

No. 10-A \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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**Family PAC, *Plaintiff-Appellee***

*v.*

**Rob McKenna, et al., *Defendants-Appellants***

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Appeal from Case No. 10-35832 in the  
United States Court of Appeals for the Ninth Circuit

and

Case No. 3:09-cv-05662-RBL in the  
U.S. District Court for the Western District of Washington

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**Application of Family PAC to Vacate the Ninth Circuit's Stay  
of the District Court's Judgment — Appendix**

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To the Honorable Anthony M. Kennedy

Associate Justice of the United States Supreme Court and  
Circuit Justice for the Ninth Circuit

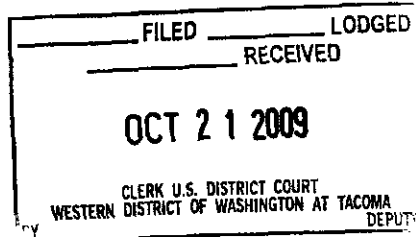
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October 7, 2010

## Appendix

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09-CV-05662-CMP

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION**

FAMILY PAC,

Plaintiffs,

vs.

SAM REED, in his official capacity as  
Secretary of State of Washington, ROB  
MCKENNA, in his official capacity as  
Attorney General of Washington, JIM  
CLEMENTS, DAVID SEABROOK, JANE  
NOLAND, and KEN SCHELLBERG,  
members of the Public Disclosure  
Commission, in their official capacities, and,  
CAROLYN WEIKEL, in her official capacity  
as Auditor of Snohomish County, Washington,

Defendants.

No.

**C09 5662** RBL

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Family PAC complains and alleges as follows:

**Introduction**

1. This is a civil action for declaratory and injunctive relief arising under the First and  
Fourteenth Amendments to the Constitution of the United States.

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2. This case concerns the pre-enforcement, facial and as-applied constitutional challenge to Washington's Public Disclosure Law, Wash. Rev. Code ("RCW") § 42.17.010, *et seq.* ("PDL"). Plaintiff seeks declaratory and injunctive relief with respect to portions of the PDL because they violate the First Amendment to the United States Constitution, as incorporated by virtue of the Fourteenth Amendment to the United States Constitution. Consequently, each is unconstitutional on its face and as applied to Plaintiff Family PAC.

3. Plaintiff Family PAC challenges the PDL's threshold for reporting contributions, RCW § 42.17.090(1)(b), both facially and as-applied to it, on the ground that the threshold is not narrowly tailored to serve a compelling government interest in violation of the First Amendment to the United States Constitution.

4. Plaintiff Family PAC also challenges the PDL's \$5,000 campaign contribution limit during the twenty-one days preceding a general election, RCW § 42.17.105(8), both facially and as-applied to it, on the grounds that it is not narrowly tailored to serve a compelling government interest in violation of the First Amendment to the United States Constitution. *See Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981) ("CARC") (holding that contribution limits are unconstitutional in the context of a referendum election).

5. Given the nature of the rights asserted, the failure to obtain injunctive relief from this Court will result in immediate and irreparable injury to Plaintiff.

### **Jurisdiction and Venue**

6. This case raises questions under the Constitution of the United States and 42 U.S.C. § 1983, and thus this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331 and 1343(a).

7. This Court also has jurisdiction under the Declaratory Judgment Act. *See* 28 U.S.C. §§ 2201, 2202.

8. The Western District of Washington is the proper venue for this case pursuant to 28 U.S.C. § 1391(b) because Defendant Reed resides in this district and Plaintiff Family PAC has its principal place of business in this district.

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## Parties

9. Plaintiff Family PAC is a State Continuing Political Committee organized pursuant to RCW § 42.17.040, that is a “political committee . . . of continuing existence not established in anticipation of any particular election campaign” (RCW § 42.17.020(14) (definition of “continuing political committee”) and has its principal place of business in Snohomish County, Washington. It intends to support traditional family values in Washington State by soliciting and receiving contributions, and by making contributions and expenditures to support or oppose ballot propositions in the 2009 election and beyond. Its initial project is to support referendum 71 on SB 5688 and to encourage voters to reject SB 5688. In the future, it will only support or oppose ballot measures, not candidates.

10. Defendant Sam Reed is the Secretary of State of Washington. In his official capacity, Defendant Reed is responsible for receiving referendum petitions pursuant to RCW § 29A.72.010. The Office of the Secretary of State is also designated as a place where the public may file papers or correspond with the Public Disclosure Commission and receive any form or instruction from the Commission. RCW § 42.17.380.

11. Defendant Rob McKenna is the Attorney General for the State of Washington. In his official capacity, Defendant McKenna is charged with supplying such assistance as the Public Disclosure Commission may require. RCW § 42.17.380. Defendant McKenna is also granted the authority to investigate and bring civil actions on behalf of the state for any violations of the PDL. RCW § 42.17.400.

12. Defendant Jim Clements is the Chair of the Public Disclosure Commission. Defendant Clements is sued in his official capacity and is subject to the jurisdiction of this Court. Defendants David Seabrook, Jane Noland, and Ken Schellberg are commissioners of the Public Disclosure Commission. They are sued in their official capacity. The Public Disclosure Commission is granted the authority to enforce the PDL, RCW § 42.17.360(7).

13. Defendant Carolyn Weikel is the Auditor of Snohomish County, Washington. In her official capacity, Defendant Weikel is charged with receiving copies of reports filed by Plaintiff Family PAC. RCW §§ 42.17.040(1), 42.17.040(2).

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## **Facts**

14. Pursuant to Wash. Const. art. II, § 1(b), the referendum power is reserved by the people of Washington State.

15. The referendum power grants Washington citizens the right to call a referendum on any act, bill, law, or any part thereof passed by the legislature by submitting a petition to that effect to the Secretary of State. Wash. Const. art. II, § 1(b).

16. If a petition submitted to the Secretary of State contains at least four percent of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the referendum petition, the effective date of the act, bill, law, or any part thereof is delayed until the electorate has an opportunity to vote on the referendum. Wash. Const. art. II, §§ 1(b), (d).

17. An act, bill, law, or any part thereof, subject to a referendum, becomes law only if a majority of the votes cast are in favor of the referendum. Wash. Const. art. II, § 1(d).

18. On January 28, 2009, Washington State Senator Ed Murray introduced Senate Bill 5688 ("SB 5688"), a bill designed to expand the rights, responsibilities, and obligations accorded state-registered same-sex and senior domestic partners to be equivalent to those of married spouses. The legislation is commonly referred to simply as the "everything but marriage" domestic partnership bill.

19. On March 10, 2009, after various amendments, the Washington Senate passed Second Substitute Senate Bill 5688.

20. On April 15, 2009, the Washington House of Representatives passed Second Substitute Senate Bill 5688.

21. On or about October 21, 2009, Family PAC organized as a State Continuing Political Committee pursuant to RCW § 42.17.040.

22. Family PAC's general purpose is to support traditional family values in Washington State by soliciting and receiving contributions, and by making contributions and expenditures to support or oppose ballot propositions in the 2009 election and beyond. Its initial project is to support referendum 71 on SB 5688 and to encourage voters to reject SB 5688.

23. Joseph Backholm is the campaign manager of Family PAC.

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1       24. On May 18, 2009, Washington Governor Christine Gregoire signed Engrossed Second  
2 Substitute Senate Bill 5688.<sup>1</sup>

3       25. On July 25, 2009, a petition with over 138,500 signatures was submitted to Defendant  
4 Reed, exceeding the number of signatures necessary to place a referendum question on the ballot.

5       26. SB 5688 will become law only if a majority of Washington residents vote to “approve”  
6 the bill at the next general election.

7       27. Persons intend – now and in the future – to contribute more than \$5,000 to Family PAC  
8 during the twenty-one days preceding the election, and Family PAC intends – now and in the  
9 future – to receive contributions in excess of \$5,000 during the twenty-one days preceding the  
10 election. Family PAC will not accept such contributions as long as Washington law prohibiting  
11 such contributions is not enjoined. RCW § 42.17.105(8).

12       28. Potential donors to Family PAC have indicated that they are unwilling to donate if  
13 Family PAC is required to report their name and address pursuant to the PDL.

14       29. Family PAC intends – now and in the future – to accept contributions in excess of \$25  
15 and is required to report the name and address of those contributors. Family PAC will report the  
16 names and addresses of contributors as long as Washington law requiring such reporting is not  
17 enjoined.

18       30. Family PAC intends – now and in the future – to accept contributions in excess of \$100  
19 and is required to report the occupation, employer, and employer’s address of those contributors.  
20 Family PAC will report the occupation, employer, and employer’s address of contributors as long  
21 as Washington law requiring such reporting is not enjoined.

## 22       **The Washington Public Disclosure Law**

23       31. The PDL defines a “political committee” in relevant part as “any person having the  
24 expectation of receiving contributions or making expenditures in support of, or opposition to, any  
25 candidate or any ballot proposition.” RCW § 42.17.020(39).

26       32. “Ballot proposition” is defined in relevant part as “any . . . initiative, recall, or  
27

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28       <sup>1</sup> The enacted legislation subject to the referendum petition will be referred to simply as SB 5688.

1 referendum proposition proposed to be submitted to the voters of the state.” RCW §  
2 42.17.020(4).

3 33. “Person” is defined as “an individual, partnership, joint venture, public or private  
4 corporation, association, federal, state, or local governmental entity or agency however  
5 constituted, candidate, committee, political committee, political party, executive committee  
6 thereof, or any other organization or group of persons, however organized.” RCW §  
7 42.17.020(36).

8 34. “Contribution” is defined broadly and includes legal and professional services  
9 performed on a *pro bono* basis to a political committee. RCW § 42.17.020(15); Wash. Admin.  
10 Code 390-17-405(2). *See also* Public Disclosure Commission, *2009 Campaign Disclosure*  
11 *Instructions*, at 24 & 31 (July 2009).

12 35. Family PAC and major donors are required to file reports with the Public Disclosure  
13 Commission and the local county auditor or elections officer. *See, e.g.*, RCW §§ 42.17.040(1) &  
14 42.17.080(1).

15 36. The Public Disclosure Commission is required to keep copies of reports for ten years.  
16 RCW § 42.17.450. All other recipients of reports (*i.e.* county auditor or elections officer) are  
17 required to keep copies for six years. RCW § 42.17.450.

18 37. All statements and reports filed in accordance with the PDL are public records of the  
19 agency where they are filed and must be made available to the public during normal business  
20 hours. RCW § 42.17.440.

21 38. Pursuant to RCW § 42.17.367, the Public Disclosure Commission is required to make  
22 copies of all statements and reports available on the internet. *See also* [http://www.pdc.wa.gov/](http://www.pdc.wa.gov/QuerySystem/Default.aspx)  
23 [QuerySystem/Default.aspx](http://www.pdc.wa.gov/QuerySystem/Default.aspx).

24 39. RCW § 42.17.090 provides, in relevant part, that each report required under RCW §  
25 42.17.080 shall disclose:

26 the *name and address* of each person who has made one or more contributions during the  
27 period, together with the money value and date of such contributions and the aggregate  
28 value of all contributions received from each such person during the campaign . . .  
PROVIDED FURTHER, That contributions of no more than twenty-five dollars in the  
aggregate from any one person during the election campaign may be reported as one lump

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1 sum so long as the campaign treasurer maintains a separate and private list of the name,  
2 address, and amount of each such contributor . . . .

3 RCW § 42.17.090 (emphasis added).

4 40. Pursuant to Wash. Admin. Code 390-16-034, all reports required under RCW §  
5 42.17.080 shall also disclose the occupation, employer's name, and employer's address of each  
6 person who has made one or more contributions in the aggregate amount of more than \$100.  
7 Wash. Admin. Code 390-16-034 (emphasis added).

8 41. Furthermore, the PDL provides that:

9 it is a violation of this chapter for any person to make, or for any candidate or political  
10 committee to accept from any one person, contributions reportable under RCW 42.17.090  
11 in the aggregate . . . exceeding five thousand dollars for any other campaign subject to the  
12 provisions of this chapter within twenty-one days of a general election.

13 RCW § 42.17.105(8).

14 42. Any person who violates a provision of the PDL is subject to civil fines and sanctions.  
15 RCW § 42.17.390. The PDL authorizes treble damages, RCW § 42.17.400(5), and provides that  
16 the State may be awarded attorney's fees and costs of investigation and trial in a successful  
17 action. RCW § 42.17.400(5).

18 43. Plaintiff has suffered, or will suffer, irreparable harm if the requested relief is not  
19 granted.

20 44. Plaintiff has no adequate remedy at law.

### 21 Legal Arguments Common to Plaintiff's Claims

22 45. "The First Amendment is the pillar of a profound national commitment to the principle  
23 that debate on public issues should be uninhibited, robust, and wide-open . . . ." *Mont. Right to*  
24 *Life v. Eddlemann*, 999 F. Supp. 1380, 1384 (D. Mont. 1998).

25 46. "In the free society ordained by our Constitution it is not the government, but the  
26 people—individually as citizens and candidates and collectively as associations and political  
27 committees—who must retain control over the quantity and range of debate on public issues in a  
28 political campaign." *Buckley v. Valeo*, 424 U.S. 1, 57 (1976).

47. In *Buckley*, the Supreme Court held that any significant encroachment on First  
Amendment rights, such as those imposed by compelled disclosure provisions, must survive

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1 exacting scrutiny, which requires the government to craft a narrowly tailored law to serve a  
2 compelling government interest. *Buckley*, 424 U.S. at 64.

3 48. The Supreme Court has recognized that the principles applied in *Buckley* apply as  
4 forcefully to activities surrounding the referenda process. See *Buckley v. Am. Constitutional Law*  
5 *Found.*, 525 U.S. 182, 192 (1999) (“*ACLF*”) (“[T]he First Amendment requires us to be vigilant  
6 in making those judgments, to guard against undue hindrances to political conversations and the  
7 exchange of ideas. We therefore detail why we are satisfied that . . . the restrictions in question  
8 significantly inhibit communication with voters about proposed political change, and are not  
9 warranted by the state interests (administrative efficiency, fraud detection, informing voters)  
10 alleged to justify those restrictions.”) (internal citations omitted); *Citizens Against Rent Control*  
11 *v. City of Berkeley*, 454 U.S. 290, 295 (1981) (“*CARC*”) (applying *Buckley*’s contribution limit  
12 analysis in the context of ballot measure elections).

13 49. The PDL also results in compelled political speech.

14 50. The Supreme Court has repeatedly reaffirmed that “compelled disclosure, in itself, can  
15 seriously infringe on privacy of association and belief guaranteed by the First Amendment.”  
16 *Davis v. FEC*, 554 U.S. \_\_\_, \_\_\_, 128 S.Ct. 2759, 2774-75 (2008) (quoting *Buckley*, 424 U.S.  
17 at 64).

18 51. To survive exacting scrutiny, the PDL must be narrowly tailored to serve a compelling  
19 government interest. *Buckley*, 424 U.S. at 64).

20 52. The burden is on the State to demonstrate that the PDL are narrowly tailored to serve a  
21 compelling state interest. *Cal. Pro-Life Council, Inc. v. Randolph*, 507 F.3d 1172, 1178 (9th Cir.  
22 2007) (“*CPLC II*”) (citing *Republican Party of Minnesota v. White*, 536 U.S. 765, 774-75  
23 (2002)).

24 53. In the context of the First Amendment, the usual deference granted to the legislature  
25 does “not foreclose [a court’s] independent judgment of the facts bearing on an issue of  
26 constitutional law.” *Turner Broad. Sys. v. FEC*, 512 U.S. 622, 666 (1994) (internal citations  
27 omitted). The Court’s role is to ensure that the legislature “has drawn *reasonable inferences*  
28 based on *substantial evidence*.” *Id.* (emphasis added).

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1       **54.** The Supreme Court has stated that three governmental interests may justify campaign  
 2 disclosure laws if the regulations are narrowly tailored to serve those interests. *Buckley*, 424 U.S.  
 3 at 66-68 (identifying an “informational interest,” a “corruption interest,” and an “enforcement  
 4 interest.”).

5       **55.** However, *Buckley* involved only candidate elections, and the courts have clarified that  
 6 the “corruption” and “enforcement” interests are inapplicable in the context of referenda  
 7 elections. *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978) (“The risk of  
 8 corruption perceived in cases involving candidate elections simply is not present in a popular  
 9 vote on a public issue.”); *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1105 n. 23 (9th  
 10 Cir. 2003) (“*CPLC I*”) (“The interest in collecting data to detect violations also does not apply  
 11 since there is no cap on ballot-measure contributions . . .”).

12       **56.** The Ninth Circuit recently held that compelled disclosure of *de minimis* support of a  
 13 referenda is also unconstitutional under the First Amendment. *See Canyon Ferry Road Baptist*  
 14 *Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009).

15       **57.** The Supreme Court has also indicated that limits and thresholds that are not indexed for  
 16 inflation “will almost inevitably become too low over time.” *Randall v. Sorrell*, 548 U.S. 230,  
 17 261 (2006).

18       **58.** In materially similar situations in the future, Plaintiff intends to do speech materially  
 19 similar to all of its planned speech such that Washington law will apply to Plaintiff as it does  
 20 now.

21       **59.** In the future, it is likely that referenda regarding traditional family values will recur. It  
 22 is likely that issues will arise in the future, and persons will be interested in supporting or  
 23 opposing referenda, as they are in 2009, as noted above.

24       **Count I — The Public Disclosure Law’s Requirement that Political**  
 25 **Committees Report All Contributors of \$25 or More is**  
 26 **Unconstitutional**

27       **60.** Plaintiff incorporates here by reference paragraphs one through fifty-nine (59), *supra*, as  
 28 if fully set forth herein.

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1       **61.** The PDL's requirement that political committees report the name and address of all  
 2 contributors of more than \$25, and the occupation, employer, and employer's address of  
 3 contributors of more than \$100, violates the First Amendment because the disclosure thresholds  
 4 are not narrowly tailored to serve a compelling government interest.

5       **62.** WHEREFORE, Plaintiff request the following relief:

6       **a.** Declare RCW § 42.17.090 unconstitutional to the extent that it requires Family PAC  
 7 and all other similar persons to report the name and address of contributors of more than  
 8 twenty-five dollars;

9       **b.** Declare Wash. Admin. Code 390-16-034 unconstitutional to the extent that it requires a  
 10 Family PAC and all other similar persons to report the occupation, employer, and  
 11 employer's address of contributions of more than one hundred dollars;

12       **c.** Order Defendants to expunge all records containing the name, address, occupation,  
 13 employer, and/or employer's address for any contributor reported pursuant to RCW §  
 14 42.17.090 and/or Wash. Admin. Code 390-16-034;

15       **d.** Enjoin Defendants from commencing any civil actions for failing to comply with RCW  
 16 § 42.17.090(1)(b) or Wash. Admin. Code 390-16-034;

17       **e.** Grant Plaintiff Family PAC its costs and attorneys fees under 42 U.S.C. § 1988 and any  
 18 other applicable authority; and

19       **f.** Any and all other such relief as may be just and equitable.

20       **Count II — The Public Disclosure Law's Prohibition on Aggregate**  
 21 **Contributions Exceeding \$5,000 to a Single Political Committee During**  
 22 **the Twenty-One Days Preceding an Election is Unconstitutional As**  
**Applied to Referenda Elections**

23       **63.** Plaintiffs incorporate here by reference paragraphs one through sixty-two (62), *supra*, as  
 24 if fully set forth herein.

25       **64.** Any and all contribution limits on contributions to committees formed to support or  
 26 oppose ballot measures submitted to popular vote contravene the First Amendment rights of  
 27 association and expression. *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 296  
 28 (1981) ("CARC").

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1       **65.** The PDL's \$5,000 contribution limit during the twenty-one days preceding a  
2 referendum elections violates the First Amendment because it is not narrowly tailored to serve a  
3 compelling government interest.

4       **66.** WHEREFORE, Plaintiff request the following relief:

5       **a.** Declare RCW § 42.17.105(8) unconstitutional to the extent that it prohibits Family PAC  
6 and all other similar persons from receiving contributions in excess of \$5,000 during the  
7 twenty-one days preceding a ballot proposition election;

8       **b.** Enjoin Defendants from enforcing RCW § 42.17.105(8) against Family PAC and all  
9 other similar persons;

10       **c.** Grant Plaintiff Family PAC its costs and attorneys fees under 42 U.S.C. § 1988 and any  
11 other applicable authority; and

12       **d.** Any and all other such relief as may be just and equitable.  
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**Verified Complaint**

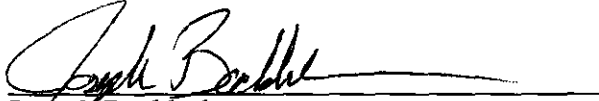
**11**

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**Verification**

I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS CONCERNING FAMILY PAC IN THIS COMPLAINT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated this 20th day of October, 2009.


  
Joseph Backholm

Dated this 20th day of October, 2009.

Respectfully submitted,

James Bopp, Jr. (Ind. Bar No. 2838-84)\*  
Barry A. Bostrom (Ind. Bar No. 11912-84)\*  
Randy Elf (N.Y. Bar No. 2863553)\*  
Sarah E. Troupis (Wis. Bar No. 1061515)\*  
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Verified Complaint

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1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON  
 3 AT TACOMA

4 FAMILY PAC,

5 Plaintiff,

6 v.

7 SAM REED, in his official  
 8 capacity as Secretary of State  
 9 of Washington, ROB MCKENNA, in  
 10 his official capacity as  
 11 Attorney General of Washington,  
 12 JIM CLEMENTS, DAVID SEABROOK,  
 13 JANE NOLAND, and KEN SCHELLBERG,  
 members of the Public Disclosure  
 Commission, in their official  
 capacities, and CAROLYN WEIKEL,  
 in her official capacity as  
 Auditor of Snohomish County,  
 Washington,

14 Defendants,

) Docket No. C09-5662RBL

) Tacoma, Washington  
 ) October 27, 2009

15  
 16  
 17 TRANSCRIPT OF COURT'S ORAL RULING  
 18 BEFORE THE HONORABLE RONALD B. LEIGHTON  
 19 UNITED STATES DISTRICT COURT JUDGE.

20 APPEARANCES:

21 For the Plaintiff:

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10 Court Reporter: Julaine V. Ryen  
11 Post Office Box 885  
Tacoma, Washington 98401-0885  
12 (253) 882-3832

13  
14 Proceedings recorded by mechanical stenography, transcript  
15 produced by Reporter on computer.

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\* \* \* \* \*

THE COURT: Let me thank counsel for excellent briefing and remarks under trying circumstances given the press of time. A decision is important at this point given this temporal relationship between this motion and the election next Tuesday.

I do not believe that the criteria for imposition of a temporary restraining order or a preliminary injunction have been met on this record, and the motion will be denied. I do not believe that there is a real emergency that -- I certainly sympathize with Mr. Bieniek in terms of when he was authorized to take action on behalf of a client who wanted to engage in the electoral process in the State of Washington, but the reality is, is that I do not believe that the emergency -- I mean, in this case the emergency and the constraints imposed upon the plaintiff are self-inflicted.

That is not dispositive of the issue, certainly, but I will say that on the record that is before this Court, there is not a likelihood of success on the merits that has been demonstrated. You've probably gathered from my questions, I think the state has a real and vital interest in providing information to voters about where the money in elections come from.

As I indicated earlier, I think this case is a far cry from the *John Doe* case, and for the reasons that have been

1 articulated by the state and by the intervenors, the issues  
2 are different, and for that reason the outcome will be  
3 different here.

4       There is no evidence on this record of irreparable harm.  
5 Evidence of a contributor who can't give \$5,000 but would have  
6 given \$5,000 before, that is, I will say, the one aspect of  
7 this lawsuit that I think may have some real merit. I'm not  
8 sure that the prevention of a sudden influx of money is the  
9 substantial and important government interest that would  
10 sustain the burden on freedom of speech and participation in  
11 the election process.

12       Having said that, the record is simply inadequate to make  
13 that determination at this time. I do not want to  
14 overemphasize my concern because this has hit all counsel  
15 suddenly, and there may be very real reasons having to do with  
16 the state's informational interest in informing the public  
17 that I haven't been able to seize upon as I have cogitated  
18 about the subject. But it seems to be more related to  
19 preventing expenditures than providing information.

20       Having said that, based on the record before this Court, I  
21 am not prepared to make a decision that in fact that  
22 limitation is contrary to the First Amendment freedom of  
23 speech.

24       With regard to the low threshold of \$25 and \$100, I'm far  
25 more comfortable in saying that I am not able to find that

1 there's a likelihood of success on the merits. I think that  
2 such limits have been widely accepted by trial courts, courts  
3 of appeal, and the Supreme Court, and I think that there are  
4 obvious and ample reasons for the state to want the relatively  
5 low threshold as part of its informational interests in  
6 informing the public of where the money is coming from for a  
7 candidate or, in this case, a referendum issue.

8       Ultimately, and perhaps most significantly, I do not  
9 believe that it is in the public interest for a court a week  
10 before an election to intervene and change the rules of the  
11 game at the last minute. I recognize that the disclosure laws  
12 impose some burden of self confidence and conviction in order  
13 to participate as a contributor in an election of any kind,  
14 and I recognize that freedom of speech is not simply for the  
15 strong and the fleet of foot. It is also for the timid and  
16 the meek.

17       But when it comes to campaign finance, there are competing  
18 First Amendment rights at stake, and it seems to me that the  
19 State of Washington at this point has achieved a balance which  
20 meets constitutional standards, and perhaps more importantly,  
21 is met with widespread public acceptance. I am loathed to  
22 upset that statutory structure based on the meager record that  
23 I have before me.

24       So for those reasons, the motion for temporary restraining  
25 order and the motion for preliminary injunction are denied.

1 Any further questions or comments?

2 Mr. Bieniek.

3 MR. BIENIEK: Your Honor, I think we have a pending  
4 motion to expedite in light of the Court's denial of the PI  
5 and TRO. I would respectfully request that the case be  
6 expedited so that we can move towards summary judgment as  
7 quickly as possible at this point.

8 THE COURT: Ms. Dalton.

9 MS. DALTON: Yes, Your Honor. I have actually  
10 contacted the firm yesterday and specifically requested that  
11 once those matters were noted that we have an opportunity to  
12 respond to the other motions, including the motion to  
13 expedite. We would, of course, be resisting that.

14 Given the fact that the Court has now denied both the  
15 preliminary injunction and the restraining order, there's no  
16 need that this case would not proceed under the ordinary  
17 course and deliberately before this Court, and so we would  
18 like an opportunity to at least be able to respond in writing  
19 to that.

20 THE COURT: How much time do you need?

21 MS. DALTON: I would probably have it done by the end  
22 of the week.

23 THE COURT: I'm going to note the motion for the  
24 30th. I don't anticipate oral argument being necessary. Get  
25 your papers in by the end of the week, and I will give Mr.

1 Bieniek until the end of the business day on the 27th to get  
2 your response, your reply.

3 MS. DALTON: Today is the 27th.

4 MR. BIENIEK: I'm sorry, today is the 27th.

5 THE COURT: I'm sorry, I'm a week off.

6 MR. BIENIEK: Do you want it noted for the 6th?

7 THE COURT: I want it noted for the 6th, and get your  
8 materials in on the 3rd.

9 MS. DALTON: We will file ours on the 30th; theirs on  
10 the 3rd. Thank you, Your Honor.

11 MR. BIENIEK: Thank you, Your Honor.

12 THE COURT: Anything further?

13 MR. BIENIEK: No. We will address the merits of that  
14 in our motion to expedite. Obviously, we would like to avoid  
15 the brevity of the shortened schedule of this before the  
16 Court, and would hope that the motion to expedite would  
17 resolve this issue before the next election and we would not  
18 be back in here seven days before the election.

19 THE COURT: I understand. Thank you, Mr. Bieniek.

20 (Above hearing concluded at 11:10 a.m.)

21

22 C E R T I F I C A T E

23 I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

24

25 /s/ Julaine V. Ryen  
JULAIN V. RYEN

October 27, 2009  
Date

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION**

Family PAC,

No. 09-CV-5662-RBL

Plaintiff,

**DECLARATION OF  
MONA PASSIGNANO**

vs.

The Honorable Ronald B. Leighton

McKenna, et al,

Defendants.

I, Mona Passignano, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of the state of Colorado over 18 years of age, and my statements herein are based on personal knowledge.

2. I am the Lead Analyst for State Issues at Focus on the Family/Focus on the Family Action. Focus on the Family is a global Christian ministry dedicated to helping families thrive. We provide help and resources for couples to build healthy marriages that reflect God's design, and for parents to raise their children according to morals and values grounded in biblical principles. Focus on the Family Action ("Focus Action") is active in the promotion of social welfare by addressing the Christian community and the Christian's responsibility in the public policy arena, both locally and nationally. Since the events described in this declaration, Focus

**Declaration of  
Mona Passignano  
(No. 09-CV-5662-RBL)**

**1**

**BOPP, COLESON & BOSTROM  
1 South Sixth Street  
Terre Haute, Indiana 47807-3510  
(812) 232-2434**

1 Action has changed its name to CitizenLink, but the events described in this declaration took  
2 place before the name change.

3 3. In 1988 Dr. James C. Dobson and Focus on the Family, along with business, professional  
4 and community leaders from across the nation helped form state-based organizations called  
5 *Family Policy Councils* (FPCs) to invest in the future of America's families. These Councils are  
6 independent entities with no corporate or financial relationship to each other, or to Focus on the  
7 Family. Their purpose, however, is uniform: to serve as a voice for the traditional, Judeo-  
8 Christian family. Focus on the Family/Focus Action is associated with 37 state-based family  
9 policy councils including the one in Washington State. Because of the working relationship, we  
10 routinely provide legislation and ballot issue resources to these state councils upon request.

11 4. Focus Action first became involved with Referendum 71 while Senate Bill 5688  
12 (eventually passed as Second Substitute Senate Bill 5688), the bill that became the subject of  
13 Referendum 71, was being debated in the Washington legislature.

14 5. Although Focus Action was involved with the legislative actions that preceded  
15 Referendum 71, Focus Action was not involved in the petition process to place Referendum 71  
16 on the November 2009 ballot.

17 6. In September 2009, Focus Action began its efforts regarding Referendum 71 in earnest.  
18 Shortly after this, we discussed the possibility of a donation regarding the Referendum 71  
19 campaign with Joseph Backholm, who was the director of the FPC based in Washington State.  
20

21 7. Our original intention was to make a donation of \$60,000 to a group involved in the  
22 Referendum 71 campaign. Ultimately, we decided that we would like to donate the money to a  
23 new organization, Family PAC.

24 8. Upon making this decision, we informed one of our attorneys that we were planning on  
25 giving Family PAC \$60,000. Specifically, this money would be spent on radio ads that would  
26 begin to air on October 13, 2009.

27 9. Our attorney informed us that we could not write this check to Family PAC at this date in  
28

Declaration of  
Mona Passignano  
(No. 09-CV-5662-RBL)

2

BOPP, COLESON & BOSTROM  
1 South Sixth Street  
Terre Haute, Indiana 47807-3510  
(812) 232-2434

1 the referendum process. Specifically, RCW § 42.17.105(8) prevented us from making a donation  
 2 of over \$5,000 to Family PAC during the 21 days preceding the November 2009 general  
 3 election. Thus, we could not give this money to Family PAC on October 12, 2009 or later, as we  
 4 desired to do.

5 10. Because of the possibility that the State of Washington could take legal action based  
 6 upon violations of RCW § 42.17.105(8), Focus Action did not initiate communications with  
 7 Family PAC after the 21 day cut off for donations.

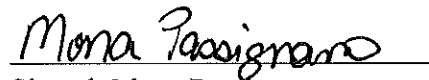
8 11. On October 13, 2009, Family PAC asked Focus Action to contribute \$20,000 to a phone  
 9 campaign. Because of RCW § 42.17.105(8), we were unable to make this contribution.

10 12. Although we were eventually able to participate in the Referendum 71 campaign through  
 11 other methods, RCW § 42.17.105(8) prevented Focus Action from participating in Referendum  
 12 71 in the manner we had desired.

13 13. If RCW § 42.17.105(8) had not been in place, Focus Action would have made a  
 14 donation of \$60,000 to Family PAC in the twenty-one days preceding the November 2009  
 15 election, in addition to the \$20,000 that Family PAC later asked for.

16 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE  
 17 AND CORRECT.  
 18

19 Executed on: May 18, 2010.  
 20  
 21

22   
 23 Signed: Mona Passignano  
 24  
 25  
 26  
 27  
 28



**CERTIFICATE OF SERVICE**

I, Sarah E. Troupis, am over the age of 18 years and not a party to the above-captioned action. My business address is 1 South Sixth Street; Terre Haute, Indiana 47807-3510.

On May 19, 2010, I electronically filed the foregoing document described as Declaration of Mona Passignano with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

Linda A. Dalton  
lindad@atg.wa.gov

*Counsel for Defendant Rob McKenna  
and Defendant Members of the Public Disclosure Commission*

Nancy J. Krier  
nkrier@pdc.wa.gov

*Counsel for Defendant Members of the Public Disclosure Commission*

I declare under the penalty of perjury under the laws of the State of Indiana that the above is true and correct. Executed this 19th day of May, 2010.

s/ Sarah E. Troupis

Sarah E. Troupis  
*Counsel for All Plaintiffs*

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON  
 3 AT TACOMA

4 FAMILY PAC, ) Docket No. C09-5662RBL  
 5 Plaintiff, ) Tacoma, Washington  
 6 vs. ) September 1, 2010  
 7 SAM REED, et al., )  
 8 Defendant. )  
 9 \_\_\_\_\_ )

10  
 11 TRANSCRIPT OF PROCEEDINGS  
 12 BEFORE THE HONORABLE RONALD B. LEIGHTON  
 13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Plaintiff: JOSEPH E. LARUE  
 16 Bopp Coleson & Bostrom  
 17 1 South Sixth Street  
 18 Terre Haute, IN 47807-3510

19 For the Defendant: NANCY J. KRIER  
 20 Attorney General's Office  
 21 WA Public Disclosure Commission  
 22 P.O. Box 40908  
 23 Olympia, Washington 98504-0898

LINDA ANNE DALTON  
 Attorney General's Office  
 P.O. Box 40100  
 Olympia, Washington 98504-0100

24 Court Reporter: Teri Hendrix  
 25 Union Station Courthouse, Rm 3130  
 1717 Pacific Avenue  
 Tacoma, Washington 98402  
 (253) 882-3831

Proceedings recorded by mechanical stenography, transcript  
 produced by Reporter on computer.

1 purpose in 1972.

2 How long does it take us to really organize the  
3 information so that we can get it meaningfully to the voters  
4 before they all stand in line at the polls and vote on  
5 election day? We don't do that too much any more.

6 MS. KRIER: If I may suggest, we did speak of this  
7 earlier, but the 21-day provision has some counterparts, 42.17  
8 and 42.17.080, where certain reports are due in 21 days, and  
9 then 103(1), which is the independent expenditure report. So  
10 it's not without its other counterparts in the same part of  
11 the country.

12 THE COURT: I know that. Thank you very much.

13 All right, I have decided that in the interest of not  
14 interfering unnecessarily with the current election cycle,  
15 that I would make my decision here today, read a decision, and  
16 the transcript will be the record.

17 There will be, of necessity, less -- it will be short on  
18 inspiration and flowery language about democracy, the  
19 republic, and the time-honored right that we have all come to  
20 expect. Please know that they are in my heart, if not in my  
21 words. But it will at least allow you to know what the  
22 decision is, and you can make your decisions accordingly.

23 Family PAC challenges the constitutionality of three  
24 provisions of Washington State's campaign finance laws and  
25 rules as violating the First Amendment:

1       1. RCW 42.17.090, requiring disclosure of names and  
2 addresses of contributors giving more than \$25 to a campaign;

3       2. Washington Administrative Code 390-16-034, requiring  
4 disclosure of individuals' occupations and names and addresses  
5 of employers when they contribute more than \$100; and

6       3. RCW 42.17.105(8), providing a 21-day time period  
7 before a general election, during which time no person may  
8 make, and no candidate or political committee may accept, any  
9 contribution in excess of \$5,000. That's subject to an  
10 exception for a bona fide political party, and that issue is  
11 not before the Court here.

12       The level of scrutiny to be applied:

13       Laws that burden political speech are subject to strict  
14 scrutiny for a violation of the First Amendment, which level  
15 of scrutiny requires the government to prove that the  
16 restriction furthers a compelling interest and is narrowly  
17 tailored to achieve that interest. *Citizens United v. Federal*  
18 *Election Commission*, 130 S.Ct. 876, at 898, a 2010-case,  
19 citing *Federal Election Commission v. Wisconsin Right to Life,*  
20 *Inc.*, 551 U.S. 449, at 464, a 2007 case.

21       Disclaimer and disclosure requirements may burden the  
22 ability to speak, but they "impose no ceiling on  
23 campaign-related activities," and "do not prevent anyone from  
24 speaking." The Court has subjected these requirements to  
25 "exacting scrutiny" which requires a "substantial relation"

1 between the disclosure requirement and a "sufficiently  
2 important governmental interest." *Citizens United* at 914,  
3 citing *Buckley v. Valeo*, 424 U.S. 1, at 64 and 66, a  
4 1976-case, and *McConnell v. Federal Election Commission*, 540  
5 U.S. 93, at 201, a 2003 case.

6 Plaintiff argues that exacting scrutiny and strict  
7 scrutiny are the same standard when the burden of a statute on  
8 First Amendment rights is high, citing *Davis v. Federal*  
9 *Election Commission*, 128 S.Ct. 2759, at 2774-75, a 2008-case.  
10 It argues that all three subject statutes and regulations  
11 place a high burden on the exercise of First Amendment rights.

12 Defendants argue that the subject laws all relate to  
13 run-of-the-mill disclosure requirements that should be subject  
14 to the less onerous "exacting scrutiny" standard employed by  
15 the Supreme Court in *Citizens United*, when dealing with the  
16 disclosure and disclaimer requirements imposed by the  
17 Bipartisan Campaign Reform Act of 2002.

18 The Court agrees that those disclosure requirements  
19 triggered by contributions greater than \$25 and greater than  
20 \$100 are evaluated by the less strenuous "exacting scrutiny"  
21 standard most recently enunciated in *Citizens United*. The  
22 burden on the ability to speak is modest, and they impose no  
23 ceiling on campaign-related activities.

24 The Court sees the 21-day/\$5,000 contribution limit  
25 differently than either of the parties. The provision

1 represents a ban on political speech that is subject to strict  
2 scrutiny. Although related to the desire to disclose useful  
3 information to voters, it is more than a disclosure or  
4 disclaimer regulation. In order to "push the big money out  
5 first" to enable full disclosure to the voting public, the law  
6 imposes a ban on large contributions during the key part of an  
7 election. In so doing, it suppresses political speech and  
8 therefore must be subjected to strict scrutiny.

9 Now, for the application of these standards. Exacting  
10 scrutiny, requires a substantial relation between the  
11 disclosure requirement and a sufficiently important government  
12 interest.

13 What is the government interest advanced by the disclosure  
14 statute and the regulation? It is the informational interest  
15 satisfied by allowing voters to "follow the money." The  
16 ability for voters to know who it is that is trying to  
17 influence their vote. That interest is a vital interest to  
18 government and the people it serves.

19 Are the subject laws substantially related to that vital  
20 interest? Yes, though the limits may seem low to the  
21 plaintiff, small contributions when aggregated by  
22 organizations of people ("special interests," as we so often  
23 refer to them in the political debate; unions, business  
24 interests, occupational guilds or associations) they can have  
25 a powerful impact on the debate and voters can benefit from

1 the information that disclosure provides.

2 The disclosure statute, RCW 42.17.090, and the disclosure  
3 regulation, Washington Administrative Code 390-16-034, both  
4 meet the exacting scrutiny standard and are constitutional.

5 Plaintiff's motion for summary judgment is therefore  
6 denied with respect to that statute and that regulation.

7 The application of strict scrutiny: The challenged  
8 provision must be narrowly tailored to serve a compelling  
9 state interest. The burden is on the State of Washington.

10 With regard to campaign regulations that impact free  
11 speech rights, there is generally thought to be formerly  
12 three, now perhaps two, government interests:

13 (1) information interest -- seeing to it that voters have  
14 much needed information to inform their voting decisions; and

15 (2) the corruption or enforcement interest -- avoiding quid  
16 pro quo influence, pedaling or bribery.

17 With regard to the subject regulation or the subject  
18 statute as it pertains to referenda, it is the information  
19 interest that is of primary and perhaps sole concern.

20 That interest is, however, a compelling one. The ability  
21 of the voters to identify those who have invested in the  
22 effort to solicit their vote for a candidate or an issue is of  
23 vital importance to any effort to build and maintain open  
24 government.

25 The right to receive information is an inherent corollary

1 of the right to free speech. So said our Circuit Court in  
2 *Monteiro v. Tempe Union High School District*, 158 F.3d 1022,  
3 at 1027, note 5, a Ninth Circuit 1998 decision.

4 The interest which the State of Washington seeks to  
5 advance in this statute is compelling.

6 The more pertinent question is whether the law, in this  
7 time of immediate dissemination of information, is narrowly  
8 tailored to serve that compelling State interest.

9 The State focuses on the fact that all but one of  
10 Washington counties use a vote-by-mail system and they mail  
11 ballots 18 days before the election date. This system is  
12 offered up as modern-day justification for a 1970s-era law  
13 that may have needed up to 21 days to gather, organize, and  
14 distribute the information about campaign contributions.

15 Now, however, campaign contributions can be reported and  
16 made publicly available within minutes, and certainly within  
17 24 hours. Given that reality, a 21-day ban on large  
18 contributions cannot be viewed as necessary or narrowly  
19 tailored to effectuate the original purpose.

20 The fact that voters have access to ballots earlier than  
21 before, and that they may choose to vote before all the  
22 election debate is in fact over, is not a sufficient reason to  
23 save this statute as it pertains to referenda.

24 The compelling State interest here is providing access to  
25 voters to information relevant to voting decision. That



1 information can be provided to voters without a ban on large  
2 donations lasting for as long as 21 days prior to the  
3 election. The 21 days prior to an election is a time when the  
4 political debate is fully joined and the attention of voters  
5 is most focused.

6 Banning large contributions for such a long period during  
7 this critical time in the debate cannot now reasonably be  
8 described as a narrowly tailored solution to the problem  
9 government seeks to address.

10 Such a ban may pass constitutional muster if limited to a  
11 time more carefully calculated to reflect the current time  
12 necessary to gather and organize and disseminate the relevant  
13 information about contributions and contributors that the  
14 government legitimately seeks to convey.

15 In the opinion of the Court, RCW 42.17.105(8), as applied  
16 to referenda, is not narrowly tailored to meet its compelling  
17 State interest. It imposes a significant burden on free  
18 speech. Because it does not pass strict scrutiny when applied  
19 to referenda, it is unconstitutional.

20 Plaintiff's motion for summary judgment as to that statute  
21 is granted.

22 Any questions?

23 MR. LARUE: (Shakes head.)

24 MS. KRIER: One question, Your Honor. Would the  
25 Court be willing to entertain a stay of this pending the

1 outcome -- after this November election? There are campaigns  
2 that have organized themselves, geared up, worked under the  
3 current calendar.

4 THE COURT: I understand that. Let me just, as an  
5 aside, tell you that with regard to payments under Medicaid,  
6 with regard to retirement homes and so forth, I entered a stay  
7 on one case, and denied it on another, and the Court of  
8 Appeals has -- while they get a chance to look at it -- has  
9 entered its own stay on that issue.

10 I cannot say that the exercise of First Amendment rights  
11 is any less important than payments under Medicaid to owners  
12 and operators of retirement homes. So I am not willing to  
13 stay the enforcement at this time. But I wanted to alert you  
14 to the fact that the Circuit may disagree with me when you  
15 present your position to them.

16 I think you should be able to do that well before the  
17 21-day period at issue here is arrived at.

18 Anything further?

19 MS. KRIER: Will the Court be entering a written  
20 order, or do you want the parties to prepare an order?

21 THE COURT: I am not going to prepare a written  
22 order. The transcript is what you've got.

23 I, oftentimes, will rule from the bench where time is of  
24 the essence. So you'll have the transcript of the debate that  
25 we had, and you will also have the transcript of my

1 handwritten remarks so that I think I have given the Circuit a  
2 reasoned -- be it be reasonable or not -- a reasoned decision  
3 that they can evaluate on the merits, and I don't think that  
4 the appellate process ought to be delayed while we wait for  
5 some written order.

6 Ms. Krier?

7 MS. KRIER: We can talk.

8 If I may, Your Honor, at some point a written order of the  
9 summary judgment motion, I think, would be required. I am  
10 not --

11 THE COURT: I think the transcript has sufficed in  
12 years past.

13 MS. KRIER: Has it? Thank you.

14 THE COURT: Okay, anything further?

15 Court will be in recess.

16 MR. LARUE: Thank you, Your Honor.

17 (Proceedings concluded.)

18 \* \* \* \* \*

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct transcript from  
21 the record of proceedings in the above-entitled matter.

22 /S/ Teri Hendrix

September 1, 2010

23 Teri Hendrix, Court Reporter

Date

24

25

**United States District Court**  
**WESTERN DISTRICT OF WASHINGTON**

**JUDGMENT IN A CIVIL CASE**

FAMILY PAC,

v.

SAM REED, et al.,

CASE NUMBER: C09-5662 RBL

[✓] **Decision by Court.** This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

The Court has determined that there is no just reason for delay and upon an express direction for the entry of judgment, FRCP 54(b), it is **ORDERED** that

Plaintiff's Motion for Summary Judgment on the Unconstitutionality of RCW 42.17.105(8) is GRANTED. Plaintiff's Motion for Summary Judgment on its remaining claims is DENIED.

DATED: September 1, 2010

BRUCE RIFKIN  
*Clerk*

/s/ Jean Boring  
*(By) Deputy Clerk*

**FILED**

UNITED STATES COURT OF APPEALS

OCT 05 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FAMILY PAC,

Plaintiff - Appellee,

v.

ROB MCKENNA, in his official capacity  
as Attorney General of Washington; JIM  
CLEMENTS, member of the Public  
Disclosure Commission, in his official  
capacity; DAVID SEABROOK, member  
of the Public Disclosure Commission, in  
his official capacity; JANE NOLAND,  
member of the Public Disclosure  
Commission, in her official capacity;  
JENNIFER JOLY, member of the Public  
Disclosure Commission, in her official  
capacity; BARRY SEHLIN, member of  
the Public Disclosure Commission, in his  
official capacity,

Defendants - Appellants.

No. 10-35832

D.C. No. 3:09-cv-05662-RBL  
Western District of Washington,  
Tacoma

ORDER

Before: O'SCANNLAIN, TROTT and W. FLETCHER, Circuit Judges.

We consider whether to grant the Attorney General of Washington's motion  
for a stay of the district court's order declaring RCW § 42.17.105(8)  
unconstitutional as applied to ballot measure committees pending appeal.

Our review takes into account four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably harmed absent a stay;
- (3) whether the issuance of the stay will substantially injure other parties interested in the proceeding; and
- (4) where the public interest lies.

*Golden Gate Restaurant Ass’n v. San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (internal quotation marks omitted). These factors represent a sliding scale, and “even failing a strong likelihood of success on the merits, the party seeking a stay may be entitled to prevail if it can demonstrate a substantial case on the merits and the second and fourth factors militate in its favor.” *Natural Res. Council, Inc. v. Winter*, 502 F.3d 859, 863 (9th Cir. 2007) (internal quotation marks omitted). The merits of the Attorney General of Washington’s appeal rest ultimately on what level of scrutiny this court is to apply to Family PAC’s First Amendment challenge to RCW § 42.17.105(8). That question remains open in this circuit following *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).

Although the Supreme Court declared in *Citizens United* that “[l]aws that burden political speech are subject to strict scrutiny,” *id.* at 898, the Court did not overrule *Buckley v. Valeo*, 424 U.S. 1 (1976), which established that limits on

direct contributions to candidates are assessed under less-than-strict “exacting scrutiny.” *See Citizens United*, 130 S. Ct. at 901–15; *Buckley*, 424 U.S. at 25–26. Under *Buckley* and its progeny, this court has upheld limits on contributions made to political action committees that fund political candidates under exacting scrutiny, *Cal. Med. Ass’n v. Fed. Election Comm’n*, 641 F.2d 619, 623 (1980), and stated that “less rigorous scrutiny” applies to limits on contributions to ballot measure campaigns, like those engaged in by Family PAC, *see Citizens for Clean Government v. City of San Diego*, 474 F.3d 647, 652 (9th Cir. 2007). We have expressly withheld consideration of whether that level of scrutiny remains the same after *Citizens United*. *See Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 692 n.4 (9th Cir. 2010).

The Attorney General of Washington has thus presented a colorable argument that this court should continue to apply exacting scrutiny to contribution limits such as RCW § 42.17.105(8), and therefore has made at least a “substantial case on the merits” of his appeal. *Natural Res. Council, Inc.*, 502 F.3d at 863. That showing is sufficient to warrant a stay of the district court’s order, as the equities lie heavily in the state’s favor. Family PAC has failed to identify any contributions greater than \$5000 that it expects to receive in the event that the law is overturned, and indeed it has submitted no disclosure statements this campaign

season and appears not to be participating in the upcoming general election. On the other hand, Washington and its voters have a significant interest in preventing the State's longstanding campaign finance laws from being upended by the courts so soon before the upcoming election. As the Attorney General of Washington has identified, significant and potentially harmful confusion regarding the impact of the district court's order has already resulted. Until this court has had the opportunity to clarify the level of scrutiny that applies to laws such as RCW § 42.17.105(8) after *Citizens United*, that law should remain in place for the upcoming election season.

Appellants' motion for a stay of the district court order pending appeal is GRANTED.



## RCW 42.17.080

Reporting of contributions and expenditures — Public inspection of accounts. (*Effective until January 1, 2012.*)

(1) On the day the treasurer is designated, each candidate or political committee shall file with the commission, in addition to any statement of organization required under RCW 42.17.040 or 42.17.050, a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each treasurer shall file with the commission a report containing the information required by RCW 42.17.090:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section. However, such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special election is held, or for the period beginning the first day of the fifth month before the date on which the general election is held, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17.040, the books of account must be open for public inspection by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any day

from the eighth day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(5) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(6) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(7) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to \*RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(8) The commission shall adopt administrative rules establishing requirements for filer participation in any system designed and implemented by the commission for the electronic filing of reports.

[2010 c 205 § 6; 2008 c 73 § 1; 2006 c 344 § 30; 2005 c 184 § 1; 2002 c 75 § 2; 2000 c 237 § 2; 1999 c 401 § 13; 1995 c 397 § 2; 1989 c 280 § 8; 1986 c 28 § 1; 1982 c 147 § 6; 1975 1st ex.s. c 294 § 6; 1973 c 1 § 8 (Initiative Measure No. 276, approved November 7, 1972).]

Notes:

**\*Reviser's note:** RCW 42.17.040 was recodified as RCW 42.17A.205 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

**Effective date -- 2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

**Effective date -- 1989 c 280:** See note following RCW 42.17.020.

## RCW 42.17.105

Special reports — Late contributions or large totals — Certain late contributions prohibited. (*Effective until January 1, 2012.*)

(1) Campaign treasurers shall prepare and deliver to the commission a special report regarding any contribution or aggregate of contributions which: Is one thousand dollars or more; is from a single person or entity; and is received during a special reporting period.

Any political committee making a contribution or an aggregate of contributions to a single entity which is one thousand dollars or more shall also prepare and deliver to the commission the special report if the contribution or aggregate of contributions is made during a special reporting period.

For the purposes of subsections (1) through (7) of this section:

(a) Each of the following intervals is a special reporting period: (i) The interval beginning after the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before a primary and concluding on the end of the day before that primary; and (ii) the interval composed of the twenty-one days preceding a general election; and

(b) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.

(2) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.

(3) Except as provided in subsection (4) of this section, the special report required by this section shall be delivered electronically or in written form, including but not limited to mailgram, telegram, or nightletter. The special report required of a contribution recipient by subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after: The contribution of one thousand dollars or more is received by the candidate or treasurer; the aggregate received by the candidate or treasurer first equals one thousand dollars or more; or the subsequent contribution that must be reported under subsection (2) of this section is received by the candidate or treasurer. The special report required of a contributor by subsection (1) of this section or RCW 42.17.175 shall be delivered to the commission, and the candidate or political committee to whom the contribution or contributions are made, within twenty-four hours of the time, or on the first working day after: The contribution is made; the aggregate of contributions made first equals one thousand dollars or more; or the subsequent contribution that must be reported under subsection (2) of this section is made.

(4) The special report may be transmitted orally by telephone to the commission to satisfy the delivery period required by subsection (3) of this section if the written form of the report is also mailed to the commission and postmarked within the delivery period established in subsection (3) of this section or the file transfer date of the electronic filing is within the delivery period established in subsection (3) of this section.

(5) The special report shall include at least:

- (a) The amount of the contribution or contributions;
- (b) The date or dates of receipt;
- (c) The name and address of the donor;
- (d) The name and address of the recipient; and
- (e) Any other information the commission may by rule require.

(6) Contributions reported under this section shall also be reported as required by other provisions of this chapter.

(7) The commission shall prepare daily a summary of the special reports made under this section and RCW 42.17.175.

(8) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for statewide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a bona fide political party as defined in this chapter, excluding the county central committee or legislative district committee.

(9) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17.135.

[2001 c 54 § 2; 1995 c 397 § 4; 1991 c 157 § 1; 1989 c 280 § 11; 1986 c 228 § 2; 1985 c 359 § 1; 1983 c 176 § 1.]

Notes:

**Effective date -- 2001 c 54:** See note following RCW 42.17.103.

**Effective date -- 1989 c 280:** See note following RCW 42.17.020.

# CONTRIBUTION LIMITS

(Effective June 10, 2010)

## CONTRIBUTORS

### RECIPIENTS

	<i>State Party</i>	<i>County and LD Party Committees</i>	<i>Caucus Political Committee (House or Senate)</i>	<i>Candidate Committees</i>	<i>Pacs, Unions, Corps and other entities</i>		<i>Individuals</i>
<i>State Party</i>	Not Applicable	No Limit	No Limit	Only from Surplus Funds <b>No Limit</b>	\$4,000 per calendar year (non-exempt)	<b>No Limit</b> (exempt)	No Limit
<i>County or LD Party Committee</i>	No Limit	No Limit	No Limit	Only from Surplus Funds <b>No Limit</b>	\$4,000 per calendar year (non-exempt)	<b>No Limit</b> (exempt)	No Limit
<i>Caucus Political Committee</i>	No Limit	No Limit	No Limit	Only from Surplus Funds <b>No Limit</b>	\$800 per calendar year		No Limit
<i>Statewide Executive Candidate</i>	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$1,600 per election		\$1,600 per election
<i>Legislative Candidate</i>	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$800 per election		\$800 per election
<i>Judicial Candidate</i>	\$1,600 per election	\$1,600 per election	\$1,600 per election	Prohibited	\$1,600 per election		\$1,600 per election
<i>County Office Candidate</i>	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$800 per election		\$800 per election
<i>City Council or Mayor Candidate</i>	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$800 per election		\$800 per election
<i>Port of Seattle or Port of Tacoma Commissioner Candidate</i>	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$1,600 per election		\$1,600 per election
<i>PACS</i>	No Limit	No Limit	No Limit	Prohibited	<b>No Limit</b>		No Limit

Limits apply only to candidates running in port districts with more than 200,000 registered voters.

- **Per cycle** means aggregate during the period from January 1 after the date of the previous general election for the office through December 31 after the upcoming general election for the office.
- **Per election** means per each primary, general, or special election for that office.
- **Per calendar year** means aggregate during the period from January 1 through December 31 each year.
- Contributions designated for the exempt account of a bona fide political party are NOT subject to limit, except **during the 21 days before the general election** when the \$5,000 maximum applies. See next column.

- **During the 21 days before the general election**, no contributor may donate over \$50,000 in the aggregate to a candidate for statewide office, or over \$5,000 in the aggregate to a candidate for any other office or to a political committee. This includes contributions to a party committee, as well as a candidate's personal contributions to his/her own campaign. It does not apply to contributions from the state committee of the WA State Democratic, Republican or Libertarian Party or from a minor party.

## Contribution Limits to Candidates Subject to Limits

A candidate subject to limits is prohibited from accepting aggregate contributions exceeding the following amounts:

Source of Contribution	To State Executive or Port Commissioner* Candidates	To Legislative, County Office, Mayor, or City Council Candidates
Individual	\$1,600 <sup>1</sup>	\$800 <sup>1</sup>
Union or Business	1,600 <sup>1</sup>	800 <sup>1</sup>
Political Action Committee	1,600 <sup>1</sup>	800 <sup>1</sup>
State Party Central Committee	.80/voter <sup>2</sup>	.80/voter <sup>2</sup>
County Party Central Committee	.40/voter <sup>3</sup>	.40/voter <sup>4</sup>
Legislative District Committee	.40/voter <sup>3</sup>	.40/voter <sup>4</sup>
Minor Party Committee	.80/voter <sup>5</sup>	.80/voter <sup>5</sup>
Legislative Caucus Committee	.80/voter <sup>5</sup>	.80/voter <sup>5</sup>

\*only in jurisdictions with more than 200,000 registered voters as of the last General Election

**Any judicial candidate is prohibited from accepting aggregate contributions exceeding \$1,600 per election from any source.**

1 This is a per election limit; each primary, general and special election is considered a separate election. This limit does not apply to the candidate using personal funds to give to his or her own campaign. The limit does apply to the candidate's spouse.

**Primary election contributions must be made on or before the date of the primary unless a candidate lost the primary and has debt to retire.** Contributors may continue to make contributions to a candidate who loses the primary election and has insufficient funds to pay debts outstanding until the debt is retired or 30 days after the primary, whichever comes first.

**General election contributions must be made no later than December 31 of the election year.**

During the 21 days before the general election, no candidate for legislative office or local office may contribute to his or her own campaign more than \$5,000 in the aggregate, and no candidate for state executive office or supreme court justice may contribute to his or her own campaign more than \$50,000 in the aggregate.

2 The limit amount of \$.80 times the number of registered voters in the jurisdiction (as of the last general election) is for the entire election cycle. The election cycle is from January 1 after the last election for the office or the start of the candidate's campaign -- whichever is later -- through December 31 of the election year in which election is sought. Contributions must be made no later than December 31 of the election year.

3 During the election cycle (defined in #2 above), all county central committees and legislative district committees in the state share a combined limit to each candidate of \$.40 times the number of registered voters statewide as of the last general election. (However, during the 21 days before the general election, neither a county central committee nor a legislative district committee may give a state executive office candidate more than \$50,000 in the aggregate.) Contributions must be made on or before December 31 of the election year.

4 A county central and legislative district committee may only contribute to a candidate if voters residing in the city, county or legislative district are entitled to elect the candidate to the office sought. During the election cycle (defined in #2 above), a legislative district committee, in conjunction with all county central committees in that district, share a combined per candidate limit of \$.40 times the number of registered voters in the legislative district as of the last general election. (However, during the 21 days before the general, neither a county central committee nor a legislative district committee may give a city, county or legislative candidate more than \$5,000 in the aggregate.) Contributions must be made on or before December 31 of the election year.

5 The limit amount is for the entire election cycle. The election cycle is from January 1 after the last election for the office or the start of the candidate's campaign -- whichever is later -- through December 31 of the year in which election is sought. (However, during the 21 days before the general, a caucus political committee may not give a state executive candidate more than \$50,000 in the aggregate or a city, county or legislative candidate more than \$5,000 in the aggregate.) Contributions must be made on or before December 31 of the election year.

WA FAMILIES STANDING TOGETHER - 2009 - contributions - Thursday, October 07, 2010

Total Raised			Total Spent		
\$2,096,995.42			\$2,076,656.55		
Cash Contributions	Inkind Contributions	Anonymous Contributions	Loans	Miscellaneous Income	Small Contributions
\$1,470,124.01	\$590,087.79	\$2,815.56	\$0.00	\$7,156.33	\$26,811.73
Name	Date	Amount	P/G	Employer	Occupation
MICROSOFT CORPORATION	2009-10-02	\$100,000.00	N		
HUMAN RIGHTS CAMPAIGN APPROVE REF. 71 PAC	2009-10-07	\$60,000.00	N		
BALLMER STEVEN	2009-10-12	\$25,000.00	N	MICROSOFT	CEO
GATES WILLIAM H III	2009-10-12	\$25,000.00	N	BILL & MELINDA GATES FOUNDATION	CO-CHAIR
STRYKER JON	2009-10-09	\$25,000.00	N	JON STRYKER ARCHITECTURE	ARCHITECT
PRIDE FOUNDATION	2009-10-01	\$21,353.00	N		
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON	2009-09-21	\$20,000.00	N		
EYCHANER FRED	2009-10-12	\$20,000.00	N	NEWSWEB CORPORATION	EXECUTIVE

WA FAMILIES STANDING TOGETHER - 2009 - contributions - Thursday, October 07, 2010

Name	Date	Amount	P/G	Employer	Occupation
BROADBAND COMMUNICATIONS ASSOC. OF WA PAC	2009-10-12	\$15,000.00	N		
NATIONAL EDUCATION ASSOCIATION	2009-10-08	\$15,000.00	N		
PRIDE FOUNDATION	2009-09-25	\$15,000.00	N		
PUGET SOUND ENERGY	2009-09-25	\$15,000.00	N		
WA EDUCATION ASSOCIATION	2009-10-04	\$15,000.00	N		
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON	2009-09-25	\$12,000.00	N		
ABRAHAM LINCOLN MEMORIAL SOCIETY	2009-09-29	\$10,000.00	N		
BASTIAN BRUCE	2009-10-12	\$10,000.00	N	NONE	RETIRED
CURIEL JOSEPH C.	2009-09-15	\$10,000.00	N	THE COMMERCE COMPANY	FINANCIAL CONSULTANT
FORONA TECHNOLOGIES INC.	2009-10-06	\$10,000.00	N		
HUMAN RIGHTS CAMPAIGN APPROVE REF. 71 PAC	2009-09-15	\$10,000.00	N		
NATIONAL GAY & LESBIAN TASK FORCE ACTION FUND	2009-09-15	\$10,000.00	N		
RAUGUST ANTHONY H.	2009-09-15	\$10,000.00	N	THE COMMERCE COMPANY	FINANCIAL CONSULTANT
SEIU WASHINGTON STATE COUNCIL	2009-09-08	\$10,000.00	N		



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WA FAMILIES STANDING TOGETHER - 2009 - contributions - Thursday, October 07, 2010

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Name	Date	Amount	P/G	Employer	Occupation
T-MOBILE USA INC.	2009-10-09	\$10,000.00	N		
UFCW LOCAL 21	2009-10-07	\$10,000.00	N		
VICTIMS ADVOCATE	2009-09-15	\$10,000.00	N		
VULCAN INC.	2009-09-19	\$10,000.00	N		
WA FED OF ST EMPLOYEES	2009-10-07	\$10,000.00	N		
AVISTA CORP.	2009-10-12	\$7,500.00	N		
FUSE VOTES	2009-09-21	\$7,500.00	N		
SUB POP RECORDS	2009-10-05	\$7,500.00	N		
RAININ JENNIFER	2009-10-07	\$5,150.00	N	SELF	PHILANTHROPIST
BOGGS PAULA	2009-09-25	\$5,000.00	N	STARBUCKS COFFEE CO.	EXECUTIVE
BOHNETT DAVID	2009-10-07	\$5,000.00	N	DAVID BOHNETT FOUNDATION	CHAIRMAN
BRUMMEL LISA	2009-10-17	\$5,000.00	N	MICROSOFT CORPORATION	MANAGEMENT
BUCKLEY JODY	2009-11-01	\$5,000.00	N	NONE	HOMEMAKER
CAST JENNIFER	2009-09-21	\$5,000.00	N	NONE	COMMUNITY VOLUNTEER
CAST JENNIFER	2009-08-26	\$5,000.00	N	NONE	COMMUNITY VOLUNTEER