and CEO Cann seeking a declaratory judgment that their positions as directors afforded
20 them certain rights to information and to full participation in board of directors’ discussions and
21 decision-making in its management of the business and affairs of Columbia, consistent with
22 RCW 31.12.255.

23 At a special board meeting on August 15, 2006, Columbia’s five-member majority board
24 amended its bylaws to define “for cause” so as to warrant a member’s immediate expulsion from
25 Columbia to include “any other reason which in the opinion of the Board members voting for the
26 expulsion agree is inimical to the best interests of the Credit Union.” Thereupon, that five-
27 member majority board voted to expel immediately from membership directors Chudy and

1 Edgecomb, the three supervisory committee members (including Marbet) who voted on June 30,
2 2006 to call the special membership meeting. The notices of expulsion of Chudy, Edgecomb,
3 and Marbet are included as Exhibits 26, 27, and 28 of the Complaint Appendix.

4 Columbia now asserts that Chudy and Edgecomb have been lawfully removed from their
5 elective positions as directors, and that Marbet has been lawfully removed from his elective
6 position as a member of the supervisory committee. Columbia asserts publicly that its 2006
7 election, for which it plans to mail out ballots to members on September 19, 2006, will be to fill
8 five (5) director positions (including the remaining terms of Chudy and Edgecomb), and to fill
9 all five (5) supervisory committee positions. Columbia struck Marbet's name and information
10 from the listing of board candidates posted on its website and does not recognize him as a
11 candidate seeking election to Columbia's board of directors.

12 13 **III. Statement of the Issues**

14 Should the Court enter a preliminary injunction to bar Columbia (1) from mailing to its
15 members 2006 annual election materials and ballots that omit Marbet as a candidate for the
16 election to Columbia's board of directors, and (2) from excluding from full participation of
17 Columbia's board of directors and supervisory committee those plaintiffs (Chudy, Edgecomb,
18 and Marbet) and other individuals who were wrongfully removed from their duly elected
19 positions by action of a majority of Columbia's board on August 15, 2006, to expel them from
20 membership?

21 **IV. Evidence Relied Upon**

22 This motion is based upon the Complaint and its Appendix, the Declaration of Cathryn
23 Chudy, and the Declaration of Lloyd Marbet filed concurrently with this motion.

24 25 **V. Legal Authority**

26 The Washington Credit Union Act ("WCUA"), Chapter 31.12 RCW, provides that credit
27 unions such as Columbia are member-owned and member-governed cooperative societies. RCW

1 31.12.015. Upon a credit union’s voluntary liquidation, its members divide its net assets in
2 proportion to their shares and deposits. RCW 31.12.474. A credit union’s members elect from
3 among their numbers individuals to serve on its board of directors (RCW 31.12.225) and its
4 supervisory committee (RCW 31.12.326), and may by membership vote at a special meeting
5 remove directors (RCW 31.12.246) and take any other action (RCW 31.12.195). Members have
6 statutory authority by RCW 31.12.225((1)(i) (“the board shall (i) Perform such other duties as
7 the members may direct.”) to direct, by majority vote, their board of directors as to any matter.
8 RCW 31.12.195(1) provides that special membership meetings “may be called by a majority of
9 the board, a majority vote of the supervisory committee, or upon written application of at least
10 ten percent or two thousand of the members of a credit union, whichever is less.”

11 It is clear from the collective provision of the WCUA that state credit unions, including
12 Columbia, are to be governed by democratic principles. The Washington Department of
13 Financial Institutions (“DFI”) recognizes that principle, as illustrated by its DCU Opinion Letter
14 04-01 (Exhibit 3 to Complaint Appendix) and its Agreement with Columbia (Exhibit 5 to
15 Complaint Appendix), both of which enforce fair democratic procedures for the governance of
16 Columbia by its membership.

17 The WCUA does not permits a credit union’s board of directors unilaterally to remove a
18 duly elected director or member of its supervisory committee. Instead, removal requires a vote
19 of the membership at a special meeting called for that purpose after the member has been
20 suspended by the board for “cause”, as RCW 31.12.285 provides:

21 **Suspension of members of board or supervisory committee by board - For**
22 **cause.** The board may suspend for cause a member of the board or a member of
23 the supervisory committee until a membership meeting is held. The membership
24 meeting must be held within thirty days after the suspension. The members
25 attending the meeting shall vote whether to remove a suspended party. For
26 purposes of this section, “cause” includes demonstrated financial irresponsibility,
27 a breach of fiduciary duty to the credit union, or activities which, in the judgment
of the board, threaten the safety and soundness of the credit union.

25 The “cause” necessary for suspension of an elected board or committee member defined in that
26 statute: demonstrated financial irresponsibility, breach of fiduciary duty, activities threatening
27

1 the safety and soundness of the credit union. RCW 31.12.005 (23) and (24) define “unsafe and
2 unsound” for purposes of the WCUA.

3 Plainly, RCW 31.12.285 does not empower Columbia’s five-member board majority to
4 remove unilaterally from an elective office on it board or supervisory committee an individual
5 with whom it has philosophical differences concerning the proper governance of Columbia. The
6 action of Columbia’s five-member board majority in purporting to expel from membership the
7 plaintiff is nothing more than that.

8 The Court of Appeals in *Galbraith v. Tapco Credit Union*, 88 Wn. App. 939, 946 P.2d
9 1242 (1997), recognized the lawlessness of a credit union board expelling a member for having
10 exercised his lawful rights involving a dispute by he and others with the credit union. That
11 appellate court reversed the trial court’s summary dismissal of that member’s claim of wrongful
12 expulsion.

13 Similarly, there is a substantial likelihood that this court will find as wrongful and
14 unlawful the actions of Columbia’s board majority on August 15, 2006, in unilaterally removing
15 from membership and from elective office Chudy, Edgecomb, and Marbet.

16 While RCW 31.12.255(1)(d) does empower a credit union’s board to “Establish the
17 conditions under which a member may be expelled for cause,” there is legal significance in the
18 statutory requirement that an expulsion be “for cause.” In the employment termination context,
19 the Washington state supreme court has held that an employer’s determination of “just cause”
20 simply a subjective one but must pass an “objective reasonable belief standard.” *Baldwin v.*
21 *Sisters of Providence*, 112 Wn.2d 127, 139, 769 P.2d 298 (1989). There is no good reason why a
22 the “for cause” language in RCW 31.12.255(1)(d) should not also require an objective standard,
23 as well. Plainly, the Columbia majority board’s action on August 15, 2006, to amend its bylaws
24 to permit their expulsion of members for “any other reason which in the opinion of the Board
25 members voting for the expulsion agree is inimical to the best interests of the Credit Union” fails
26 an objective standard, particularly when their cited reasons for removal are activities plainly
27 permitted by law.

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VI. Irreconcilable Harm

If Columbia is not enjoined, it will continue to deny Chudy and Edgecomb notice of, and the right to participation in, the meetings of its board of directors, causing all actions taken at those meetings to be void or voidable under applicable law. And unless enjoined, Columbia will omit from its 2006 election materials and ballot the name and information of Marbet as a candidate for election to Columbia's board, causing irreconcilable harm to him and those Columbia members who wish to vote for his election to that position.

Under the circumstances of this request, Plaintiffs ask that the Court exercise its inherent power to waive any bond, or in the alternative, to fix a bond or cash deposit at a nominal amount.

VII. Conclusion.

Plaintiffs move for a preliminary injunction or other relief to restore immediately to office the individuals duly elected to the board of directors and supervisory committee of Columbia and to bar Columbia from mailing (now scheduled for September 19, 2006) ballots and voter pamphlets to its membership for the 2006 election without restoring in those election materials plaintiff Marbet as a candidate for Columbia's board of directors. The Court should employ its equitable powers to enjoin that misconduct from continuing.

Date: September 8, 2006



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