

## Project on Fair Representation and the Oregon Cares Fund

A public interest law firm may, if it qualifies, obtain tax exemption under section 501(c)(3) of the Internal Revenue Code (IRC). By granting tax exemption to these law firms, the IRC helps these firms litigate issues of broad public importance that might not otherwise be litigated due to the economic constraints of their clients.

But should 501(c)(3) exemption be granted to public interest firms that challenge policies designed to benefit and protect historically oppressed groups? Take the Project on Fair Representation (POFR), for example. This public interest law firm was founded by Edward Blum, a conservative political strategist known for challenging racially conscious policies.<sup>1</sup> In the highly publicized case *Fisher v. University of Texas*, Blum and POFR helped Abigail Fisher, a white applicant who was denied admission, sue UT Austin for considering race in its undergraduate admissions process.<sup>2</sup> POFR has been involved in several other high-profile cases challenging affirmative action policies. According to its online donation page, POFR is a 501(c)(3) nonprofit organization.<sup>3</sup>

Recently, POFR has expanded its reach to Oregon. On October 30, 2020, POFR announced that it would provide legal counsel to Great Northern Resources, Inc. (Great Northern) in challenging the state's Oregon Cares Fund. The state earmarked \$62 million of its CARES Act Coronavirus Relief Fund for the Oregon Cares Fund, which is targeted at providing pandemic-related relief to Black-owned businesses, Black community-based organizations, and Black individuals.<sup>4</sup> Great Northern is "a small family-owned logging business that has suffered financially because of the pandemic."<sup>5</sup> Because the owner of Great Northern is white, the company was ineligible for relief through the Oregon Cares Fund and was denied upon submitting an application.<sup>6</sup> Great Northern argues that "[t]he pandemic's harm to Great Northern should qualify it to compete in any government-aid program for businesses that have been affected by Covid-19," and that the Oregon Cares Fund's "express use of race in distributing

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<sup>1</sup> Morgan Smith, *One Man Standing Against Race-Based Laws*, N.Y. TIMES (Feb 23, 2012), <https://www.nytimes.com/2012/02/24/us/edward-blum-and-the-project-on-fair-representation-head-to-the-supreme-court-to-fight-race-based-laws.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Make a Donation*, PROJECT ON FAIR REPRESENTATION, <https://www.projectonfairrepresentation.org/donate/> (last visited Feb. 15, 2021 at 9:10 AM).

<sup>4</sup> John Eligon, *A Covid-19 Relief Fund Was Only for Black Residents. Then Came the Lawsuits*, N.Y. TIMES (Jan. 3, 2021), <https://www.nytimes.com/2021/01/03/us/oregon-cares-fund-lawsuit.html>.

<sup>5</sup> *Project on Fair Representation Provides Counsel to Oregon Small Business Owner Challenging Constitutionality of Race-Based Covid-19 Relief Program*, PR NEWSWIRE (Oct. 30, 2020, 10:00 AM), <https://www.prnewswire.com/news-releases/project-on-fair-representation-provides-counsel-to-oregon-small-business-owner-challenging-constitutionality-of-race-based-covid-19-relief-program-301163884.html>.

<sup>6</sup> *Id.*; Complaint at 7, *Great Northern Resources, Inc. v. Cobra*, 3:20-cv-01866-IM, 2020 WL 6820793 (D. Or. Nov. 20, 2020) [https://www.projectonfairrepresentation.org/wp-content/uploads/2020/10/POFR\\_Oregon\\_Complaint\\_and\\_PI\\_2020\\_10\\_29\\_Great\\_Northern\\_Resources\\_v\\_Cobra\\_Complaint\\_Exs\\_FILED.pdf](https://www.projectonfairrepresentation.org/wp-content/uploads/2020/10/POFR_Oregon_Complaint_and_PI_2020_10_29_Great_Northern_Resources_v_Cobra_Complaint_Exs_FILED.pdf).

government money is unprecedented and blatantly unconstitutional” under the Equal Protection Clause of the 14th Amendment.<sup>7</sup>

In justifying the Oregon Cares Fund, proponents cite the historic health, education, and economic disparities that Black people face, which have been exacerbated by the COVID-19 pandemic. Because Black laborers are overrepresented in low-wage, “essential” jobs, they are overexposed to COVID-19 while also facing rising unemployment rates.<sup>8</sup> In Oregon, Black households make on average less than half the amount of white households (\$29,825 per annum compared to \$67,715 per annum), and 2006–2010 data showed that 29% of Black families lived in poverty compared to 12% of white families.<sup>9</sup> In light of these disparities, proponents of the Oregon Cares Fund argue that “the distribution of funds should not, and must not, flow based solely on per capita population figures. Distribution should reflect an investment in those disproportionately affected by the COVID-19 pandemic due to pre-existing biases in our socio-economic systems.”<sup>10</sup> The Oregon Department of Administrative Services is responsible for implementing the Oregon Cares Fund, while the Fund itself is managed and distributed by two community-based partners, the Black United Fund and The Contingent.<sup>11</sup>

The 501(c)(3) tax exemption for public interest law firms is intended to help firms litigate issues that are of benefit to the community as a whole and that would not otherwise be litigated because no individual plaintiff has sufficient economic interest to take on the costs of litigation. While one could argue that this case and POFR’s other cases meet those intentions, it is worth noting that granting tax exemption to a law firm of this nature may have other societal costs. This type of litigation hinders policies to mitigate historic and present disparities and the systemic inequities facing oppressed groups and individuals. While the scope of “community benefit” is vague (likely by the IRS’s intention), enabling public interest law firms to challenge such policies is not without its own harm.

Divine Zheng  
University of Oregon School of Law  
JD 2021

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<sup>7</sup> Complaint at 2–3, *Great Northern Resources, Inc. v. Coba*, 3:20-cv-01866-IM, 2020 WL 6820793 (D. Or. Nov. 20, 2020).

<sup>8</sup> *The Oregon Cares Fund for Black relief and resiliency Overview*, THE OREGON CARES FUND FOR BLACK RELIEF + RESILIENCY, <https://www.theoregoncaresfund.org/data> (last visited Feb. 15, 2021, 9:20 AM).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*