

Post-Script: Nick Rolovich Lawsuit  
By Martin J. Greenberg

I. Introduction

On or about November 1, 2022 an article was posted on Greenberg’s Coaching Corner entitled “Nick Rolovich Termination for COVID-19 Vaccination Refusal.” Shortly thereafter, on or about November 14, 2022, Rolovich, as Plaintiff, filed a complaint in the Superior Court of the State of Washington in the County of Whitman.

II. Party Defendants: Washington State University, an agency of the State of Washington, Patrick Chun, Director of Athletics, Washington State University, in his capacity personally, and Jay Inslee, Governor of the State of Washington.

III. Attorney for Rolovich: Attorney Brian Fahling, an experienced trial and appellate lawyer, of Kenmore, Washington.

IV. Facts of the Case: Facts of the case are as stated in the previous article posted on Greenberg’s Coaching Corner and as stated in the Complaint.<sup>1</sup>

V. Exhaustion of Remedies: Rolovich had exhausted pursuant to his contractual obligations all administrative procedures and remedies:

1. WSU Administrative Process

5. Pursuant to Mr. Rolovich’s employment agreement with WSU, he was required to appeal his termination, first, to Mr. Chun, and upon Mr. Chun’s denial of the appeal, to WSU President, Kirk Schulz. Mr. Rolovich timely appealed to Mr. Chun, and then President Schulz. President Schulz denied Mr. Rolovich’s appeal on December 6, 2021.

2. Equal Employment Opportunity Commission/Washington State Human Rights Commission

6. On or about February 14, 2022, Mr. Rolovich filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging violations of Title VII of the Civil Rights Act 1964, 42 U.S.C. §§ 2000 et seq. Because the Washington State Human Rights Commission (“WHRC”) is a designated Fair Employment Practices Agency (“FEPA”) in partnership with the EEOC, Mr. Rolovich’s EEOC filing (dual filing) fulfills the State’s requirement that a 49.60.030, et seq., claim be filed with the State prior to any court filing. The State and federal claims arise out of the same facts alleged herein.

7. On or about August 16, 2022, Mr. Rolovich received, from the Department of Justice, Civil Rights Division (“DOJ”), a Notice of Right to Sue Within 90 Days in response to his previously filed charge of discrimination with the EEOC. This

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<sup>1</sup> Cody Proctor, *Former WSU head football coach Nick Rolovich sues WSU, Gov. Inslee for wrongful termination*, KREM2.com, Nov. 14, 2022, <https://www.krem.com/article/sports/ncaa/wsuv/wsu-nick-rolovich-wrongful-termination-lawsuit/293-bbe32255-a76b-45c0-af36-5540d7dd8ba3>.

complaint has been filed within 90 days of Mr. Rolovich's receipt of the DOJ Notice of Right to Sue.

3. Department of Enterprise Services—Office of Risk Management (Tort Claim)
  8. On or about April 27, 2022, Mr. Rolovich filed a tort claim with the State of Washington Department of Enterprise Services, Office of Risk Management.
  9. More than 60 days has elapsed from the date of filing Mr. Rolovich's tort claim. RCW 4.92.110.
  10. Any and all prerequisites to the filing of this lawsuit shall have been met.<sup>2</sup>

VI. Causes of Action:

1. Breach of Contract-Breach of Implied Covenant of Good Faith and Fair Dealing
2. Washington Law Against Discrimination, RCW 49.60, et seq.
3. Washington Constitution, Article 1, Section 11-Discrimination against Religion/Conscience
4. Wrongful Withholding of Wages, RCW 49.52, et seq. and RCW 49.48.010, et seq.
5. Violation of Title VII, 42 U.S.C. Section 2000e, et seq., alleges Title VII of the Civil Rights Act of 1964 prohibits WSU from discriminating against its employees on the basis of their sincerely held religious beliefs.
6. 42 U.S.C., Section 1983-First Amendment-Free Exercise of Religion and Fourteenth Amendment-Due Process (Defendant Chun only, in his individual capacity)
7. 42 U.S.C., Section 1983, (First Amendment-Free Exercise of Religion)
8. Fourteenth Amendment – Due Process (as applied)<sup>3</sup>

VII. Prayer for Relief:

- a. Assume jurisdiction over this action;
- b. Award damages in an amount to be determined at trial plus pre and post-judgment interest, to compensate Plaintiff for all monetary and/or economic damages, including but not limited to, the loss of past and future income, wages, compensation, job security and other benefits of employment;
- c. Award liquidated damages, as provided for in the employment contract;
- d. Award punitive damages, as provided for under 42 U.S.C. § 1983, Title VII, RCW 49.60 et seq. and as otherwise provide for under federal and state law;
- e. Award double damages as provided for in RCW 49.52, et seq.;
- f. Award damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff in an amount to be determined at trial, plus pre and post-judgment interest;
- g. Award an offset for the adverse federal income tax consequences resulting from damages and award of attorneys' fees;
- h. Award costs that Plaintiff has incurred in this action, including but not limited to expert witness fees, as well as reasonable attorneys' fees and costs to the fullest extent permitted by federal and state law; and
- i. Award such other and further relief as the Court may deem just and proper.<sup>4</sup>

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

VIII. University of Washington's initial response:

In response to the Rolovich lawsuit, WSU Vice President for Marketing and Communication Phil Weiler shared the following statement with KREM 2:

*Mr. Rolovich's lawsuit against Washington State University is wholly without merit.*

*Washington State University carried out the Governor's COVID-19 vaccination proclamation for state employees in a fair and lawful manner, including in its evaluation of employee requests for medical or religious exemptions and accommodations. For multiple reasons, Mr. Rolovich did not qualify, and the university firmly stands by that decision.*

*Washington State University will vigorously defend itself against Mr. Rolovich's claims.<sup>5</sup>*

Stay tuned for Defendants' answer to the Complaint and defenses thereto, a settlement as between the parties, or the results of a trial . . .

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<sup>5</sup> *Id.*