

NO. 10-A-357

In the Supreme Court of the United States

Family PAC,

Plaintiff-Appellee,

v.

Rob McKenna, et al.,

Defendants-Appellants.

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

DEFENDANTS-APPELLANTS' APPENDICES

To the Honorable Anthony M. Kennedy
Associate Justice of the United States Supreme Court and
Circuit Justice for the Ninth Circuit

ROBERT M. MCKENNA
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APPENDIX A

NO. 10A357

In the Supreme Court of the United States

Family PAC,

Plaintiff-Appellee,

v.

Rob McKenna, et al.,

Defendants-Appellants.

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

**DECLARATION OF DOUG ELLIS IN OPPOSITION TO APPLICATION
OF FAMILY PAC TO VACATE THE NINTH CIRCUIT'S STAY OF THE
DISTRICT COURT'S JUDGMENT**

To the Honorable Anthony M. Kennedy
Associate Justice of the United States Supreme Court and
Circuit Justice for the Ninth Circuit

ROBERT M. MCKENNA
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I, Doug Ellis, declare as follows:

1. I am over the age of 18 and competent to testify on the matters contained in this Declaration.

2. I am the Interim Executive Director of the Washington State Public Disclosure Commission (PDC). I was appointed to this position effective April 1, 2010. Prior to that, I was the PDC's Assistant Director, a position I assumed in 2005. Prior to that time, I was the PDC's Director of Public Outreach. I have been employed by the PDC since 1992.

3. My duties include overseeing the PDC's day-to-day operations, as well as performing Assistant Director duties during the interim appointment period. My duties, therefore, also include direct supervision of the Compliance, Administrative and Customer Service/Public Outreach Divisions, as well as oversight of the Information Technology Division's Chief Technology Officer. I supervise all PDC enforcement cases. I am also the PDC's legislative liaison. The agency is led by a five-member bipartisan citizen's commission that is appointed by the Washington State Governor and confirmed by the Washington State Senate. The current Commissioners are the named defendants in this action, along with the Washington State Attorney General.

4. The PDC implements and enforces the campaign finance, lobbying and personal financial affairs disclosure requirements found in Wash. Rev. Code § 42.17. I am aware that, among other claims, Family PAC is challenging the constitutionality of Wash. Rev. Code § 42.17.105(8).

5. I previously provided declarations in the lower court proceedings in this case, including a declaration in the U.S. District Court for the Western District of Washington, and the U.S. Court of Appeals for the Ninth Circuit. My

declaration in the Court of Appeals supported the State's Emergency Motion for Stay, and explained why a stay was necessary. This declaration supplements that information to address statements made in Family PAC's Application to Vacate Ninth Circuit's Stay of the District Court Judgment (Application).

6. As I, and others, have previously advised the courts, PDC records show that Family PAC has filed only one form with the PDC. That sole form is its initial political committee registration form (C1pc) which it filed on October 21, 2009, and which I understand is the same day this lawsuit was filed in federal court. Exhibit 1. On the C1pc form, Family PAC checked the box "Continuing" and not "Ballot Committee" as the type of committee. While it has checked the box "Continuing", PDC records do not show any campaign contribution or campaign expenditure reports have been filed to date by Family PAC. *See also* Exhibits 2A and 2B (2009 and 2010 screen shots of PDC database at www.pdc.wa.gov with arrows added to mark Family PAC information showing zero dollars raised and zero dollars spent).

7. On its C1pc form, Family PAC also checked the box "Other Political Committee" indicating it has a related or affiliated committee or entity, which it identified as "FPIW Action" [Family Policy Institute of Washington Action]. Family PAC lists its email address on the form as familypac@fpiw.org. PDC records do not indicate that FPIW Action has registered with the state of Washington as a political committee.

8. In its Application to this Court, Family PAC now describes that it is "interested" in Initiative 1098, one of the several statewide measures on the general election ballot in Washington State for November 2, 2010. Application at 2. To the best of my knowledge, Family PAC did not file any declarations in

the District Court or the Circuit Court attesting to that fact. I also understand that Family PAC has not filed any declarations attesting to that fact in this Application.

9. Initiative 1098 involves a proposed new state income tax. I confirmed with the Washington Secretary of State's Office that Initiative 1098 was filed April 23, 2010, revised May 18, 2010 (by court order), and was certified August 11, 2010. For many months this year, this initiative has been the subject of extensive media coverage.

10. I can find no reports filed with the PDC showing any funds were raised or spent by Family PAC with regard to Initiative 1098.

11. I can find no reports filed with the PDC showing that FPIW Action or Family Policy Institute of Washington raised or spent any funds with regard to Initiative 1098. In addition, on October 8, 2010, I conducted a search of the Family Policy Institute of Washington's website at www.fpiw.org, using the search term "1098." The responsive screen stated "Your search yielded no results." Exhibit 3A. I also searched using the search term "initiative 1098." The responsive screen stated "Your search yielded no results." Exhibit 3B.

12. I have not seen any documents filed in this litigation by Family PAC attesting that it has raised or spent funds with respect to any campaign in Washington State.

13. As I explained in my declaration in the Circuit Court in support of the State's Emergency Motion for Stay, Wash. Rev. Code § 42.17.105(8) has not impacted Family PAC because it has engaged in no fundraising for contributions, either in 2009 or 2010. While Family PAC's Application states it is "once again" prevented from raising funds (Application at 2), I cannot find

reports showing that it ever raised any funds to support or oppose a campaign in Washington State, including any ballot measure campaign or specifically Initiative 1098. Under Wash. Rev. Code § 42.17, there are no contribution limits for ballot measures and Family PAC was free to raise unlimited funds with respect to any ballot measure campaign in Washington State prior to 21 days before the general election, plus up to \$5,000 in the 21 days before the general election.

14. Meanwhile, other political committees have been active in Washington's 2010 ballot measure campaigns and I have not seen nor heard that Wash. Rev. Code § 42.17.105(8) has presented any fundraising barriers for them. In fact, this year will be a record-setting year for ballot measure campaign funding in Washington State. As of October 9, 2010, PDC records show that \$46.3 million has been raised to support or oppose such measures and \$15.3 million has been reported as being spent. Exhibit 4 (screenshot of PDC database for initiative campaigns in 2010). The next expenditure summary reports are due to be filed on October 12, 2010.

15. As of October 9, 2010, records show that more than \$9.8 million has been raised to support or oppose Initiative 1098 alone. Exhibit 5 (screenshot of PDC database for Initiative 1098 campaign in 2010, when campaigns are grouped by ballot number).


16. To my knowledge, none of those committees supporting or opposing ballot measures came forward in the District Court or the Circuit Court to support Family PAC.

///

///

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and of my own knowledge.

SIGNED in Olympia, Washington, this 9th day of October, 2010.


DOUG ELLIS

Committee Name (Show entire official name.) Family PAC	Acronym: Telephone: (425) 608-0242
Mailing Address 16108 Ash Way Suite 111A	Fax: (425) 608-7216
City: Lynnwood County: Lynnwood Zip + 4: 98036	E-mail: familypac@fpiw.org

NEW OR AMENDED REGISTRATION? <input type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.	COMMITTEE STATUS <input checked="" type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input type="checkbox"/> _____ election year only. Date of general or special election: _____ (Year)
--	---

1. What is the purpose or description of the committee?
 Bona Fide Political Party Committee - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.

Ballot Committee - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: _____

Ballot Number FOR AGAINST

Other Political Committee - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name: **FPIW Action**

For single election-year only committees (not continuing committees): Is the committee supporting or opposing
 (a) one or more candidates? Yes No If yes, attach a list of each candidate's name, office sought and political party affiliation.
 (b) the entire ticket of a political party? Yes No If yes, identify the party:

2. Related or affiliated committees. List name, address and relationship. Continued on attached sheet.

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)
If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

MINI REPORTING
 Mini Reporting is selected. No more than \$5,000 will be raised or spent and no more than \$500 in the aggregate will be accepted from any one contributor.

FULL REPORTING
 Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address Joseph Backholm	Telephone Number: (425) 608-0242
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5. Treasurer's Name and Address. Does treasurer perform only ministerial functions? Yes ___ No ___ See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet. <input type="checkbox"/> Continued on attached sheet. Joseph Backholm	Daytime Telephone Number: (425) 608-0242
--	--

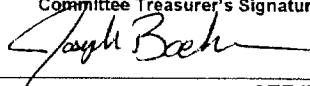
6. Persons who perform only ministerial functions on behalf of this committee and on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. Continued on attached sheet.

7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." Continued on attached sheet.

Larry Sundquist	Virginia Chapman	Jim Robinson
Roger Lageschulte	Shantae Sutton	Matt Shea
Bob Baker	Glenn Dobbs	Joe Fuiten

8. Campaign Bank or Depository Bank of America	Branch 164th St.	City Lynnwood
--	---------------------------------------	-------------------------

9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.
Street Address, Room Number, City where campaign books will be available for inspection
16108 Ash Way Suite 111A
 In order to make an appointment, contact the campaign at (telephone, fax, e-mail): **(425) 608-0242**

10. Eligibility to Give to State Office Candidates: During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State. <input type="checkbox"/> A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).	11. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge. Committee Treasurer's Signature:  Date: 10/21/09
--	--

SEE INSTRUCTIONS ON NEXT PAGE



Building Confidence in the Political Process

HOME PUBLIC RESOURCES FILER RESOURCES SEARCH THE DATABASE VIEW ACTUAL REPORTS ONLINE FILING

CANDIDATES COMMITTEES INDEPENDENT SPENDING ADVANCED SEARCH

CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

Year: 2009 Total Raised: \$15,720,413.67 Total Spent: \$8,843,121.09

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

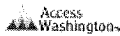
Details	Name	Type	Raised	Spent	Debt
Details	FAITH & FREEDOM PAC	O	\$21,126.71	\$17,814.30	\$0.00
Details	FAMILY PAC	O	\$0.00	\$0.00	\$0.00
Details	FAR WEST AGRIBUSINESS PAC	I	\$12,382.75	\$7,995.12	\$0.00
Details	FARMERS EMPLOYEES AND AGENTS PAC	B	\$138,829.92	\$37,449.07	\$0.00
Details	FFC PAC FUND	O	\$96,470.00	\$96,470.00	\$0.00
Details	FIRE SERVICES FUND OF WA	I	\$8,695.38	(\$275.00)	\$0.00
Details	FIREFIIGHTERS ACTION SUPPORT TEAM	I	\$53,713.62	\$7,304.81	\$0.00
Details	FISHING INDUSTRIES & SALMON HARVESTERS	B	\$0.00	\$0.00	\$0.00
Details	FORWARD SEATTLE PAC	O	\$181,645.08	\$181,516.68	\$0.00
Details	FRIENDS OF COVINGTON PARKS	O	\$0.00	\$0.00	\$0.00
Details	FRIENDS OF SEATTLE VICTORY FUND	O	\$2,302.46	\$2,289.41	\$0.00
Details	FUSE VOTES	O	\$59,006.94	\$51,270.17	\$0.00
Details	GRAPE PAC	B	\$5,220.49	\$1,600.00	\$0.00
Details	GREEN PARTY OF SEATTLE	O	\$0.00	\$0.00	\$0.00
Details	GUN OWNERS ACTION LEAGUE OF WA	I	\$93,293.30	\$753.36	\$0.00

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EXHIBIT

2A



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CANDIDATES COMMITTEES INDEPENDENT SPENDING ADVANCED SEARCH

CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

Year: 2010 Total Raised: \$21,166,179.53 Total Spent: \$9,952,000.73

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

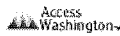
Details	Name	Type	Raised	Spent	Debt
Details	EDUCATE THE VOTERS COMM	I	\$0.00	\$0.00	\$0.00
Details	EDUCATION VOTERS POLITICAL ACTION FUND	I	\$82,114.30	\$66,732.41	\$469.50
Details	ELECTRICAL WORKERS PAC 46	U	\$33,953.80	\$20,124.20	\$0.00
Details	ELEVATOR CONSTRUCTORS LOCAL 19 PAC	U	\$0.00	\$0.00	\$0.00
Details	EMPLOYMENT FOR ALL	I	\$0.00	\$0.00	\$0.00
Details	ENTERPRISE WA JOBSPAC	O	\$548,083.61	\$160,535.10	\$0.00
Details	ENVISION SPOKANE POLITICAL COMM	I	\$4,230.63	\$1,302.61	\$0.00
Details	EQUAL RIGHTS WA	I	\$16,219.86	\$12,304.20	\$1,402.39
Details	EVERGREEN PROGRESS	O	\$20,000.00	\$600.00	\$1,200.00
Details	FAIRPAC / CIT TO UPHOLD THE CONSTITUTION	I	\$360,165.76	\$357,058.74	\$0.00
Details	FAITH & FREEDOM PAC	O	\$4,388.41	\$3,619.76	\$0.00
Details	FAMILY PAC	O	\$0.00	\$0.00	\$0.00
Details	FAR WEST AGRIBUSINESS PAC	I	\$14,497.63	\$5,550.00	\$10,000.00
Details	FARMERS EMPLOYEES AND AGENTS PAC	B	\$195,838.35	\$86,672.78	\$0.00
Details	FILM PAC	B	\$5,270.00	\$0.00	\$842.25

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Enter your keywords:

Your search yielded no results

Check if your spelling is correct.

Remove quotes around phrases to match each word individually: *"blue smurf"* will match less than *blue smurf*.

Consider loosening your query with *OR*: *blue smurf* will match less than *blue OR smurf*.

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How to call your legislature



Calendar

October						
S	M	T	W	T	F	S
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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

State Funding for Abortion

Do you support parental notification for abortions?:

- Yes
- No
- Don't Know

Small steps



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Consider loosening your query with OR: *blue smurf* will match less than *blue OR smurf*.

Search

Search



Homeschool



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Small steps



How to call your legislature



Calendar

October						
S	M	T	W	T	F	S
				1	2	
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

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CANDIDATES COMMITTEES INDEPENDENT SPENDING ADVANCED SEARCH

CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

Year: 2010 Total Raised: \$46,381,424.27 Total Spent: \$15,306,285.58

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

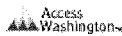
Details	Name	Ballot	F/A	Raised	Spent	Debt
Details	CAMPAIGN FOR TAX FAIRNESS	1098	F	\$0.00	\$0.00	\$0.00
Details	CIT FOR RESPONSIBLE SPENDING	1053	F	\$488,850.00	\$299,500.00	\$0.00
Details	CIT FOR THE PEOPLES INITIATIVE I-1071	1071	F	\$0.00	\$0.00	\$0.00
Details	CIT TO PROTECT OUR ECONOMIC FUTURE	1107	A	\$342,356.92	\$281,983.13	\$5,399.00
Details	COMM FOR THE RIGHT TO DRIVE TO WORK	0	F	\$0.00	\$0.00	\$0.00
Details	COMM TO EVALUATE I-1068	1068	F	\$30,448.60	\$30,448.60	\$0.00
Details	DEFEAT 1098	1098	A	\$4,559,976.00	\$236,757.88	\$0.00
Details	DEMOCRACY IN ELECTION PROCESS	1075	F	\$0.00	\$0.00	\$0.00
Details	EASTERN WA FOR 1098	1098	F	\$0.00	\$0.00	\$0.00
Details	MODERNIZE WAYES 1100 COMM	1100	F	\$3,073,297.85	\$1,706,682.31	\$0.00
Details	NO ON 1077	1077	A	\$0.00	\$0.00	\$0.00
Details	NO ON 1098	1098	A	\$0.00	\$0.00	\$0.00
Details	NO ON I-1053 COM	1053	A	\$52,646.19	\$439.81	\$1,519.75
Details	NO ON I-1082 COMM	1082	A	\$2,187,060.14	\$287,894.84	\$13,453.91
Details	NO ON I-1105	1105	A	\$0.00	\$0.00	\$0.00

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CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

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NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

Details	Name	Ballot	F/A	Raised	Spent	Debt
Details	STOP INSURANCE INDUSTRY TAKEOVER	1082	A	\$1,216,765.70	\$137,228.59	\$0.00
Details	CAMPAIGN FOR TAX FAIRNESS	1098	F	\$0.00	\$0.00	\$0.00
Details	DEFEAT 1098	1098	A	\$4,559,976.00	\$236,757.88	\$0.00
Details	EASTERN WA FOR 1098	1098	F	\$0.00	\$0.00	\$0.00
Details	NO ON 1098	1098	A	\$0.00	\$0.00	\$0.00
Details	PROTECT WA	1098	F	\$55,089.00	\$9,589.00	\$545.25
Details	WASHINGTONIANS AGAINST INCOME TAX 1098	1098	A	\$5,500.00	\$5,363.45	\$5,500.00
Details	WASHINGTONIANS FOR EDUCATION HEALTH & TAX RELIEF	1098	F	\$5,260,485.93	\$1,305,644.31	\$7,285.26
Details	MODERNIZE WA/YES 1100 COMM	1100	F	\$3,073,297.85	\$1,706,682.31	\$0.00
Details	PROTECT OUR COMMUNITIES	1100	A	\$8,433,410.33	\$3,439,879.15	\$50,030.30
Details	NO ON I-1105	1105	A	\$0.00	\$0.00	\$0.00
Details	WA CIT FOR LIQUOR REFORM	1105	F	\$2,244,000.00	\$2,242,022.13	\$44,694.20
Details	CIT TO PROTECT OUR ECONOMIC FUTURE	1107	A	\$342,356.92	\$281,983.13	\$5,399.00
Details	STOP THE FOOD & BEVERAGE TAX HIKES	1107	F	\$14,448,077.83	\$3,524,682.71	\$3,500,000.00

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APPENDIX B

NO. 10-A-357

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APPLICATION OF FAMILY PAC TO VACATE THE NINTH CIRCUIT'S
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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

ROBERT M. MCKENNA
Attorney General
JAY D. GECK, *Counsel of Record*
Deputy Solicitor General
LINDA A. DALTON, WSBA #15467
Senior Assistant Attorney General
NANCY J. KRIER, WSBA #16558
Special Assistant Attorney General
CALLIE CASTILLO, WSBA #38214
Assistant Attorney General
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

I, Lori Anderson, declare as follows:

1. I am over the age of 18 and competent to testify on the matters contained in this declaration.

2. I am currently employed by the Washington State Public Disclosure Commission (PDC) as a Communications and Training Officer. I have been employed at the PDC since August 1999. My primary duties are to coordinate training for political campaigns and filers, coordinate publications and outreach efforts, assist filers, and respond to media inquiries. During my tenure with the PDC, I have also served as a Political Finance Specialist. In that capacity, my duties included assisting filers, auditing campaigns, and investigating complaints. Prior to the PDC, I was a legal secretary for 20 years (which includes the Washington State Attorney General's Office and the Office of Administrative Hearings, and three years with a private law firm). I have filed declarations in this case in the District Court and the Ninth Circuit Court of Appeals.

3. In my capacity as the PDC's Communications and Training Officer, and previously as a Political Finance Specialist, I have regular contact with members of the media and the public, including persons who file reports with the PDC.

4. I am aware of the District Court decision (of the U.S. District Court in Tacoma, the Honorable Judge Ronald B. Leighton) in this case of September 1, 2010 (Case No. C09-5662 RBL). In particular, I am aware of the District Court's decision concerning Wash. Rev. Code § 42.17.105(8) with regard to ballot measures. This year, the 21-day time period in that statute begins October 12, 2010.

5. I am also aware of the October 5, 2010 Stay Order entered by the Ninth Circuit Court of Appeals, staying that part of the District Court's decision concerning Wash. Rev. Code § 42.17.105(8).

6. In my declaration filed in the Circuit Court in support of the State's Emergency Motion for a Stay, I explained the kinds of telephone calls and other questions PDC staff were receiving as a result of the District Court's decision, and the disruption the decision was causing among political committees and other filers. After the date of that declaration (September 20, 2010), my office received additional inquiries seeking status reports on the litigation and raising more questions about the impact of the District Court decision.

7. The Ninth Circuit Court of Appeals' stay Order was entered on October 5, 2010, apparently late in the day. I received a copy of it immediately the next morning, on October 6. I then did the following in order to inform as many ballot measure campaigns, filers, contributors, voters, the media and others as soon as possible about the stay, and thus to address their concerns and questions:

- I issued a media release on October 6 on behalf of the Commission describing the stay that had been entered. I sent the release by email to 163 media contacts and posted a copy on the Commission's website at www.pdc.wa.gov. The Washington State Attorney General's Office also posted a copy on its website at www.atg.wa.gov. The Associated Press and other media picked up the story and news reports began running.
- On October 6, I contacted by email more than 172 political committees that had provided an email address to us (a few emails bounced back as not deliverable), including 24 initiative committees and 14 local ballot measure committees, plus numerous single year committees, caucus campaign committees, and political party committees.

- I requested my staff member Jennifer Hansen to inform other political committees and she did on October 7 by sending 434 continuing political committees an email (there were 64 bounce-backs as not deliverable). Many of the political committees Ms. Hansen contacted had already been contacted by me because there are some overlaps on our email contact lists.
- On October 6 I also met with PDC staff to confirm with them that (1) a stay of the District Court's decision concerning Wash. Rev. Code § 42.17.105(8) had been entered, and (2) that they were providing that information to ballot measure campaigns and other persons who were contacting them about the status of Wash. Rev. Code § 42.17.105(8) and its 21-day timing period for contributions larger than \$5,000.

8. If the stay were now "lifted" for the November 2, 2010 general election, I believe it would, again, cause significant further disruption and confusion. The stay provided stability for the political campaign community particularly since the 21-day period begins shortly, ballots are on their way to voters, and the November 2, 2010 election is impending.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and of my own knowledge.

SIGNED in Olympia, Washington, this 10th day of October, 2010.



LORI ANDERSON

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FAMILY PAC,

Plaintiff- Appellee,

v.

ROB MCKENNA, in his official capacity as Attorney General of Washington, and JIM CLEMENTS, DAVE SEABROOK, JANE NOLAND, JENNIFER JOLY and BARRY SEHLIN, members of the Public Disclosure Commission, in their official capacities,
Defendants - Appellants.

DECLARATION OF
DOUG ELLIS IN SUPPORT OF
EMERGENCY MOTION FOR
STAY OF DISTRICT COURT
DECISION REGARDING
RCW 42.17.105(8) IN
CASE NO. C09-5662 RBL

I, Doug Ellis, declare as follows:

1. I am over the age of 18 and competent to testify on the matters contained in this Declaration.

2. I am the Interim Executive Director of the Washington State Public Disclosure Commission (Commission). I was appointed to this position effective April 1, 2010. Prior to that I was the Assistant Director. I became the Assistant Director in 2005. Prior to that time, I was the agency Director of Public Outreach. I have been employed by the Commission since 1992.

3. My duties include overseeing the day-to-day operations of the PDC, as well as performing Assistant Director duties during the interim appointment period. My duties therefore also include direct supervision of the Compliance, Administrative and Customer Service/Public Outreach Divisions of the PDC, as well as oversight of the Information Technology Division's Chief Technology Officer. I supervise all PDC enforcement cases. I am the agency's legislative liaison. The agency is led by a five-member bipartisan citizen's commission that is appointed by the Washington State Governor and confirmed by the Washington State Senate. The current Commissioners are the named defendants in this action, along with the Washington State Attorney General ("State Defendants").

4. The PDC implements and enforces the campaign finance, lobbying and personal financial affairs disclosure requirements in state law at RCW 42.17. I am aware that Family PAC is challenging the constitutionality of a disclosure statute and a Commission rule at RCW 42.17.090(1)(b) and WAC 390-16-034, and another provision of state law regarding timing and disclosure at RCW 42.17.105(8).

5. I am aware of the District Court decision (of the U.S. District Court in Tacoma, the Honorable Judge Ronald B. Leighton) in this case of

September 1, 2010 (Case No. C09-5662 RBL). In particular, I am aware of the court's decision concerning RCW 42.17.105(8). The statute provides that:

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.

This statute was first enacted in 1985, has been amended by the Washington State Legislature over the years, and was retained by the Legislature in a recent re-codification of RCW 42.17 effective January 1, 2012. As I understand the District Court decision, the District Court found that the 21-day/\$5,000 provision in this statute is not constitutionally valid with respect to ballot measures.

6. On September 15, 2010 the Commission unanimously joined with the Attorney General's Office in deciding to seek an appeal with this Court of the District Court decision with respect to RCW 42.17.105(8) and to request an emergency stay of the District Court decision in this case with respect to that statute. That appeal has now been filed and State Defendants are now asking for a stay.

7. This declaration supplements information I provided in a declaration filed with the District Court including with respect to RCW 42.17.105(8), a copy of which I understand is being provided to this court with the State Defendants' motion seeking a stay. This declaration specifically addresses why a stay of the District Court's decision regarding RCW 42.17.105(8) is warranted.

8. In sum, disrupting a campaign finance system shortly before ballots are being mailed for the November 2, 2010 general election and overturning a campaign finance statute that has been in effect since 1985 without an opportunity to fully brief all the legal issues on appeal, is not in the public interest and the public will be harmed by such a result. Retaining the statutory provision at RCW 42.17.105(8) until this Court has the opportunity to consider all the issues on appeal is fully warranted given that:

(a) political committees including ballot measure campaigns have been operating with RCW 42.17.105(8) in place for years including during this 2010 election season and millions of dollars have been raised during that time, including in 2010,

(b) Family PAC has reported no campaign activity for any ballot measure for 2010 or for any other campaign activity in 2010, and

(c) Family PAC provided no evidence in the District Court record showing harm resulting from the continued implementation of RCW 42.17.105(8).

Granting a stay retains an important campaign finance provision governing ballot measure campaigns at a crucial time in the election season. The District Court decision has the opposite impact, which is to upend that system during a very active election campaign season and prior to this Court's determination of the issues on appeal.

9. There are seven statewide ballot measures (including initiatives and referenda) on the November ballot this year, plus local ballot measures. Our records show that there are 62 (24 state, 38 local) ballot measure committees for 2010 that are engaged in "full reporting" as ballot measure committees (as opposed to "mini reporting" for smaller campaigns). Other committees that file as "other" (or "continuing") political committees could also be supporting or opposing ballot measures. There are 716 active political committees engaged in full reporting for 2010 that could also be contributing to ballot measure campaigns.

10. According to the PDC database available on the PDC's website at www.pdc.wa.gov, as of September 20, 2010, more than \$37 million has been raised for the 2010 ballot measures in Washington State, and more than

\$15 million has been spent. See Exhibit A. Given the millions of dollars raised to date and the millions of those dollars yet to be spent, we can find no indication that RCW 42.17.105(8) is presenting any barriers to fundraising for the ballot measures on the November 2 general election.

11. As explained in my declaration filed in the District Court (paragraphs 57-65), RCW 42.17.105(8) is a timing provision that enables disclosure to the voters of who is contributing the “big money” at a time when voters are receiving their ballots. As also explained in my District Court declaration (paragraph 13), because the PDC provides campaign finance contributor and expenditure reports online and in a free searchable database, voters can access that information when they are voting from their homes, from overseas, and from military bases. This access and timing is important because the majority of voters (38 of 39 counties) in Washington State vote by mail and those ballots are mailed out well in advance of the general election.

12. Specifically with respect to this timing, Washington State has a calendar of events that occur leading up to each general election. The 2010 general election is November 2, 2010. For campaigns and political committees including ballot measure committees, a series of dates lead up to that general election date for certain required activities such as filing disclosure reports

required by law, and for other activities under other provisions of law. One of those dates is the 21-day period in RCW 42.17.105(8). A copy of the PDC schedule of 2010 dates for political committees filing under RCW 42.17 is attached at Exhibit B (also available on the PDC's website).

13. Similarly, the Secretary of State's Office has a calendar of dates for election events that occur leading up to the general election. Those include, for example, the mailing dates of ballots for persons who vote by mail. As noted, and as explained in the District Court currently 38 of Washington's 39 counties vote by mail, plus overseas and military voters vote by mail. See SOS election calendar for September – November 2010 at Exhibit C, printed from SOS website at www.sos.wa.gov. A review of the upcoming dates from those two calendars for the PDC and the SOS shows, for example:

- October 3 (SOS) – Overseas and military ballots mailing date for the November 2 general election (Pierce County plans to mail ballots earlier – see next paragraph)
- **October 12 (PDC) – RCW 42.17.105(8)'s 21-day period begins**
- October 13 (SOS) – Ballots available for November 2 general election
- October 15 (SOS) – Ballots mailed for November 2 general election
- November 2 (SOS) – General election

14. Exhibit D printed from the SOS website provides a further explanation of early mailing of ballots to military voters. In addition, recent

media reports indicate that Pierce County was working to mail military ballots by September 18, 2010. “Pierce County: We’ll Meet Deadline for Military Voters,” *Tacoma News Tribune*, August 31, 2010 (<http://blog.thenewstribune.com/politics/2010/08/31/pierce-county-well-meet-deadline-for-military-voters>).

15. In effect, the 21-day provision in RCW 42.17.105(8) enables voters to access information regarding the largest contributors to a ballot measure campaign at a time when the voters have received their ballots and can cast their votes.

16. In my experience, campaigns and political committees plan fundraising and other activities based upon these dates described in the attached calendars and the target date of the general election (or primary election if relevant). Knowing what those dates are, and how those dates may affect their campaign activities and strategies (such as reserving media space well in advance of each election and when to do it, when to fundraise, and when they will have the funds available for those media buys and other planned activities) is an important component enabling campaigns to operate smoothly and consistently and under a known set of rules. As described in another declaration filed in the District Court by Anne Levinson (paragraph 7),

it is “well known” by campaigns operating in Washington State that the 21-day/\$5,000 provision is in place and ballot measure campaigns take steps with donors to ensure compliance.

17. As a consequence of the District Court’s decision, my agency has been receiving inquiries from campaigns and others, wondering what the impact of the court’s decision is with respect to campaigns and in particular ballot measure campaigns for the November 2 general election. I understand PDC staff member Lori Anderson will be providing a more detailed description of such contacts in a separate declaration. This uncertainty unfairly disrupts these campaigns at this time and warrants a stay until the legal issues that result from the District Court’s decision can be addressed by this Court.

18. The District Court’s decision also impedes our agency’s ability to provide timely information to voters for the November 2 general election regarding who are the larger funders of ballot measure campaigns at a time when they are receiving their ballots, as that disclosure is enabled by RCW 42.17.105(8). The District Court decision’s impact on disclosure is not in the public interest and also warrants a stay.

19. Further, as described, ballot measure campaigns have been operating with RCW 42.17.105(8) in place for years. The 2010 election looks

to be a record-setting year for money raised to support or oppose ballot measures in Washington State, even with RCW 42.17.105(8). Thus, retaining the same consistent “rules of the road” for ballot measure campaigns which they expected would be in place for the 2010 elections and while this appeal proceeds in an orderly fashion, is reasonable and warranted. This reality further supports entry of a stay.


20. Finally, as I explained in paragraph 67 in my District Court declaration, Family PAC has not filed any contribution or expenditures reports with the PDC for any campaign, including any ballot measure campaign. Except for its initial political committee registration form filed in 2009 at the same time this lawsuit was filed, to my knowledge Family PAC has not indicated it has been involved in any campaign in Washington, including any ballot measure campaign in 2010. This fact is still true. See Exhibit E, PDC database report for political committees for 2010, showing \$0 in contributions to Family PAC and \$0 in expenditures by Family PAC. The one declaration Family PAC filed in the District Court from a possible contributor in 2009 did not show RCW 42.17.105(8) presented a barrier for that contributor in 2009 (described more fully in my District Court declaration, paragraph 68). Therefore, staying the District Court’s decision with respect to

RCW 42.17.105(8) would likely have no impact on Family PAC's activities including with respect to the general election on November 2, 2010.

21. During oral argument our attorneys requested the District Court to enter a stay at least through the November 2010 general election, given the campaigns that are already underway. That request was denied and the District Court observed that stays can be sought in the appellate court. Therefore, State Defendants are now requesting a stay from this Court of the decision below.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge.

Signed this 20th day of September 2010 at Olympia, Washington.


DOUG ELLIS



Building Confidence in the Political Process

HOME PUBLIC RESOURCES FILER RESOURCES SEARCH THE DATABASE VIEW ACTUAL REPORTS ONLINE FILING

CANDIDATES COMMITTEES INDEPENDENT SPENDING ADVANCED SEARCH

CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

Year: 2010 Total Raised: \$37,246,660.84 Total Spent: \$15,301,000.14

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

Details	Name	Ballot	F/A	Raised	Spent	Debt
Details	CIT FOR RESPONSIBLE SPENDING	1053	F	\$341,600.00	\$299,500.00	\$0.00
Details	CIT FOR THE PEOPLES INITIATIVE I-1071	1071	F	\$0.00	\$0.00	\$0.00
Details	CIT TO PROTECT OUR ECONOMIC FUTURE	1107	A	\$321,856.92	\$281,983.13	\$5,399.00
Details	COMM FOR THE RIGHT TO DRIVE TO WORK	0	F	\$0.00	\$0.00	\$0.00
Details	COMM TO EVALUATE I-1068	1068	F	\$30,448.60	\$30,448.60	\$0.00
Details	DEFEAT 1098	1098	A	\$3,462,511.00	\$236,757.88	\$0.00
Details	DEMOCRACY IN ELECTION PROCESS	1075	F	\$0.00	\$0.00	\$0.00
Details	MODERNIZE WAYES 1100 COMM	1100	F	\$2,168,815.78	\$1,706,682.31	\$0.00
Details	NO ON 1077	1077	A	\$0.00	\$0.00	\$0.00
Details	NO ON 1098	1098	A	\$0.00	\$0.00	\$0.00
Details	NO ON I-1053 COMM	1053	A	\$47,596.19	\$439.81	\$1,519.75
Details	NO ON I-1082 COMM	1082	A	\$1,084,744.15	\$287,894.84	\$13,453.91
Details	NO ON I-1105	1105	A	\$0.00	\$0.00	\$0.00
Details	ONE WASHINGTON NOW	0	F	\$5,589.00	\$1,827.07	\$0.00
Details	PROTECT OUR COMMUNITIES	1100	A	\$6,020,367.63	\$3,439,879.15	\$50,030.30

1 2

Displaying items 1 - 15 of 27

HOME / PRIVACY NOTICE / EMPLOYMENT / SITE MAP

PUBLIC DISCLOSURE COMMISSION / 711 CAPITOL WAY #206 / PO BOX 40908 / OLYMPIA, WA 98504-0908
 TOLL FREE - 1-877-601-2829 / PHONE 360-753-1111 / FAX (360)753-1112 / EMAIL pdc@pdc.wa.gov
 OFFICE HOURS: 8:00AM - 5:00PM Monday - Friday Closed Weekends & State Holidays.

Access Washington

Exhibit A



HOME PUBLIC RESOURCES FILER RESOURCES SEARCH THE DATABASE VIEW ACTUAL REPORTS ONLINE FILING

CANDIDATES COMMITTEES INDEPENDENT SPENDING ADVANCED SEARCH

CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

Year: 2010 Total Raised: \$37,246,660.84 Total Spent: \$15,301,000.14

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

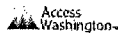
Details	Name	Ballot	F/A	Raised	Spent	Debt
Details	PROTECT WA	1098	F	\$55,089.00	\$9,589.00	\$545.26
Details	RESPECT WASHINGTON # I-1056	1056	F	\$31,096.98	\$29,933.58	\$11,558.51
Details	SAVE OUR JOBS WA	1082	F	\$1,383,867.33	\$960,202.02	\$0.00
Details	SENSIBLE WA	1088	F	\$37,299.07	\$36,874.11	\$2,290.75
Details	STOP INSURANCE INDUSTRY TAKEOVER	1082	A	\$979,705.70	\$137,228.59	\$0.00
Details	STOP THE FOOD & BEVERAGE TAX HIKES	1107	F	\$14,448,077.83	\$3,524,682.71	\$3,500,000.00
Details	VOTERS WANT MORE CHOICES - SAVE THE 2/3RDS VOTE FOR TAX INCREASES	1053	F	\$689,416.40	\$641,869.85	\$237,417.68
Details	WA CIT FOR LIQUOR REFORM	1105	F	\$2,244,000.00	\$2,242,022.13	\$44,694.20
Details	WASHINGTONIANS AGAINST INCOME TAX 1098	1098	A	\$5,500.00	\$5,363.45	\$5,500.00
Details	WASHINGTONIANS FOR EDUCATION HEALTH & TAX RELIEF	1098	F	\$3,575,424.95	\$1,305,644.31	\$7,285.26
Details	WETHEPEOPLEOFWA.ORG	1058	F	\$9,520.33	\$23,670.15	\$3,000.00
Details	YES FOR SCHOOLS & JOBS	62	F	\$304,133.98	\$98,507.45	\$76,858.95

1 2

Displaying Items 16 - 27 of 27

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 OFFICE HOURS: 8:00AM - 5:00PM Monday - Friday Closed Weekends & State Holidays.



2010 Key Reporting Dates for Political Committees

DATE	ACTIVITY	C-4 REPORT PERIOD
Within two weeks of forming a committee	File a C-1pc (file an amended C-1pc within ten days of change in committee makeup) ¹	
Jan 11	File monthly C-4 & C-3, if necessary	close of last report thru Dec 31
Feb 10	" "	close of last report thru Jan 31
Mar 10	" "	close of last report thru Feb 28
Apr 12	" "	close of last report thru Mar 31
May 10	" "	close of last report thru Apr 30
June 1	Begin filing C-3 reports weekly, each Monday, for deposits made during previous 7 days (Monday thru Sunday)	
June 10	File monthly C-4, if necessary	close of last report thru May 31
July 2	Final day to change from mini to full reporting without special circumstances ²	
July 27	21 day pre-primary C-4 due ³	June 1 thru July 26
Aug 9 - 16	Committee books open for public inspection	
Aug 10	7 day pre-primary C-4 due	July 27 thru Aug 9
Aug 10 - 16	Special reports due if committee makes or receives contributions of \$1,000 or more from one source. ⁴	
Aug 17	PRIMARY ELECTION DAY	
Sept 10	Post-primary C-4 due	Aug 10 thru Aug 31
Sept 21	Final day to change from mini to full reporting without special circumstances ²	
Oct 12	21 day pre-general C-4 due	Sep 1 thru Oct 11
Oct 12 – Nov 1	Special reports due if committee makes or receives Contributions of \$1,000 or more in the aggregate. ³ Further, unless the contributor is a <u>state committee</u> of a bona fide Political party, no committee may now: 1) receive contributions over \$5,000 in the aggregate from one source or 2) make aggregate Contributions totaling over \$5,000 to a candidate or other political committee.	
Oct 25 – Nov 1	Campaign books open for public inspection	
Oct 26	7 day pre-general C-4 due	Oct 12 thru Oct 25
Nov 2	GENERAL ELECTION DAY	
Dec 10	Post-general C-4 due (and C-3, if necessary)	Oct 26 thru Nov 30
Jan 10 (2011)	End of election cycle C-4 due (and C-3, if necessary)	Dec 1 thru Dec 31

¹ Committees forming within 3 weeks of the election must file C-1pc within 3 business days of organizing.

² See WAC 390-16-125.

³ Primary reports not required of committees only supporting or opposing general election ballot issues. These committees file monthly reports for June, July, August – these reports are due on the 10th of the following month.

⁴ Does not constitute authority to exceed any applicable local or state contribution limit.

September 2010						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 County Certification of the August 17 Primary	2	3	4
5	6 LABOR DAY	7 State Certification of the August 17 Primary	8	9	10 PDC Form C-4 due	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28 Last day to publish registration deadlines for the November 2 General Election	29	30		
Overseas and military ballots mailed for the November 2 General Election	Deadline for mail and online voter registrations and transfers for the November 2 General Election					

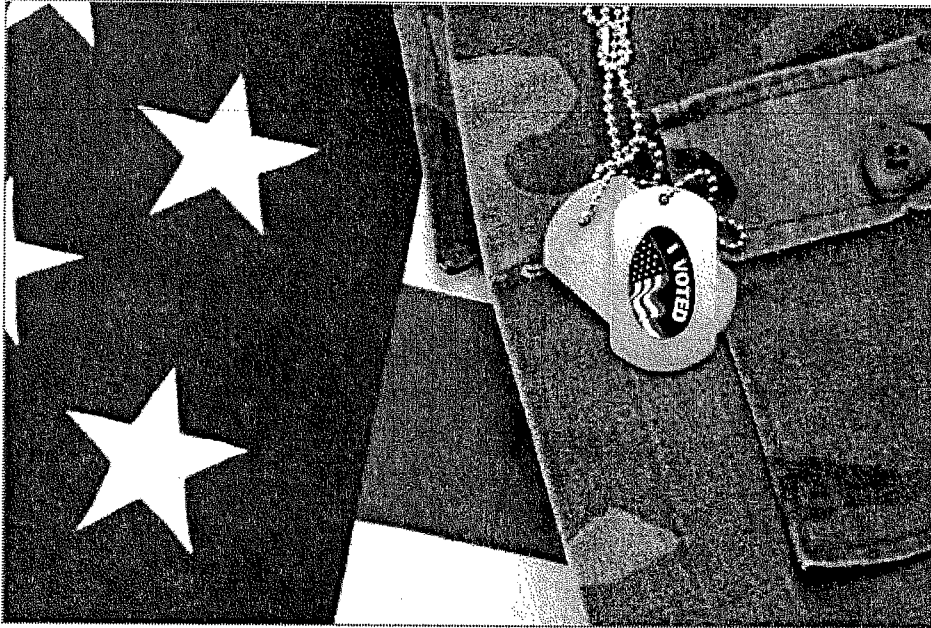
Exhibit C

October 2010						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
		Last day to publish registration deadlines for the November 2 General Election				
3	4	5	6	7	8	9
Overseas and military ballots mailed for the November 2 General Election	Deadline for mail and online voter registrations and transfers for the November 2 General Election					
10	11	12	13	14	15	16
		PDC Form C-4 due	Accessible Voting Units and ballots available in County Auditor Offices through Election Day		Ballots mailed for the November 2 General Election	
17	18	19	20	21	22	23
					First day to publish notice of the November 2 General Election	
24	25	26	27	28	29	30
	Deadline for in-person registration for the November 2 General Election	PDC Form C-4 due			Last day to publish notice of the November 2 General Election	
31	Final day to file as a write in candidate for the November 2 General Election	GENERAL ELECTION				

November 2010						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 Final day to file as a write in candidate for the November 2 General Election	2 GENERAL ELECTION	3	4	5	6
7	8	9	10	11 VETERANS' DAY	12	13
14	15	16	17	18	19	20
21	22 County Certification of the November 2 General Election	23	24 THANKSGIVING	25 LEGAL HOLIDAY	26	27
28	29	30	State Certification of the November 2 General Election			
					10 PDC Form C-4 due	

Military voting: 51-day transit exceeds feds' 45-day rule

by David Ammons | September 2nd, 2010



Washington election officials today emphasized that the state's recent federal "waiver" of the 45-day ballot deadline for military and overseas voters shouldn't be viewed as providing less voting time for our soldiers abroad. Indeed, Washington has a generous 51-day transit period, and all properly voted military ballots that are returned in the three weeks after Election Day are counted.

State Elections Director Nick Handy said Thursday:

"It's clear that some people hear the word 'waiver' and jump to the erroneous conclusion that it means we are trying to shortchange our military voters, or even disenfranchise them. Nothing could be further from the truth! We are providing a 51-day transit period, and many counties will be able to make the 45-day standard that is mentioned in the new federal law."

Secretary of State Sam Reed, a former County Auditor himself for many years, said military voters have always been a paramount priority for state and county election officials — and that nothing has changed about that firm commitment. The former president of the National Association of Secretaries of State noted that Washington has been a national leader in complying with the new federal MOVE Act, including emailing and faxing ballots.

He added:

"For the past 10 years, we have championed legislation at the state and federal level on behalf of our military voters. Our County Auditors and this office have always highly valued our servicemembers and all the Washington residents who are overseas as missionaries, relief workers, Peace Corps volunteers and business people.

"We bend over backwards to get military people registered and to make sure they get their ballots in a timely fashion, no matter where they may be stationed. The Department of Defense, the National Guard leadership and veterans groups have complimented our efforts, and there is no way we would have gotten a waiver if we hadn't demonstrated that our program is of the highest caliber.


"Make no mistake, the counties are making every effort to get the ballots into the mail ASAP. Ballots also are available by instant email and fax."

Because of Washington's late primary, there are only 11 days between certification of the final list of candidates and Sept. 18,

45 days before Election Day. The alternate plan that the feds approved last Friday gives counties until Oct. 3, if they need it, meaning the ballots would go out at least a full month before Election Day. And, again, the ballots will have three extra weeks after Election Day to arrive back at the county elections office and be counted. Most states require ballots to be returned by Election Day.

The state Elections Division has posted [Frequently Asked Questions](#) on the elections homepage.

2 Responses to "Military voting: 51-day transit exceeds feds' 45-day rule"

1.  *Spokane web designer* says:
[September 5, 2010 at 9:28 AM](#)

They should have worded the initiative better, at first glance it does seem as though they are trying to undermine the military voters, of course that is not the case upon further reading.

Leave a Reply


Name (required)

Mail (will not be published) (required)

Website

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Building Confidence in the Political Process

HOME PUBLIC RESOURCES FILER RESOURCES SEARCH THE DATABASE VIEW ACTUAL REPORTS ONLINE FILING

CANDIDATES COMMITTEES INDEPENDENT SPENDING ADVANCED SEARCH

CONTINUING SINGLE YEAR INITIATIVE CAUCUS PARTY

Year: 2010 Total Raised: \$19,023,996.75 Total Spent: \$9,857,460.33

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

Details	Name	Type	Raised	Spent	Debt
Details	EDUCATION VOTERS POLITICAL ACTION FUND	I	\$82,114.30	\$68,732.41	\$469.50
Details	ELECTRICAL WORKERS PAC 46	U	\$33,953.80	\$20,124.20	\$0.00
Details	ELEVATOR CONSTRUCTORS LOCAL 19 PAC	U	\$0.00	\$0.00	\$0.00
Details	EMPLOYMENT FOR ALL	I	\$0.00	\$0.00	\$0.00
Details	ENTERPRISE WA JOBSPAC	O	\$406,083.61	\$160,535.10	\$0.00
Details	ENVISION SPOKANE POLITICAL COMM	I	\$4,150.63	\$1,107.44	\$0.00
Details	EQUAL RIGHTS WA	I	\$14,144.86	\$12,304.20	\$1,402.39
Details	EVERGREEN PROGRESS	O	\$20,000.00	\$600.00	\$1,200.00
Details	FAIRPAC / CIT TO UPHOLD THE CONSTITUTION	I	\$360,165.76	\$357,058.74	\$0.00
Details	FAITH & FREEDOM PAC	O	\$4,178.41	\$3,619.76	\$0.00
Details	FAMILY PAC	O	\$0.00	\$0.00	\$0.00
Details	FAR WEST AGRIBUSINESS PAC	I	\$14,497.63	\$5,550.00	\$10,000.00
Details	FARMERS EMPLOYEES AND AGENTS PAC	B	\$195,838.35	\$86,672.78	\$0.00
Details	FILM PAC	B	\$4,400.00	\$0.00	\$842.25
Details	FIRE SERVICES FUND OF WA	I	\$8,970.83	\$270.00	\$0.00



1 2 3 4 5 6 7 8 9 10 ...

Displaying Items 106 - 120 of 445

HOME / PRIVACY NOTICE / EMPLOYMENT / SITE MAP

PUBLIC DISCLOSURE COMMISSION / 711 CAPITOL WAY #206 / PO BOX 40908 / OLYMPIA, WA 98504-0908
 TOLL FREE - 1-877-801-2828 / PHONE 360-753-1111 / FAX (360)753-1112 / EMAIL pdc@pdc.wa.gov
 OFFICE HOURS: 8:00AM - 5:00PM Monday - Friday Closed Weekends & State Holidays.

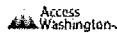


Exhibit E

APPENDIX D

NO. 10-35832

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FAMILY PAC,

Plaintiff- Appellee,

v.

ROB MCKENNA, in his official capacity as Attorney General of Washington, and JIM CLEMENTS, DAVE SEABROOK, JANE NOLAND, JENNIFER JOLY and BARRY SEHLIN, members of the Public Disclosure Commission, in their official capacities,
Defendants - Appellants.

DECLARATION OF
LORI ANDERSON IN SUPPORT
OF EMERGENCY MOTION
FOR STAY OF DISTRICT
COURT DECISION
REGARDING RCW 42.17.105(8)
IN CASE NO. C09-5662 RBL

I, Lori Anderson, declare as follows:

1. I am over the age of 18 and competent to testify on the matters contained in this declaration.

2. I am currently employed by the Washington State Public Disclosure Commission (PDC) as a Communications and Training Officer. I have been employed at the PDC since August 1999. My primary duties are to coordinate training for political campaigns and filers, coordinate publications and outreach efforts, assist filers and respond to media inquiries. During my

tenure with the PDC, I have also served as a Political Finance Specialist for the PDC. In that capacity, my duties included assisting filers, auditing campaigns, and investigating complaints. Prior to the PDC, I was a legal secretary for 20 years (which includes the Washington State Attorney General's Office and the Office of Administrative Hearings, and three years with a private law firm).

3. In my capacity as the PDC's Communications and Training Officer and previously also as a Political Finance Specialist I regularly have contact with members of the media and the public, including persons who file reports with the PDC. I have filed declarations in this case in the District Court.

4. I am aware of the District Court decision (of the U.S. District Court in Tacoma, the Honorable Judge Ronald B. Leighton) in this case of September 1, 2010 (Case No. C09-5662 RBL). In particular, I am aware of the court's decision concerning RCW 42.17.105(8).

5. Since the decision, the PDC has been receiving inquiries from persons who want to know the effect of the District Court decision and particularly for the 2010 general election, which is November 2, 2010. There are several statewide ballot measures that will be on the ballot in that election, plus local ballot measures.

6. I have spoken with PDC staff and they describe our agency has had contacts from persons inquiring about the District Court decision. I have also received inquiries. The persons who have contacted PDC staff have asked questions such as: Does this opinion impact only ballot measures? Does this decision eliminate contribution limits to candidates? Does the decision impact political committees that are not specifically (or only) ballot measure committees? Does the decision affect campaigns for the November 2 general election?

7. By way of further example, an attorney who represents Costco (a membership warehouse and retailer) called PDC staff to ask if Costco could now give more than \$5,000 to a ballot measure at any time (we have two ballot measures affecting liquor in Washington State and Costco is a large contributor). Another attorney representing a builders organization called to inquire about when the stay motion would be filed (we have a ballot measure affecting workers compensation in Washington State and the builders organization has formed a political committee to support the measure and is a large contributor).

8. We have also received other inquiries about the decision, including from an attorney for a state employees' union, the media, and the City of Seattle. There have been media stories about the decision.

9. We had an inquiry from an attorney representing the City of San Diego, saying a copy of the transcript of the District Court's decision had been filed in a pending 9th Circuit case.

10. In sum, the District Court's decision has created uncertainty in the campaign finance community about what the "rules of the road" are with respect to campaigns in 2010, and at a critical time in the several weeks before the general election.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge.

DATED and SIGNED this 20th day of September, 2010 at Olympia, Washington.


LORI ANDERSON

APPENDIX E

NO. 10-35832

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FAMILY PAC,

Plaintiff/Appellee,

v.

ROB MCKENNA, in his official capacity as Attorney General of Washington, and JIM CLEMENTS, DAVE SEABROOK, JANE NOLAND, JENNIFER JOLY and BARRY SEHLIN, members of the Public Disclosure Commission, in their official capacities,

Defendants/Appellants.

DECLARATION OF
LINDA A. DALTON IN
SUPPORT OF EMERGENCY
MOTION FOR STAY OF
DISTRICT COURT DECISION
REGARDING RCW 42.17.105(8)
IN CASE NO. C09-5662 RBL

I, Linda A. Dalton, declare as follows:

1. I am over the age of 18, one of the co-counsel representing the Defendants/Appellants in the above action, and competent to testify on the matters contained in this declaration.

2. I have reviewed the factual assertions from the Response (“Opposition”) filed by Family PAC in response to the emergency stay motion filed by the Defendants/Appellants.

Timeline for Appeal and Request for Stay

3. In footnote 4 and at pages 1 and 4, Family PAC suggests that because of the time between the District Court's decision and the Notice of Appeal being filed, no actual emergency exists.

4. The summary judgment hearing and the District Court's decision were held and issued on Wednesday, September 1, 2010.

5. The Defendants requested a stay of the proceedings from the District Court immediately following the oral decision being rendered and before the hearing concluded. The District Court denied that request.

6. The Defendants also immediately requested a copy of the transcript of the proceedings at the conclusion of the hearing. Receipt of the transcript was required in this appeal because the District Court did not enter a written opinion following the summary judgment motion hearing, and instead stated that the transcript would suffice in any appeal. App. B at 50-51.

7. The 2010 Labor Day weekend was September 4-6, 2010 and all state agencies were closed. Additionally, many state agencies were closed on Tuesday, September 7, 2010 as a statutorily-mandated furlough day in Washington state as part of the state's budget reduction efforts. The State Public Disclosure Commission was included in that furlough. As a result, I

was unable to have contact with five of the defendants or my co-counsel during that four-day period.

8. The transcript of the proceedings arrived on September 9, 2010 and we began review of the matter for purposes of determining whether to appeal the one issue related to invalidating a state law. From Tuesday, September 7, 2010 to Friday, September 10, 2010, I had four meetings, including one with Defendant McKenna, to discuss the possibility of appeal.

9. State agency offices were again closed on Saturday and Sunday, September 11-12, 2010.

10. Notice of a special meeting of the Public Disclosure Commission as required under the Washington Open Public Meetings Act was issued on Tuesday, September 14, 2010. The Act requires the defendants to provide public notice of any meeting they may have where a quorum exists and before they can take any action together, such as voting on an appeal in this case. There are five members of the Commission. They are citizen members located throughout the state. As a result, and to expedite this meeting, arrangements needed to be made for them to meet via teleconference.

11. The special meeting with the Public Disclosure Commission was held on Wednesday morning, September 15, 2010, at 10:00 a.m. after 24-hour notice was given to the public.

12. At the end of that meeting, the five Public Disclosure Commission members/Defendants acted in open meeting and voted to appeal the district court's decision and seek an emergency stay.

13. The Notice of Appeal was filed the next day on Thursday, September 16, 2010.

14. September 18-19, 2010 was a weekend and again state agencies were closed. The Emergency Motion for Stay (and appendices) was filed immediately after that time, on September 20, 2010.

15. Contrary to the suggestion in Family PAC's opposition, all due diligence and speed was used to determine whether an appeal should be filed and emergency stay sought. Two different state agencies and their named defendants needed to be consulted, legal notice under Washington law had to be given, and a review of the court's transcript needed to be done in order to determine if an appeal was supportable. Given that six of the fifteen days between decision and appeal were dates in which the Commission was closed,

only nine days were used to make the decision including obtaining the transcript and briefing each defendant.

16. Also, on Thursday September 16, 2010, I spoke with Family PAC counsel Scott Bieniek and Joseph LaRue about a number of issues regarding the case including our appeal and request for an emergency stay. I advised them that we were working on the emergency stay and that it would be filed no later than Tuesday, September 21, 2010.

17. As noted, the emergency stay was filed on Monday, September 20, 2010 and the court has been requested to issue a stay no later than October 6, 2010, sufficient time before the start of the 21-day period at RCW 42.17.105(8), October 12, 2010.

Family PAC Reporting

18. Based on assertions that Family PAC “has” reporting requirements as a “continuing political committee” (Opp. at 2), I have reviewed Family PAC’s filing with the state Public Disclosure Commission. As of September 30, 2010, Family PAC has not filed any reports that show it is participating in any 2010 ballot measures.

19. The only evidence in the case relates to one initial filing (a committee registration form) in 2009 regarding a ballot measure which has

long since been decided. To date, through both the 2009 and 2010 election seasons, Family PAC has not received a single contribution that it has reported.

Preliminary Injunction Response

20. Additionally, Family PAC never sought a stay from either the District Court or this Court for the denial of the preliminary injunction in October 2009.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge.

DATED and SIGNED this 30th day of September, 2010 at Olympia, Washington.


LINDA A. DALTON

APPENDIX F

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The Honorable RONALD B. LEIGHTON

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

FAMILY PAC,

Plaintiff,

v.

ROB MCKENNA, in his official capacity
as Attorney General of Washington, and
JIM CLEMENTS, DAVE SEABROOK,
JANE NOLAND, JENNIFER JOLY and
BARRY SEHLIN, members of the Public
Disclosure Commission, in their official
capacities,

Defendants.

NO. C09-5662 RBL

DECLARATION OF
DOUG ELLIS

I, Doug Ellis, declare as follows:

1. I am over the age of 18 and competent to testify on the matters contained in this Declaration.

2. I am the Interim Executive Director of the Washington State Public Disclosure Commission (Commission). I was appointed to this position effective April 1, 2010. Prior to that I was the Assistant Director. I became the Assistant Director in 2005. Prior to that time, I was the agency Director of Public Outreach. I have been employed by the Commission since 1992.

3. My duties include overseeing the day-to-day operations of the PDC, as well as performing Assistant Director duties during the interim appointment period. My duties

1 therefore also include direct supervision of the Compliance, Administrative and Customer
2 Service/Public Outreach Divisions of the PDC, as well as oversight of the Information
3 Technology Division's Chief Technology Officer. I supervise all PDC enforcement cases. I
4 am the agency's legislative liaison.

5 4. I am aware that the Plaintiff, Family PAC, is challenging the constitutionality of
6 a disclosure statute and a rule at RCW 42.17.090(1)(b) and WAC 390-16-034, and another
7 provision of state law regarding timing and disclosure at RCW 42.17.105(8). This declaration
8 supplements information previously provided to the Court as part of the state's response to
9 Family PAC's motion for a temporary restraining order and preliminary injunction. The
10 purpose of my testimony in this declaration is to:

- 11 a. Discuss the PDC (§§5-10);
- 12 b. Describe the Washington State culture of disclosure and compliance with
13 disclosure requirements by campaigns, and how persons filing with the PDC can
14 and do receive guidance and assistance from the Commission and its staff (§§11-
15 17, 27-31);
- 16 c. Describe the information that the PDC gathers from filers and makes available to
17 the public, and how that information is made available and used (§§18-26);
- 18 d. Summarize Washington's disclosure requirements and process (§§32-34);
- 19 e. Describe RCW 42.17.090(1)(b) (which requires reporting of names and addresses
20 of contributors contributing more than \$25) and describe the PDC's C3 form filers
21 use to report that information (§§35-49);
- 22 f. Describe WAC 390-16-034 (which requires reporting of contributors' occupations
23 and employers when contributing more than \$100) and the fact that information is
24 also provided on the C3 form (§§50-56);
- 25 g. Describe the 21-day timing and disclosure provision in RCW 42.17.105(8) (§§57-
26 65);
- h. Describe that Family PAC has not contacted the Commission to seek a
modification of reporting requirements, an advisory opinion, Interpretive
Statement, amendments to or repeal of rules, or a declaratory order; and describe
that Family PAC has reported to the PDC no campaign finance activity regarding

1 contributions or expenditures in Washington State, and describe other information
2 about Family PAC (§§66-68); and

- 3 i. Describe Washington State's other pending litigation in lawsuits filed by Family
4 PAC's legal counsel here, also challenging provisions of RCW 42.17 (§69).

5 **Washington State Public Disclosure Commission**

6 5. The PDC was created through the passage of Initiative 276 in 1972 (effective in
7 1973), which passed overwhelmingly by a vote of 72 percent. I understand a copy of a
8 Declaration by Jolene Unsoeld filed in *Human Life of Washington v. Brumsickle* (U.S. District
9 Court Case No. 08-0590) also filed in this court provided the early history of Initiative 276.
10 Initiative 276 was codified in Chapter 42.17 RCW (RCW 42.17). That is the chapter of law
11 the PDC implements and enforces. RCW 42.17 addresses a number of areas concerning
12 disclosure of campaign and other information to the public. Those include campaign
13 financing, lobbyist reporting, reporting of public officials' personal financial affairs, and
14 reporting by public treasurers. At one time, RCW 42.17 also contained the open public records
15 provisions for all public agencies which originated in Initiative 276, although the PDC did not
16 enforce those sections because those sections had an enforcement mechanism through the
17 superior courts. The public records provisions have now been recodified in Chapter 42.56
18 RCW.

19 6. The policy statement in RCW 42.17.010 includes the following language: "It is
20 hereby declared by the sovereign people to be the public policy of the state of Washington: (1)
21 That political campaign and lobbying contributions and expenditures be fully disclosed to the
22 public and that secrecy is to be avoided." The policy statement also explains, "(10) That the
23 public's right to know of the financing of political campaigns and lobbying and the financial
24 affairs of elected officials and candidates far outweighs any right that these matters remain
25 secret and private."
26

1 7. A second citizen initiative in 1992, Initiative 134, added several campaign
2 finance provisions to RCW 42.17, such as creating contribution limits for state office elections.

3 8. The Commission has adopted rules to implement RCW 42.17. Those rules are
4 located in Title 390 Washington Administrative Code (WAC).

5 9. The agency is led by a five-member bipartisan citizen's commission that is
6 appointed by the Washington State Governor and confirmed by the Washington State Senate.
7 By statute, commissioners serve staggered terms of five years of no more than one full term
8 each, and no more than three members can be affiliated with the same political party.
9 Commissioners are prohibited by law from being politically active while they serve on the
10 Commission. Historically, commissioners' backgrounds include serving as a former legislator
11 or local government official, or having had the experience of running or assisting a campaign,
12 or having a legal background, or other experience with campaign or lobbying laws. The
13 Commission members are not full-time employees; the Commission meets approximately one
14 day a month to set policy, adopt rules, hear enforcement cases, make recommendations for
15 legislative changes, and other similar activities. The current commissioners are Jim Clements
16 (who serves as chair), David Seabrook, Jane Noland, Barry Sehlin and Jennifer Joly.

17 10. As noted, I oversee the day-to-day operations of the agency. The agency
18 currently has 22 employees and is located in Olympia, Washington. I manage staff, oversee
19 the budget and physical facilities, implement Commission decisions with respect to
20 RCW 42.17, schedule and prepare for Commission meetings and hearings, and similar
21 activities. Staff members include those who work with communications to the public, provide
22 assistance to filers, create and manage the PDC website and database, develop electronic filing
23 systems, investigate complaints regarding alleged violations of the law, and others. The
24 agency's \$2.3 million current annual budget is dedicated approximately as follows: 66 percent
25 of PDC resources are devoted to providing information to the public (including providing
26 assistance to candidates, political committees, and others who must comply with RCW 42.17

1 and its implementing regulations); 24 percent to enforcement of the PDC laws and rules; and,
2 10 percent to administration.

3 **Access to Information Provided by the PDC, Including Online**

4 11. Providing information to the public is a core mission of the PDC, particularly as
5 it enables the public to “follow the money” with respect to campaigns and lobbying. In
6 essence, providing such information to the public is the PDC’s reason for being. The types of
7 reports filed with the PDC include:

- 8 • Campaign finance reports, including political committee registration forms,
9 contribution reports, expenditure reports, independent expenditure reports, and others
10 disclosing the financing of Washington State campaigns;
- 11 • Lobbying reports disclosing expenditures by lobbyists and for lobbying efforts; and,
- 12 • Personal financial affairs reports disclosing the economic interests of candidates,
13 elected officials, and many appointed state officials.

14 12. All reports filed with the PDC disclosing campaign, lobbying and other
15 activities under the laws and rules are public records. Before the mid-1990s, all reports were
16 filed on paper. Members of the public, and especially the media, would ask the PDC to
17 provide them copies of the paper reports. Today, thousands of campaign finance and lobbying
18 reports are filed electronically and made available on the PDC’s website at www.pdc.wa.gov.
19 In addition, paper reports filed by campaigns are scanned and typically made available on the
20 website within four hours of receipt by PDC staff, and within 15 minutes for electronically
21 filed reports. Information is then extracted from these electronically filed reports and scanned
22 paper reports and provided to the public free-of-charge on the website in a searchable database.

23 13. As a result, information from filed campaign finance reports is quickly available
24 online to the voters and to the public, in a searchable format. The public can then use these
25 reports to “follow the money” in campaigns, and also conduct their own analysis. Given the
26 majority of voters in Washington State also now vote by mail, the voters can have access to

1 this campaign finance information at their homes 24/7, and while they are filling out their
2 ballots.

3 14. As reflected in the PDC's 2009 *Annual Report*, during fiscal year (FY) 2009
4 (July 1, 2008 – June 30, 2009), the PDC received, through paper filings or electronically,
5 97,946 reports (totaling 386,981 pages) from candidates, elected and appointed officials,
6 lobbyists, lobbyist employers, political committees and other filing reports (such as those
7 making independent expenditures). The *Annual Report* also shows that during FY 2009, the
8 PDC website received 40,423 unique visitors, and 596,223 web pages were viewed. I
9 understand PDC Chief Technology Officer Michael Smith will be providing more details on
10 PDC website access by the public.

11 15. The PDC is considered by many observers to be the best in the nation for its
12 disclosure mechanisms that enable the public to access lobbying and campaign finance
13 information. This is due in large part to the efforts devoted to the website and the database as
14 well as the statutory requirements. The PDC has been ranked by several organizations as
15 having one of the best, if not the best, disclosure programs in the country. Those include the
16 following organizations:

- 17 a. The *Campaign Disclosure Project*, which describes itself as a project of the
18 UCLA School of Law, the Center for Governmental Studies, and the California
19 Voter Foundation, supported by The Pew Charitable Trusts. The Campaign
20 Disclosure Project evaluates, grades, and ranks all 50 states' performance in four
21 campaign finance disclosure areas: the strength of campaign disclosure laws;
22 availability of electronic filing programs; the degree of public access to campaign
23 finance information; and the usability of state disclosure web sites. In its annual
24 report "Grading State Disclosure" it has ranked Washington as number one in the
25 country in each year from 2003 – 2007 for campaign disclosures (Grade A,
26 number one ranking; reports available at <http://www.campaigndisclosure.org/>).
- b. The *Center for Public Integrity*, which describes itself as a non-partisan, non-
advocacy organization dedicated to producing original, responsible investigative
journalism on issues of public concern. It ranked Washington as number one in
2006 for campaign disclosure of financial disclosure laws applying to legislators
and number one in 2007 for disclosure of financial affairs of governors. In 2009,

1 as in previous years, it gave Washington a grade "A." (Rankings available at
2 <http://www.publicintegrity.org/OI/db.aspx?act=rank> and
3 <http://www.publicintegrity.org/StateDisclosure/Default.aspx?act=executive> and
4 http://www.publicintegrity.org/investigations/states_of_disclosure/rankings/).

5 c. The *Ballot Initiative Strategy Center Foundation*, which describes itself as
6 tracking ballot measure developments, contributions to ballot measure campaigns
7 and training people to work on ballot initiatives. In its 2002 report "The
8 Campaign Finance Reform Blind Spot" it ranked Washington number one in
9 disclosure, stating on page 25 that "Washington has the single best disclosure
10 program of any state in the country."

11 (Report at [http://ballot.org/vertical/Sites/%7B26C6ABED-7A22-4B17-A84A-
12 CB72F7D15E3F%7D/uploads/%7BA8911D38-14D3-438F-AE43-
13 B78BBADBE500%7D.PDF](http://ballot.org/vertical/Sites/%7B26C6ABED-7A22-4B17-A84A-CB72F7D15E3F%7D/uploads/%7BA8911D38-14D3-438F-AE43-B78BBADBE500%7D.PDF)).

14 d. The *National Institute on Money in State Politics*, which describes itself as the
15 only nonpartisan, nonprofit organization revealing the influence of campaign
16 money on state-level elections and public policy in all 50 states. Its website is
17 FollowTheMoney.org. It states it encourages transparency and promotes
18 independent investigation of state-level campaign contributions by journalists,
19 academic researchers, public-interest groups, government agencies, policymakers,
20 students and the public at large. It uses reports filed with agencies such as the
21 PDC to conduct its own analysis of campaigns, by state. In its August 1, 2007
22 press release regarding its report titled "Indecent Disclosure: Public Access to
23 Independent Expenditure Information at the State Level" it described Washington
24 as one of only four states that disclose information on independent expenditures in
25 a way the public can understand, and also referencing ballot measure disclosures
26 of independent expenditures (press release available at
<http://www.followthemoney.org/Newsroom/index.phtml?r=332>; report available
at <http://www.followthemoney.org/press/Reports/200708011.pdf>).

16. I believe, and the Commission believes, that the public expects a user-friendly
method of accessing campaign information online. It has become part of the political culture
of this state. As noted, this expectation is also a result of the combination of the state's
disclosure laws and advances in technology, both of which enable quick and accurate public
access to campaign finance data. For example, the directives for agencies to make information
available to the public electronically came from the State Legislature in 1994 and specific to
the PDC in 1999. RCW 42.17.367 provides:

By February 1, 2000, the commission [PDC] shall operate a web site or contract
for the operation of a web site that allows access to reports, copies of reports, or

1 copies of data and information submitted in reports, filed with the commission
2 under RCW 42.17.040, 42.17.065, 42.17.080, 42.17.100, and 42.17.105. By
3 January 1, 2001, the web site shall allow access to reports, copies of reports, or
4 copies of data and information submitted in reports, filed with the commission
5 under RCW 42.17.150, 42.17.170, 42.17.175, and 42.17.180. In addition, the
6 commission shall attempt to make available via the web site other public records
7 submitted to or generated by the commission that are required by this chapter to
8 be available for public use or inspection.

9 The legislative finding from 1994 in the Code Reviser Notes after the codification of that
10 statute in the Revised Code of Washington cites to Laws of Washington 1994, Chapter 40,
11 Section 2, and states:

12 The legislature finds that government information is a strategic resource and
13 needs to be managed as such and that broad public access to nonrestricted public
14 information and records must be guaranteed. The legislature further finds that
15 reengineering government processes along with capitalizing on advancements
16 made in digital technology can build greater efficiencies in government service
17 delivery. The legislature further finds that providing citizen electronic access to
18 presently available public documents will allow increased citizen involvement in
19 state policies and empower citizens to participate in state policy decision making.

20 17. In 1999, the legislature directed that filing of reports with the PDC be made
21 available through an electronic means, beginning in July 1999. RCW 42.17.369;
22 RCW 42.17.3691. The legislature also provided that the PDC shall make available an
23 electronic copy of the reporting forms at no charge. RCW 42.17.369(3). The legislature
24 established statutory performance measures providing that the PDC is to describe how quickly
25 reports are made available to the public online, such as the average number of days that elapse
26 between the time a report is filed and when it is available online, and a description of who is
filing reports electronically. RCW 42.17.463. The legislature required the Commission to
develop an information technology plan and performance reports. RCW 42.17.465 - .469.

23 **How PDC Information Is Used**

24 18. I believe, as do others in my field, that access to campaign finance information
25 is a critical component of fostering an informed electorate. Disclosure of such information,
26 particularly when it is accurate and timely, adds more speech into the public political discourse

1 at a time when voters need it. As described, in today's online culture, quick and easy access to
2 accurate and current information via the Internet on candidate and ballot measure contributions
3 and expenditures is now an established expectation among voters, the media, campaigns,
4 researchers, and others. The PDC website and database are heavily used by the public to
5 access campaign finance, lobbying, and other related information.

6 19. The media are also frequent users of such PDC information to help inform the
7 public. In my current position with the PDC, as well as in my prior positions, I frequently
8 respond to calls from media representatives who had reviewed information in the PDC
9 database or on the website and want to follow up because they are writing a story about a
10 particular campaign or other campaign-related stories. Attached at Exhibit A is an example of
11 a media story about campaigns (*Bellingham Herald* article from March 20, 2010 titled "Who's
12 Funding the Candidates? It's Easy to Find Out" was published during "Sunshine Week" which
13 is an effort to promote and discuss open government.). I understand more examples of media
14 contacts are being provided in the declarations of PDC Communications and Training Officer
15 Lori Anderson and Chief Technology Officer Michael Smith. Other examples are attached to
16 Declaration of Scott F. Bieniek in Support of Plaintiff's Motion for Summary Judgment
17 (Bieniek Declaration) at Exhibit 1, page 11 (inquiry from *Seattle Times*); Exhibit 4, page 7
18 (inquiry from *The Oregonian*).

19 20. Other users of the information filed with the PDC are candidates (who will also
20 review reports of their opponents, checking for disclosure and accuracy), and national
21 organizations such as those I described in paragraphs 15 and 53 that are compiling studies or
22 information on campaigns and campaign finance.

23 21. Access to such online campaign finance information impacts the outcome of
24 elections. A study released April 3, 2002 by the *Pew Internet and American Life Project* titled
25 "The Rise of the E-citizen: How People Use Government Agencies' Websites" found that
26 even as far back as 2002, 14 million people at that time had used government websites to

1 gather information to help them decide how to cast their votes. A copy of the study is
2 available at http://www.pewinternet.org/pdfs/PIP_Govt_Website_Rpt.pdf.

3 22. In addition to gathering data and reports and making them available to the
4 public, the PDC staff also analyzes data and provides summary reports to show the public such
5 information as overall totals of contributions and expenditures, the participants, and trends.
6 The PDC publishes an *Election Financing Fact Book* (fact book) for each even-numbered year
7 concerning state elections. This effort began with what is viewed as the first "fact books"
8 prepared by Jolene Unsoeld in the 1970s. The information in the fact books is compiled from
9 campaign finance reports filed by candidates and political committees disclosing activity. The
10 fact books are made available to the public, the media, legislators and others, on the PDC
11 website at <http://www.pdc.wa.gov/home/historical/publications/Factbooks.aspx>.

12 23. In 2008, for overall contribution and expenditure totals for ballot measures, the
13 fact book describes 12 statewide ballot proposition committees reported to the PDC, for a total
14 of \$9,565,276 in contributions and \$9,547,845 in expenditures; and 89 local ballot measure
15 committees reported a total of \$3,759,984 in contributions and \$3,716,975 in expenditures.
16 Exhibit B.

17 24. The 2008 fact book also summarized the expenditures supporting and opposing
18 all statewide initiatives from 1975 to 2008. Exhibit C. Expenditures for and against a single
19 initiative have reached as high as \$15,679,653 (in 2005 regarding Initiative 330, which
20 concerned claims for negligent health care).

21 25. The 2008 fact book also shows all contributions and expenditures for all
22 political committees reporting to the PDC in 2008, which totaled (just for 2008) as follows:
23 523 political committees received \$75,135,499 in contributions and made \$68,664,342 in
24 expenditures.

1 26. In sum, the reports filed with the PDC enable the agency and the public to see
2 and analyze where and when millions of dollars are received and spent with respect to ballot
3 measures and candidates in a timely manner.

4 **Assistance to Filers – Requests for Advice or Guidance**

5 27. The PDC provides a number of mechanisms to give assistance to persons who
6 file reports with the agency, and who have questions or other reasons to contact the agency.
7 As noted, the website provides much useful information, including links to the statutes and
8 rules, manuals and brochures for filers, Commission meeting schedules and materials for the
9 meetings including rulemaking activity, forms, training schedules, historical reports, and other
10 information. Electronic filers are provided software – the PDC’s campaign finance software
11 called ORCA (Online Reporting of Campaign Activity) – for free, and ORCA training is free.
12 Copies of the software and other candidate information are also made available to county
13 auditors, for distribution to filers. If a filer wants to contact someone at the PDC, the
14 assistance can be formal or informal and is provided by PDC staff, or, depending upon the
15 question, by the Commission. The PDC has a toll-free number. Staff answers telephone and
16 e-mail questions from filers. As noted in the most recent *Annual Report*, staff conducted 41
17 training opportunities for candidates, political committees, lobbyists and others; in total, there
18 were 1,147 attendees at these trainings. Candidate training videos are available for streaming,
19 again for free. Examples of responses to telephone, email and letter inquiries to PDC staff are
20 attached as exhibits to the Bieniek Declaration.

21 28. If PDC staff is unable to answer a question or the answer is not readily available
22 on the website, and the person inquiring seeks direction from the Commission, there are a
23 number of options available. Those include, for example, submitting an informal advisory
24 opinion request, a formal declaratory order request (WAC 390-12-250), a formal request for
25 guidance through issuance of an interpretive statement (Interpretation) under
26 RCW 34.05.230(1), or a formal rulemaking petition (RCW 34.05.330 and WAC 390-12-255).

1 In addition, the law also authorizes the Commission to respond on a case-by-case basis to
2 “modification requests” of filers. Under RCW 42.17.370(10), the Commission is authorized
3 to:

4 After hearing, by order approved and ratified by a majority of the membership of
5 the commission, suspend or modify any of the reporting requirements of this
6 chapter in a particular case if it finds that literal application of this chapter works
7 a manifestly unreasonable hardship and if it also finds that the suspension or
8 modification will not frustrate the purposes of the chapter. The commission shall
9 find that a manifestly unreasonable hardship exists if reporting the name of an
10 entity required to be reported under RCW 42.17.241(1)(g)(ii) would be likely to
11 adversely affect the competitive position of any entity in which the person filing
12 the report or any member of his or her immediate family holds any office,
13 directorship, general partnership interest, or an ownership interest of ten percent
14 or more. Any suspension or modification shall be only to the extent necessary to
15 substantially relieve the hardship. The commission shall act to suspend or modify
16 any reporting requirements only if it determines that facts exist that are clear and
17 convincing proof of the findings required under this section.

12 **Culture of Disclosure and Compliance in Washington State**

13 29. As previously described and as reflected in Initiative 276, there is very strong
14 public support for disclosure in Washington State. There is also a culture of compliance by
15 PDC filers with the statutes and rules. During FY 2009, for example, 99.3 percent of
16 candidates, lobbyists, lobbyist employers and public officials met statutory filing deadlines.

17 30. Another example of the disclosure and compliance culture here is reflected in
18 the results of a recent limited scope audit conducted by PDC staff of four 2008 statewide
19 candidate campaigns. The staff queried the PDC contribution database to review the C3
20 (contribution) reports, including checking compliance with providing name and address
21 information for contributors giving more than \$25 as required by RCW 42.17.090(1)(b), and
22 compliance with disclosing employer and occupation for individuals contributing more than
23 \$100 as required by WAC 390-16-034. With respect to providing required name and address
24 information at the more than \$25 level, the compliance rate ranged from 100 percent to 99.64
25 percent. With respect to providing occupation and employer information of individuals
26 donating more than \$100, the compliance rates ranged from 92.7 percent to 99.67 percent.

1 While only four candidate campaigns were examined, these audit results do reflect an overall
2 high degree of compliance by filers in disclosing information required by statute and rule.
3 Nevertheless, this 2008 limited scope audit showed results consistent with other audits and
4 reviews, again underscoring Washington's culture of disclosure and compliance. For example:

- 5 • In 2008 random audits of 16 state legislative election contests were conducted
6 by PDC staff. These audits included eight State Senate campaigns and eight
7 State Representative campaigns and revealed a 93 percent compliance rate in
8 the timeliness of contribution disclosure and deposits. The only minor
9 exceptions in the audits were in the areas of reporting orders placed, debits or
10 obligations and the timeliness of last minute contributions.
- 11 • A review by PDC staff of 2008 C6 reports used to disclose independent
12 expenditures and electioneering communications revealed a 95 percent overall
13 compliance rate. That review included an examination of substantial
14 compliance with timeliness of filing of the reports, plus inclusion of the
15 critical and statutorily required information on the reports.
- 16 • In 2006 a random audit was conducted by PDC staff of L5 forms used to
17 disclose lobbying by public agencies. Four of the five agencies reviewed
18 substantially complied with the lobbying disclosure filing requirements. The
19 reason for some "exceptions" noted for one agency was a misunderstanding
20 by the agency filer regarding the calculations of lobbying days.

21 These audit and review results are available on the PDC's website at www.pdc.wa.gov under
22 "Enforcement and Compliance."

23 31. This compliance is due not only to the recognition by candidates and political
24 committees that disclosure is expected by the voters, but also to the many tools the PDC
25 provides to assist filers in compliance.

26 **Campaign Finance Reporting Generally Including Disclosure of Cash Receipts and Contributions**

32. To describe campaign finance reporting in general, RCW 42.17 provides
reporting of campaign finance information at defined intervals. See, e.g., RCW 42.17.080.
Reporting includes providing the PDC, and thus the electorate, information by candidates and
political committees, including ballot measure committees, concerning contributions and

1 expenditures on "C3" (contribution) and "C4" (expenditure) reports. The contents of the
2 reports are contained in RCW 42.17.090. Exhibit D. There are two reporting options. There
3 is "full reporting" and "mini reporting" (which requires only the registration statement to be
4 filed). Full reporting simply includes (1) completing the initial registration form if you are a
5 candidate or political committee, (2) designating a treasurer, and (3) filing regular reports
6 pursuant to a schedule. The "mini reporting" option is available to filers, including political
7 committees, who during a calendar year raise and spend no more than \$5,000 and receive no
8 more than \$500 from any one contributor. This "mini reporting" enables candidates and
9 campaigns raising and spending small amounts of money to be exempted from filing
10 contribution and expenditure reports. Mini reporting is authorized under RCW 42.17.370(8),
11 WAC 390-16-105 and other PDC rules.

12 33. The dates for full reporting are those for which certain reports are due to be
13 filed with the PDC. With respect to electoral campaign activity, this scheduled reporting
14 enables the data to come in at the same time for similar entities (candidates, political
15 committees, persons making independent expenditures, etc.) to enable the public to see, at the
16 same time for similar filers, who the participants are (such as through filing candidate or
17 committee registration forms), what money is flowing in and from whom (such as through
18 reports of contributions to candidates and committees), and what money is flowing out (such as
19 through expenditure reports). Regular reporting by filers also enables the PDC, the public, and
20 the media to obtain updated totals of dollar amounts at regular and predictable intervals, in
21 order to enable comparisons between campaigns or other spenders (such as those making
22 independent expenditures). Regular reporting also gives the public an opportunity to "cross
23 check" contributions of a committee as compared to its expenditures – is money that was
24 contributed being expended for its anticipated purpose? Reporting in this manner enables the
25 public to see both sides of the equation. It also enables the public to have an important role in
26 the "checks and balances" of campaign financing – it allows the public, as well as the PDC, to

1 verify accounting of funds received and expended with respect to elections, without having any
2 need for a full audit of all campaigns and committees by a government agency. In some ways,
3 this is not unlike laws that require charities to report on how their funds are used because they
4 make it possible for the public to not only “follow the money” overall but also to follow money
5 to entities they contributed to.

6 34. Enabling the public to “trust but verify” is an important piece of why disclosure
7 on reports, at regular intervals, is a cornerstone of the statutory reporting requirements. This is
8 equally important in ballot measure campaigns, particularly given the amount of money that
9 flows in and out. For example, in 2002, the PDC referred a high profile enforcement case to
10 the Attorney General’s Office where the public’s contributions to the ballot measure committee
11 were unlawfully used by an officer for his personal expenses for activities unrelated to the
12 campaign, and those facts had been concealed from the public by the committee’s treasurer and
13 the officer. That case at the administrative level was PDC Case No. 02-281, *In Re the Matter*
14 *Of Enforcement Against Permanent Offense PAC, Permanent Offense, Inc., Traffic*
15 *Improvement Initiative Committee, and Tim Eyman.*

16 **Pursuant to RCW 42.17.090(1)(b), Disclosure of Contributions on C3 Reports Includes**
17 **Names and Addresses of Contributors Giving More Than \$25**

18 35. With respect to reporting contributions, the C3 report (copy at Exhibit E)
19 provides important information to the public about who is contributing and how much. This is
20 true both for ballot measure campaigns as well as candidate campaigns. Providing such
21 information to the public was a core purpose of Initiative 276.

22 36. The C3 report describes cash receipts and monetary contributions. It is a form
23 adopted in WAC 390-16-031 and is required under RCW 42.17.080(3), RCW 42.17.090 and
24 WAC 390-16-034. This form provides such information as follows:

- 25 • monetary contributions, loans, notes, and security agreements;
- 26 • for contributions over \$25, the contributor’s name and address;
- for contributions of more than \$100, the contributor’s occupation,
employer’s name and location; and,

- 1 • if anonymous contributions are received (which sometimes occurs, for
2 example, at “pass the hat” fundraisers). (Under RCW 42.17.060, political
3 committees can receive anonymous contributions up to 1 percent of their
4 yearly contributions or \$300, whichever is greater.)

5 Further details can be provided on attachments to the C3 form. Currently, electronic filing is
6 used very effectively by many campaigns to submit the C3 reports.

7 37. As noted, the report of contributions requires disclosure of those making
8 contributions, if the reporting threshold is met. RCW 42.17.090(1)(b), the specific provision
9 challenged by Family PAC, provides that filers shall disclose on C3 reports the following
10 information concerning contributions, among the list of other items:

11 **The name and address of each person who has made one or more**
12 **contributions** during the period, together with the money value and date of such
13 contributions and the aggregate value of all contributions received from each such
14 person during the campaign or in the case of a continuing political committee, the
15 current calendar year: PROVIDED, That pledges in the aggregate of less than one
16 hundred dollars from any one person need not be reported: PROVIDED
17 FURTHER, That the income which results from a fund-raising activity conducted
18 in accordance with RCW 42.17.067 may be reported as one lump sum, with the
19 exception of that portion of such income which was received from persons whose
20 names and addresses are required to be included in the report required by RCW
21 42.17.067: **PROVIDED FURTHER, That contributions of no more than**
22 **twenty-five dollars in the aggregate from any one person during the election**
23 **campaign may be reported as one lump sum so long as the campaign**
24 **treasurer maintains a separate and private list of the name, address, and**
25 **amount of each such contributor: PROVIDED FURTHER, That the money**
26 value of contributions of postage shall be the face value of such postage;

(Emphasis added.)

Thus, at more than \$25, the name and address of the contributor is to be provided if a campaign
is doing full reporting (and not filing under the “mini reporting” option). The current \$25
figure was provided by the Legislature in RCW 42.17.090(1)(b) in 1982 (increasing it from
\$10), and then was changed to “no more than twenty-five dollars” in 1989. Laws of
Washington 1982, c. 147, § 7; Laws of Washington 1989, c. 280 § 9.

1 38. Providing voters the name and address of contributors accomplishes several
2 purposes of RCW 42.17. First, it provides voters and the media the information enabling them
3 to “follow the money” back to its original source. It helps voters, media and others answer
4 election questions such as: Is a candidate or campaign receiving most of its money from a
5 particular person or group of persons, a particular neighborhood or city, or a particular region
6 of the state? What amount of contributions to a campaign is coming from persons outside of
7 Washington State? What states are those contributors from? What does that say about the
8 candidate or campaign? Such data makes real the original purposes of Initiative 276. The
9 previous PDC Executive Director, Vicki Rippie, also testified in her declaration filed in this
10 matter in response to the temporary restraining order/permanent injunction motion that
11 providing the names and addresses of the contributors to the voters enables them to “follow the
12 money” received by political committees and also to determine if in fact the contributors or
13 entities are really one or closely related. Rippie Decl. ¶ 7. She gave a specific example related
14 to Family PAC. Rippie Decl. ¶¶ 8 – 13.

15 39. Second, providing the names and addresses supplies data that enables PDC staff
16 and others to conduct analysis providing even more information to voters. For example,
17 because contributor addresses including zip codes are provided, PDC staff was able to develop
18 a “Gubernatorial Money Map.” The map is available on the PDC website and enabled voters
19 to easily observe which counties the contributions were coming from for each candidate in the
20 2008 gubernatorial election. See more details about the map in the Declaration of Michael
21 Smith.

22 40. Third, Family PAC claims that the state --- thus Washington voters --- have
23 only a limited compelling informational interest at the more than \$25 (and more than \$100)
24 level and argues those levels should be adjusted upward. PDC data and information from the
25 voters do not support those claims. I will first address the more than \$25 level, and in the next
26 section regarding WAC 390-16-034, I will address the more than \$100 level.

1 41. As Mr. Smith also attests in his declaration, the PDC website that provides
2 access to reports filed with the PDC including ballot measure contribution and expenditure
3 reports, has an extremely high rate of use by the public. That use includes the "View Actual
4 Reports" and "Search the Database" options which enable the public to look at copies of actual
5 reports filed, as well as the compiled information in the database. These reports include
6 disclosure at the more than \$25 (and more than \$100) thresholds as described herein.

7 42. To my knowledge since I have been at the PDC beginning in June of 1992, I am
8 not aware of any significant efforts by the members of the public or voters requesting the
9 Commission to increase the \$25 and \$100 amounts after they were implemented, or based
10 upon evidence that there no longer is any interest by the voters in disclosure at those levels.
11 There are a variety of ways that requests could have been made, including a request directed to
12 the Commission or a rulemaking petition. To the best of my knowledge at this time, I am not
13 aware of information showing that filers, campaigns, the media, legislators or others have
14 requested the more than \$25 amount be adjusted upward.

15 43. In addition, the PDC has received numerous national awards for the level of
16 disclosure the PDC provides overall, indicating the state and national informational interest in
17 the disclosure of information on Washington State campaigns and commending the state for
18 providing such information. There has been no "hue and cry" among participants in the
19 Washington State campaigns that the more than \$25 figure for disclosing names and addresses
20 is too low.

21 44. In Initiative 276 in 1972, the first reporting threshold for contributions in
22 Section 9 was more than five dollars. It was later raised to \$10, then as noted the \$25 figure
23 was provided by the legislature in RCW 42.17.090(1)(b) in 1982 (increasing it from \$10),
24 changing it to "less than twenty-five dollars" in 1982, and then changing it to "no more than
25 twenty-five dollars" in 1989. That more than \$25 disclosure figure provides voters access to a
26 large amount of information regarding the financing of campaigns. As in 1989, providing

1 today's voters such information continues to give them access to data about who is really
2 funding campaigns. For example, in the 2008 Washington State election, more than \$1.4
3 million was contributed by persons giving between \$25.01 and \$30 in 54,502 contributions,
4 according to our database. Exhibit F. That is, barring voters from receiving information
5 concerning the name and address of contributors in just the \$25.01-\$30 range would deny them
6 information regarding the true sources of almost \$1.5 million in just one election year in our
7 state.

8 45. Disclosure of names and addresses at the more than \$25 level assists in
9 enforcing other provisions of RCW 42.17. As noted, it gives not only voters --- but also PDC
10 staff --- access to the reported sources of millions of dollars in campaign contributions,
11 enabling staff to check compliance with other laws such as those prohibiting concealment.

12 46. Disclosure of names and addresses at the more than \$25 level provides sunlight
13 on who is actually financing campaigns and to what extent, thus providing information to help
14 persons analyze what this means for elections. Are there many smaller contributions? Are
15 there a few larger contributors? Are there differences in smaller vs. larger contributors'
16 interests in the campaign, candidate or ballot measure? In my view, providing data to answer
17 these questions is becoming increasingly important now that more campaigns are reported to
18 be seeking higher volumes of smaller contributions particularly when they can be easily
19 provided online. This reported experience (high amounts of small donors giving particularly
20 online) is sparking interest in the political science and legal communities, enabling them to
21 analyze what this means for future campaigns and elections. Here are some examples of
22 reports and articles commenting on this recent reported experience:

- 23 a. The *Campaign Finance Institute's* "Small Donor Project" 2008 report titled
24 "Do Small Donors Improve Representation? Some Answers from Recent
25 Gubernatorial and State Legislative Elections" (report available at
26 http://www.cfinst.org/pdf/books-reports/APSA_2008_SmallDonors.pdf)
("CFI Report").

1 The CFI Report describes various studies that have looked at the recent
2 interest by campaigns in a higher volume of smaller campaign contributions
(defined as \$100 or less for the purposes of the Report). This CFI Report also
3 provides:

- 4 • In the seven states studied (Arizona, Colorado, Connecticut, Iowa,
5 Minnesota and Pennsylvania) most of them require reporting of names and
addresses when the contributors give in the range of \$20 -\$50 per year.
(P. 7).
- 6 • As with past federal research, the CFI Report showed that the more
affluent the household, the higher the contribution. (P. 9).
- 7 • When contributing, large donors (defined as those giving at least \$500, for
8 the purposes of the CFI Report) consider the benefits for their own
business, industry or job far more important than small donors. (P. 13).
9 Candidates' ideological orientations and positions on social and moral
issues exert more influence on the giving of small donors than of large
10 donors. (P. 14).
- 11 • The CFI's website on small donors also shows that in the 2006 legislative
elections in Washington State, nine percent of the contributors gave \$100
12 or less.

- 13 b. November 24, 2008 CFI Press Release, "Reality Check: Obama Received About
the Same Percentage from Small Donors in 2008 as Bush in 2004" at
14 [http://www.cfinst.org/Press/PReleases/08-11-24/Realty Check -
Obama Small Donors.aspx](http://www.cfinst.org/Press/PReleases/08-11-24/Realty%20Check%20-%20Obama%20Small%20Donors.aspx).

15 This second CFI publication regarding the Obama campaign reviewed Federal
16 Election Commission data which showed that the volume of small contributions to
the Obama campaign was less than originally reported by the news media. This
17 release also described that in CFI's view and contrary to news reports, although the
Obama campaign did not rely upon the majority of the financing of the campaign
18 from small contributors, it was accurate to recognize that campaign's success in
using online mechanisms to seek contributions, stating as follows:

19
20 None of these findings denies the importance of either Obama's appeal to
repeat donors or his innovative use of online social networking tools to
21 interweave appeals for contributions and critically important campaign
volunteers. In particular, Obama did attract repeaters who have not been part
22 of the traditional large-dollar, reception-attending fundraising crowd. The fact
is that Obama's financial juggernaut broke records at all contribution levels.
23 The reality does not match the myth, but the reality itself was impressive.

- 24 c. November 25, 2008 article "Obama Fundraising and the 'Small Donor': Strange
25 Views from the Campaign Finance Institute," *More Soft Money Hard Law* website
(of the Perkins Coie law firm) at
26 <http://www.moresoftmoneyhardlaw.com/news.html?AID=1378>.

1 To contrast with the CFI press release, in the author's view in this article the CFI
2 release and data studied actually documented that "small donors fueled the [Obama]
3 campaign's extraordinary success in amassing in the neighborhood of \$650
4 million."

- 4 d. The 2010 report titled "Reform in An Age of Networked Campaigns," a Joint
5 Project of the *Campaign Finance Institute*, *American Enterprise Institute*, and
6 *Brookings Institution* ("Joint Project Report") available at

6 [http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-
7 Campaigns.pdf](http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf)

7 The Joint Project Report described that federal candidate Obama experienced a
8 "surge" of small contributions in the latter quarter of his campaign, once he became
9 a principal challenger to the other candidates. (P. 18). The Joint Project Report
10 also reported that for states conducting gubernatorial and legislative elections in
11 2006 (Washington was not included), donations in the \$1 - \$100 range varied from
12 two percent (Alabama) to 45 percent (Minnesota). The Joint Project Report made a
13 series of recommendations, including many Washington already adopted
14 (establishing a website for campaign finance and election information, requiring
15 electronic filing and making reports available in real-time, providing filers free
16 software, establishing contribution limits, and others.)

13 In sum, these reports are current examples of the public interest in the volume and potential
14 impact of higher volumes of smaller contributions, particularly those donated online.
15 Therefore, in my view, retaining disclosure mechanisms and particularly at this time enables
16 this analysis of small donors in campaigns to continue.

17 47. Finally, this changing campaign contribution online dynamic particularly for
18 smaller contributors presents a potentially new and easy means to corrupt the campaign
19 financing and disclosure process. That is, one person could potentially make serial
20 contributions online anonymously or under false names in an effort to circumvent transparency
21 and limits ("bundling"). See *Los Angeles Times* online story at
22 <http://articles.latimes.com/2008/oct/09/nation/na-money9> titled "Obama's Fundraising Prowess
23 Exposes Flaws in Law" (October 9, 2008) describing that the \$200 federal campaign level for
24 disclosure makes it impossible to determine if the millions of dollars the Obama campaign
25 received from contributors giving funds at lower than the federal threshold (and often via the
26 Internet) were from real persons, or persons qualified to contribute. Exhibit F-1. Requiring the

1 name and address of the contributor at "smaller amounts" helps avoid the corruption that
2 online "bundling" can present, and can lead an investigator back to the source if a complaint of
3 "bundling" or concealment is filed with the agency.

4 48. Family PAC states the more than \$25 amount should have been adjusted by the
5 Commission. RCW 42.17.370(11) empowers, but does not require, the Commission to revise
6 at least once every five years but no more often than every two years, the monetary reporting
7 thresholds and reporting code values of RCW 42.17. Those adjustments, if and when made,
8 are accomplished by rule regarding three categories (campaign finance, lobbying, and personal
9 financial affairs disclosures) and are to equally affect all thresholds within each category. A
10 separate requirement to adjust biennial dollar amounts for contribution limits that were part of
11 Initiative 134 (Laws of Washington, 1993, c. 2, § 9) at the beginning of each even-numbered
12 calendar year was codified in RCW 42.17.690 and those adjustments are reflected in
13 WAC 390-05-400. The \$25 provision was not part of Initiative 134.

14 49. With respect to the more than \$25 figure, Family PAC is correct that neither the
15 Commission nor the legislature have increased that amount since it was last considered by the
16 Legislature in 1989. However, in 2010 the Legislature passed a major rewrite of RCW 42.17
17 and did not modify the disclosure threshold provided in law. Chapter 204, Laws of
18 Washington 2010. To the best of my knowledge, and certainly since I have been at the PDC
19 since 1992, it has not been struck down by any court. To the best of my knowledge and
20 certainly since I have been at the PDC since 1992, there also has been no hue and cry by filers,
21 campaigns, candidates, ballot measure sponsors, or the public to adjust this disclosure
22 threshold. In fact all indications are that the voters' interest in more --- not less --- disclosure
23 remains very high. At this time, I am not aware of evidence presented to the Commission, or
24 the legislature, indicating voter dissatisfaction with this disclosure threshold. I am not aware of
25 any such rulemaking proposals, or other similar input to the Commission.

26

1 **Pursuant to RCW 42.17.090(1)(k), RCW 42.17.370(1) and WAC 390-16-034, Disclosure of**
2 **Contributor Occupation and Employer for Contributors Giving More Than \$100**

3 50. RCW 42.17.090(1)(k) provides that in addition to the information listed in the
4 statute, a filer shall also disclose "Such other information as shall be required by the
5 commission in rule in conformance with the policies and purposes of this chapter."
6 RCW 42.17.370(1) also provides that the Commission is empowered to "Adopt, promulgate,
7 amend, and rescind suitable administrative rules to carry out the policies and purposes of this
8 chapter, which rules shall be adopted under chapter 34.05 RCW." One of the purposes of the
9 chapter is to effect disclosure to the voters of who is financing campaigns. RCW 42.17.010.
10 One such rule adopted under these disclosure statutes is WAC 390-16-034, the rule Family
11 PAC is challenging.

12 51. The Commission adopted WAC 390-16-034 to require disclosure of the
13 occupation and name and address of the employer of persons who contribute to election
14 campaigns for those giving more than \$100. The rule currently reads:

15 **WAC 390-16-034 - Additional reporting requirements.**

16 Pursuant to RCW 42.17.090, each report required under RCW 42.17.080 shall
17 disclose, in addition to the name and address of each person who has made one or
18 more contributions in the aggregate amount of more than one hundred dollars, the
19 occupation and the name and address of the person's employer.

20 52. The rule has been the subject of significant public, stakeholder, legislative and
21 media consideration and review, particularly in 1993-94 (see some examples --- but by no
22 means all --- of consideration in 1993-94 at Exhibits 3 and 6 to Bieniek Declaration). The rule
23 has remained in its current format since 2001. Here is a brief history of the rule to the best of
24 my knowledge at this time.

- 25 a. **1993.** At its October 26, 1993 meeting, after filing the proposed rule and
26 conducting public hearings, the Commission adopted WAC 390-16-034. It was to
become effective in December 1993. Among other things, the Commission
considered information concerning states where employer disclosure was
required, Federal Election Commission requirements (also see FEC reference in

1 Exhibit 6, page 27 of Bieniek Declaration), stakeholder input, and other
2 information.

3 b. **1994.** After the rule was adopted, additional public input was received, including
4 from legislators who pointed out that the legislature was considering similar but
5 slightly different provisions in House Bill 2317 and Senate Bill 6112. Another
6 bill was introduced, House Bill 2904, on the same subject. As a result, there were
7 requests that the Commission stay implementation of the rule until the legislature
8 could decide if it wanted to act concerning this reporting of additional campaign
9 information. Therefore, the Commission adopted a motion at its January 25, 1994
10 meeting to stay implementation until close of the 1994 legislative session. The
11 media was critical of this decision. Exhibit G.

12 c. No action was taken by the Washington State Legislature during the 1994
13 legislative session to respond to the rule, by amending RCW 42.17 in particular
14 RCW 42.17.090. While some bills were introduced on the subject, they did not
15 pass.

16 d. As a result, at its March 22, 1994 meeting, the Commission re-instated the rule
17 prospectively. Legislators were informed that in deciding to proceed in
18 implementing the rule, the Commission had considered that:

- 19 (1) it acted within its statutory authority and in accordance with
20 rulemaking requirements;
21 (2) the Legislature had not provided conclusive guidance during the last
22 session on the subject;
23 (3) the rule had been adopted to advance full disclosure of financial
24 support of ballot measures as well as candidates; and,
25 (4) the rule had public support. Exhibits H-1 and H-2.

26 e. Some legislators expressed some interest to study the issue again in preparing for
the 1995 legislative session. Therefore, in September 1994, PDC staff provided
testimony to the House of Representatives State Government Committee
regarding the occupation and employer requirement in the rule. Exhibit I (Family
PAC made its own edits to this exhibit at Exhibit 6, pages 20-26 in the Bieniek
Declaration). The purpose of the requirement in the rule was described at that
legislative committee hearing as:

- (1) providing the electorate with information to aid them in evaluating
candidates and issues and help them place the candidate or issue within the
political spectrum, particularly with the adoption of contribution limits;
(2) providing the public information about the interests of persons who are
making contributions to candidates and political committees;

- 1 (3) consistent with the recommendations of the "Money in Western
2 Politics Project" conducted by the Western States Center which had
3 analyzed Initiative 134 and which was critical that the disclosure
4 requirements did not provide employer and economic interests of
5 contributors; and,
6 (4) providing more information to assist in enforcement of RCW 42.17
7 (e.g. regarding efforts to conceal the true source of contributions).

8 In sum, the PDC testimony described that the occupation and employer disclosure
9 promotes full and meaningful disclosure, deters violations of the contribution
10 limits and concealment laws, and provides a means of detecting wrongdoing when
11 it occurs. These reasons are also discussed in the *Seattle Times* news article at
12 Exhibit 6, pages 15 – 19 attached to the Bieniek Declaration. With respect to
13 ballot measures, the PDC testimony provided that although there are no campaign
14 contribution limits with ballot measures, these campaigns are still subject to
15 abuses, including concealment activities. The legislative committee was also
16 provided information about the reporting modification process under
17 RCW 42.17.370. Family PAC attached a bill that passed in 1995, Engrossed
18 Substitute Senate Bill 5684, with a Governor's veto message of Section 3
19 highlighted by Family PAC. The Governor described the section was being
20 vetoed because employer and occupational information is critical to identifying
21 and disclosing patterns of coordinated contributions, and the PDC has the
22 authority to require such information in rule. Bieniek Declaration, Exhibit 6, page
23 103.

- 24 f. 1996. The rule was amended in 1996 to correct a statutory cross reference.
25 g. 2001. The rule was amended again in 2001 to update statutory references and to
26 change "one hundred dollars or more" to "more than one hundred dollars" after
receiving input from stakeholders and determining this one penny adjustment
would not result in a significant loss of information and would streamline
reporting for campaign treasurers. Exhibit J.
h. 2002. A bill was introduced in the legislature to amend RCW 42.17.090 in order
to return the reporting threshold to "\$100 or more" (instead of the "more than
\$100" as the Commission amended in the rule in 2001) and to exempt the
provision from the adjustments in RCW 42.17.370(11). House Bill 2617. The
bill passed the House but did not pass the Senate. As a result, the "more than
\$100" reporting threshold in the rule remained. I recall our review at that time of
the Federal Election Commission's reference manual Campaign Finance Law
2000, showed that 32 states required some type of occupation and employer
reporting thresholds, 5 at less than \$100, 1 at \$100 or more, 23 at more than \$100,
and three had other qualifications.

1 i. **Status as of 2010.** To the best of my knowledge, no rulemaking petition has been
2 submitted to the Commission to request amendments to or repeals of WAC 390-
3 16-034 to address the occupation and employer language or to adjust the \$100
4 figure. In sum, and with the legislature's knowledge, this reporting provision has
5 remained at more than \$100 since 2001. While Family PAC attached copies of
6 some of the extensive discussion in 1993-94, since that time, occupation and
7 employer disclosure has become part of the Washington State political campaign
8 culture. In fact, despite one jurisdiction's initial reservations in 1993-94 (see
9 City of Seattle input at Bieniek Declaration, Exhibit 6), the Seattle Ethics and
10 Elections Commission website at
11 http://www2.seattle.gov/ethics/elpub/el_home.asp now provides occupation and
12 employer information online for Seattle elections.

13 53. Occupation and employer data gives voters the opportunity to look at patterns of
14 contributions and the occupation and employer of contributors to whom a candidate appeals in
15 order that they may learn more about the candidates and make more informed judgments.
16 Such data reveals patterns of contributions to political committees from persons with common
17 economic interests. A good example of the use of this data is the recent study issued
18 January 28, 2010 by the *National Institute on Money in State Politics* titled "Judicial Diversity
19 and Money in Politics: AL, GA, H, NM, NC, OH, WA, WI." Study at
20 <http://www.followthemoney.org/press/ReportView.phtml?r=413>. The study analyzed women
21 and minority judicial candidates and their ability to raise campaign contributions. To compile
22 the report, data on campaign contributions and expenditures in judicial races was accessed
23 from various states including Washington. The report described that, "The Institute currently
24 receives its Washington data from the Public Disclosure Commission." The study reported
25 that with respect to the 2008 Washington State Supreme Court races, "Lawyers gave \$123,381;
26 law firms accounted for 60 percent, which is \$52,933 of the \$79,220 given by businesses and
special interest groups." Exhibit K. With respect to the Court of Appeals candidate
campaigns, the report described that "Lawyers gave \$9,390 of the \$60,329 given by individual
donors; law firms gave 63 percent (\$19,243) of the \$30,534 given by businesses and special
interest groups." This useful information about who was giving in these judicial races and

1 what their interests are was available to the research institute and to the voters because
2 Washington State requires disclosure of the occupation and employer of individuals
3 contributing more than \$100.

4 54. This occupation and employer disclosure provision also gives voters the same
5 types of information concerning who is supporting or opposing ballot measures. For example,
6 if mainly doctors support an initiative and mainly lawyers oppose it, that information is
7 disclosed on reports filed with the PDC and is a valuable piece of information for voters.

8 55. It is my understanding that still over one-half of the states require reporting of
9 the occupations and employers of contributors in some manner.

10 56. The occupation and employer data also enables voters to otherwise “follow the
11 money” to see if a contribution is really coming from a contributor, or perhaps really from the
12 contributor’s employer. That is, it enables the voters as well as PDC staff to find out if in fact
13 the employer or union is “fronting” the money to its employees or members for the
14 contributions, in order to circumvent contribution limits or disclosure. One example is
15 provided in a PDC enforcement case, *In Re PJ Taggares Co. and Pete Taggares, Sr.*, PDC
16 Case No. 97-202. This case is also discussed in the *Seattle Times* news article at Exhibit 6,
17 page 17 of the Bieniek Declaration. In 1996, in viewing information filed with the PDC by
18 gubernatorial candidates, PDC staff discovered that on December 8, 1995 candidate Dale
19 Foreman had received \$15,500 in contributions from the PJ Taggares Company, some of its
20 subsidiaries, employees and relatives. Exhibit L. Foreman campaign reports showed they all
21 contributed \$1,000 each (with one person contributing \$500). In the investigation, one
22 Taggares employee testified his contribution exceeded what he earned in a two-week period,
23 and he made the contribution solely at the suggestion of Mr. Taggares. The payroll records
24 manager testified he was told some of the employees had received “bonuses” and others said
25 they were “loans” from Mr. Taggares. Other financial arrangements were allegedly made
26 between Mr. Taggares and his employees to repay the contributions. The purpose of these

1 activities was determined to be to conceal the true source of contributions and to secretly
2 exceed contribution limits. The information that first brought this scheme to light was the
3 disclosure of the common employer information. A civil penalty was assessed by the
4 Commission for actions related to several of the employees.

5 **RCW 42.17.105(8)'s 21-Day/\$5,000 Timing Disclosure Provision**

6 57. Family PAC also challenges RCW 42.17.105(8). That provision currently
7 reads:

8 It is a violation of this chapter for any person to make, or for any candidate or
9 political committee to accept from any one person, contributions reportable under
10 RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any
11 campaign for statewide office or exceeding five thousand dollars for any other
12 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.

13 58. To the best of my knowledge, RCW 42.17.105(8) was first enacted by the
14 legislature in 1985, and was amended in subsequent years (1986, 1989, 1995) to read as above.
15 RCW 42.17.105 was otherwise amended in 2001 and 2010. That is, this statutory section and
16 provision has been the subject of consideration and review, as well as some amendment, by
17 several legislatures. Over the years, it has also been a statute reviewed in interpretive
18 statements issued by the Commission. See, e.g., PDC Interpretation No. 95-02 (regarding
19 transfers of candidate surplus funds), No. 96-04 (concerning the "within 21 days" calculation)
20 (copies available on PDC website at www.pdc.wa.gov). Over the years, it has also been the
21 subject of enforcement cases. Information about the statute is also available on the PDC
22 website, and that website has been operational since 2000. In essence, this provision has been
23 subject to, or available for, considerable legislative, voter and public awareness and scrutiny
24 over many years.

25 59. It was and remains essentially a timing and disclosure provision. It is my
26 understanding that a purpose of RCW 42.17.105(8) was to "push the big money" out early, so

1 voters could have timely access to such information about big contributors before voters cast
2 their ballots and have access to information as to who is making large contributions in order to
3 effect the outcome of the election at the last minute. See, e.g., Exhibit 4 attached to Bieniek
4 Declaration. However, when RCW 42.17.105(8) was first adopted, the state did not have
5 contribution limits. In addition, most ballots were cast at polls at that time, not by mail. Since
6 then, contribution limits (except for ballot measure campaigns) were enacted through the
7 passage of Initiative 134 in 1992 and are currently codified in RCW 42.17.640, with later
8 limits for judicial campaigns codified at RCW 42.17.645. The 2010 legislature also enacted
9 contribution limits for local and county candidates effective June 10, 2010. Chapter 206, Laws
10 of Washington 2010. And, as I have described, since then, 38 of Washington State's 39
11 counties now vote by mail. Exhibit M. This means it is particularly important for the voters to
12 have access to who the large contributors are at the time they are voting, and
13 RCW 42.17.105(8) provides a disclosure provision to enable that information to be available.

14 60. As a result of the contribution limits, today, this timing provision in
15 RCW 42.17.105(8) has a more limited application than when originally enacted. It now
16 applies to contributions received by ballot measure committees, political parties, political
17 committees including independent expenditure committees, and to candidates in some smaller
18 jurisdictions.

19 61. This timing provision in RCW 42.17.105(8) does not apply to expenditures.
20 This timing provision does not apply to non-candidates spending their own money on an
21 independent expenditure (such as persons who do not contribute to an independent expenditure
22 committee but simply make their own expenditures such as for an advertisement).

23 62. It is not unusual to have a timing provision as part of a campaign finance
24 program. Campaigns themselves are targeted to an event with a specifically timed occurrence
25 – the date of a primary, special or general election. Here are some examples:
26

- 1 • RCW 42.17.710 provides that no contributions can be made to legislators for a
2 period prior to and during a legislative session.
- 3 • “Election cycle” is defined at RCW 42.17.020 as “the period beginning on the
4 first day of January after the date of the last previous general election for the
5 office that the candidate seeks and ending on December 31st after the next
6 election for the office. In the case of a special election to fill a vacancy in an
7 office, ‘election cycle’ means the period beginning on the day the vacancy occurs
8 and ending on December 31st after the special election.” The “election cycle”
9 time period is relevant because of contribution limits per election cycle under
10 RCW 42.17.640.
- 11 • Contributions for a primary election cannot be made after the primary, with
12 certain exceptions. RCW 42.17.640(2).
- 13 • Electioneering communication disclosures in state law apply when those types of
14 political ads occur “during the sixty days before an election.”
15 RCW 42.17.020(20)(c).

16 63. This timing provision in RCW 42.17.105(8) is still useful in the campaigns and
17 entities it covers and particularly for campaigns not subject to contribution limits such as ballot
18 measure campaigns. It is even more useful today, when the majority of voters vote by mail.
19 According to the Secretary of State’s website, ballots are mailed at least 18 days before an
20 election, and 38 of the state’s 39 counties vote by mail. Exhibit M. So, the opportunity for
21 those voters to see where the big money is coming from for those campaigns still subject to
22 RCW 42.17.105(8) is enhanced due to the 21-day time period in that statute.

23 64. The one challenge I am aware of to RCW 42.17.105(8) occurred in state
24 superior court and concerned whether the provision applied to certain political party activities.
25 The court held that it did. I am not aware any appeals were filed. *Republican State Committee*
26 *of Washington and Kenneth O. Eikenberry v. PDC*, Thurston Cy. Superior Court No. 94-2-
03201-9 (written opinion June 24, 1996). Except for the present lawsuit, I am not aware at this
time of other legal challenges to RCW 42.17.105(8) in the many years it has been in place in
Washington State.

1 65. Family PAC argues that there is “confusion” over when the 21-day period
2 begins and ends, relying upon 1996 discussion. Bieniek Declaration Exhibit 5 (Plaintiff’s
3 Motion for Summary Judgment and Memorandum in Support of Motion for Summary
4 Judgment, footnote 5). That discussion involved a 1992 interpretation which had been
5 inadvertently overlooked, and was corrected in 1996. Bieniek Declaration Exhibit 5, page 5.
6 That discussion was more than 14 years ago and I am not aware of any confusion expressed by
7 Family PAC.

8 **Family PAC’s Inaction Seeking Commission Guidance, Rulemaking, a Modification, or**
9 **Mini Reporting; Its Inaction Seeking Legislative Changes; Its Inaction in Conducting**
10 **Campaign Finance Activity in Washington State; and, Its Inaction in Responding to**
11 **Information in September 2009 Regarding RCW 42.17.105(8)**

12 66. Based on my personal knowledge, and to the extent I can determine, Family
13 PAC has not contacted the PDC seeking an informal advisory opinion or formal declaratory
14 order from the Commission on any of the subjects of this lawsuit, or submitted a rulemaking
15 petition seeking any changes to the name, address, occupation and employer disclosure
16 requirements. To my knowledge, Family PAC has not submitted a request for an interpretive
17 statement. While it has provided information concerning other political committees’
18 modification requests under RCW 42.17.370(10) (Bieniek Declaration Exhibit 7), it has not
19 submitted any modification request to modify its reporting requirements. To my knowledge,
20 Family PAC has not sought the mini-reporting option. I am not aware of any testimony or
21 proposals that Family PAC has offered to the legislature, seeking any changes to RCW 42.17.

22 67. To the best of my knowledge, the Complaint filed by Family PAC in this matter
23 was the first notice the PDC had that Family PAC would seek to enjoin the statutory and rule
24 provisions at RCW 42.17.090(1)(b), WAC 390-16-034, and RCW 42.17.105(8). The
25 Complaint was filed the same day that PDC records show Family PAC filed its first and only
26 report with the PDC, its political committee registration form (C1pc). While it described itself
as a “continuing political committee” in fact, since the filing of this lawsuit, it has filed no

1 additional reports and thus shows no other campaign-finance related activity, including activity
2 regarding campaign contributions.

3 68. To the best of my knowledge, Family PAC never argued or presented to the
4 PDC, except for this lawsuit, any alleged burdens in complying with RCW 42.17 or the PDC's
5 rules in Title 390 WAC. I have reviewed the declaration of Mona Passignano filed in this
6 matter. Prior to this lawsuit, I had not heard of Ms. Passignano and to my knowledge she
7 expressed no concerns to the PDC about compliance with RCW 42.17 or Title 390 WAC. I
8 also observe her declaration describes that "Focus on the Family Action" ("Focus Action" now
9 called "Citizenlink") was "eventually able to participate in the Referendum 71 campaign"
10 despite the statute challenged here at RCW 42.17.105(8). In addition:

- 11 • Ms. Passignano described that Focus on the Family works with state-based
12 organizations called "Family Policy Councils" and "including the one in
13 Washington State" which is directed by Joseph Backholm (one of the attorneys in
14 this lawsuit). According to the Citizenlink's website at www.citizenlink.org, the
15 Family Policy Council for Washington State is the Family Policy Institute of
16 Washington, Joseph Backholm Executive Director, address 16108 Ash Way,
17 Suite 111A, Lynnwood, WA, 98087. Exhibit N (website page).
- 18 • As provided in the declaration of Vicki Rippie filed in this matter, the above
19 address is the same street address and contact for Family PAC and "FPIW
20 Action." At the time of her declaration (October 26, 2009), she described that
21 Family PAC shares an address and officer/attorney and apparent email address
22 with entities that had contributed \$200,000 to the effort seeking to defeat
23 Referendum 71 (to the "Vote Reject on R-71 Committee"). Those contributions
24 were received on October 8, 2009. Declaration of Vicki Rippie.
- 25 • The Family Policy Institute's website at www.fpiw.org also provides a "Citizens
26 Guide" dated September 2009 titled "Vote to Reject Referendum 71." Copy at
Exhibit O. September 2009 is also the same time Ms. Passignano states that
Focus Action "began its efforts regarding Referendum 71 in earnest" and
discussed with Mr. Backholm making a campaign donation. September 2009 is
also the same time PDC staff member Lori Anderson recalls receiving a phone
call from one of the attorneys representing Family PAC in this lawsuit, inquiring
about RCW 42.17.105(8) and she described when in October 2009 (starting
October 13) the 21-day time period became effective. See Declaration of Lori
Anderson.

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- The “interconnectedness” of these organizations, and to another organization called Protect Marriage Washington is also described in the Declaration of Anne Levinson filed in this matter (paragraphs 9-15). She also describes that Dave Mortenson, a campaign consultant (and who is the campaign manager for the Vote Reject R-71 Committee, Exhibit P), described his knowledge of the 21-day provision in an October 9, 2009 newspaper article.
- In sum, it appears from what I have reviewed that at least in September 2009 --- and well before the 21-day time period in RCW 42.17.105(8) --- Focus Action, and the Family Policy Institute located at the same street address and with the same contact as Family PAC through Mr. Backholm, and Family PAC’s attorneys in this matter, were aware or made themselves aware of RCW 42.17.105(8) and the October 12 deadline, and had the funds available to give on or perhaps even before October 12. Contributions regarding R-71 were made before that date. It also appears that in September 2009 the Family Policy Institute was providing information on its website regarding its opposition to Referendum 71.

Other Litigation with Plaintiff’s Counsel, Challenging RCW 42.17

69. I understand that Family PAC is represented in this matter by the Bopp, Coleson & Bostrom law firm. I understand the Court is being made aware that this same law firm is representing clients challenging the constitutionality of RCW 42.17 in other cases.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge.

Signed this _____ day of June 2010 at Olympia, Washington.

DOUG ELLIS


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- The “interconnectedness” of these organizations, and to another organization called Protect Marriage Washington is also described in the Declaration of Anne Levinson filed in this matter (paragraphs 9-15). She also describes that Dave Mortenson, a campaign consultant (and who is the campaign manager for the Vote Reject R-71 Committee, Exhibit P), described his knowledge of the 21-day provision in an October 9, 2009 newspaper article.
 - In sum, it appears from what I have reviewed that at least in September 2009 --- and well before the 21-day time period in RCW 42.17.105(8) --- Focus Action, and the Family Policy Institute located at the same street address and with the same contact as Family PAC through Mr. Backholm, and Family PAC’s attorneys in this matter, were aware or made themselves aware of RCW 42.17.105(8) and the October 12 deadline, and had the funds available to give on or perhaps even before October 12. Contributions regarding R-71 were made before that date. It also appears that in September 2009 the Family Policy Institute was providing information on its website regarding its opposition to Referendum 71.

11 **Other Litigation with Plaintiff’s Counsel, Challenging RCW 42.17**

12 69. I understand that Family PAC is represented in this matter by the Bopp, Coleson
13 & Bostrom law firm. I understand the Court is being made aware that this same law firm is
14 representing clients challenging the constitutionality of RCW 42.17 in other cases.

15 I declare under penalty of perjury under the laws of the state of Washington that the
16 foregoing is true and correct and of my own knowledge.

17 Signed this 16th day of June 2010 at Olympia, Washington.

18 
19 _____
20 DOUG ELLIS

APPENDIX G

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FAMILY PAC,

Plaintiff,

v.

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

DECLARATION OF ANNE LEVINSON IN
OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER

I, Anne Levinson, declare:

1. I am the chair of intervenor Washington Families Standing Together ("WAFST").

I have personal knowledge of the facts set forth in this declaration and am competent to testify
thereto.

2. WAFST is the statewide campaign working to keep the domestic partnership law
passed by the Legislature and signed by the Governor in 2009 from being repealed. WAFST has
been endorsed by thousands of individuals and more than 500 businesses, clergy, labor unions,

DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 1

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1 community and faith-based organizations that all support the domestic partnership law,
2
3 Engrossed Second Substitute Senate Bill 5688, that is the subject of Referendum 71.

4
5 3. Referendum 71 asks the people to approve or reject the domestic partnership law.
6
7 Yet because of the way referenda are written in Washington, in order to retain the law, the
8
9 people who opposed having it on the ballot must vote to approve it. This has caused significant
10
11 confusion, making information regarding who supports or opposes Referendum 71 of particular
12
13 use to voters. WAFST has devoted significant effort to combat this voter confusion, which has
14
15 been widely reported in the media. *See, e.g.,* Lornet Turnbull, *Confused about how to vote on*
16
17 *Ref. 71? You're not alone*, [http://seattletimes.nwsourc.com/html/politics/2010096733_](http://seattletimes.nwsourc.com/html/politics/2010096733_ref71confusion20m.html)
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19 [ref71confusion20m.html](http://seattletimes.nwsourc.com/html/politics/2010096733_ref71confusion20m.html) (last visited Oct. 25, 2009) (noting that "[o]nly two weeks before the
20
21 Nov. 3 election, many voters remain confused about Referendum 71").

22
23 4. WAFST has received contributions from thousands of individuals and entities.
24
25 Contributions have been collected in compliance with and disclosed as required by the Public
26
27 Disclosure Law, Chapter 42.17 RCW, and applicable regulations. True and correct copies of all
28
29 "C3" reports WAFST has filed from the beginning of the campaign through October 24, 2009 are
30
31 available at the Public Disclosure Commission ("PDC") website, specifically at
32
33 <http://www.pdc.wa.gov/qviewreports/results.aspx?rpt=http://hera.pdc.wa.gov/PublicAppXtender>
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35 [/ISubmitQuery.aspx?DSN=IMAGE&AppName=PDC&FILER+NAME=WA FAMILIES](http://www.pdc.wa.gov/qviewreports/results.aspx?rpt=http://hera.pdc.wa.gov/PublicAppXtender)
36
37 [STANDING TOGETHER&ELECTION+YEAR=2009](http://www.pdc.wa.gov/qviewreports/results.aspx?rpt=http://hera.pdc.wa.gov/PublicAppXtender). The Public Disclosure Commission
38
39 oversees the State's campaign finance laws.

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41 5. Through October 23, WAFST had received 5,634 contributions totaling
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43 approximately \$1.3 million, including contributors in 19 Washington counties - Benton, Chelan,
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45 Clark, Grant, Island, Jefferson, King, Kitsap, Kittitas, Mason, Pierce, San Juan, Skagit,
46
47 Snohomish, Spokane, Thurston, Wahkiakum, Whatcom, and Yakima.

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49 6. 4,595 of the contributions have been \$100 or less, including 1,320 at \$25 or less.
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51 Another 937 donations were between \$100 and \$1000, 71 between \$1000 and \$5000 and 31 at

DECLARATION OF ANNE LEVINSON

(No. C09-5662 RBL) - 2

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1 \$5000 or more (.55% of total contributions). The average individual contribution amount has
2 been \$155. Family PAC claims that individuals may be deterred from giving to a campaign if
3 their identity is to be disclosed. The broad array of donations from across the state to WAFST
4 does not support this premise. And WAFST has taken a strong stand against the harassment of
5 anyone, whether supporters or opponents of Referendum 71 or not, and has made that position
6 clear in numerous media interviews. WAFST materials, speeches and debates have always
7 focused on the harm caused by rejection of Referendum 71 and have specifically avoided any
8 acrimonious interaction or communication of any kind with or about those seeking to repeal the
9 law. Plaintiff asserts a theoretical harm by third parties, not WAFST, in order to gain a
10 campaign advantage against WAFST and overturn longstanding statutes intended to provide for
11 transparency and accountability to the public (and to flood this campaign with last minute
12 advertising). In its moving papers plaintiff refuses to "set the lower limit" at which it would
13 agree that disclosure of contributors would comport with the First Amendment. *See* TRO
14 Motion at p. 26. However, when asked that question by the Seattle Times, plaintiff's counsel
15 suggested that the threshold was very high, and that it was only "maybe" even at
16 \$10,000. Attached as Exhibit A is a true and correct copy of an editorial appearing in the
17 October 26, 2009, edition of the Tacoma News Tribune, which refers to this statement.
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34 7. It is well known that the Public Disclosure Law has long required that campaigns
35 in favor and in opposition to a ballot measure must collect any contributions of more than \$5,000
36 at least three weeks before the election. This year that deadline was midnight on October 12. In
37 my experience, ballot measure campaigns are aware of this timeline and take steps with donors
38 to ensure compliance. WAFST worked with potential contributors to get their support in time to
39 meet this reporting requirement. For example, since October 12 was a federal holiday, WAFST
40 volunteers drove to donors' places of business or homes in order to ensure that checks were in
41 hand, as the requirement is not one of postmark, but of actual receipt by the campaign.
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DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 3

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1 8. The efforts of the opponents of Referendum 71 to try to change the long-standing
2 Public Disclosure Law rules with just days remaining before the election should be rejected, not
3 just for the legal and public policy reasons set forth in the briefing, but also because it would
4 severely prejudice WAFST. WAFST has complied with the law, its donors have relied on the
5 law to determine when and how much to contribute, and WAFST's campaign decisions such as
6 when and how to expend funds have been based on the law. For example, WAFST made
7 decisions about purchase of television advertisements, production of direct mail, notification of
8 potential contributors, and structured campaign fundraising events based on the October 12
9 disclosure deadline for large contributions. Indeed, the necessity of responding to this litigation
10 itself interferes with time and resources that WAFST should be directing to the campaign, while
11 the instant lawsuit helps publicize Referendum 71 opponents' campaign efforts and false claims
12 of harassment.
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24 9. Plaintiff Family PAC is connected to similar such attempts to challenge campaign
25 finance laws elsewhere, as part of a pattern of trying to influence elections with large amounts of
26 anonymous money coming into a state in the final days of a campaign.
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31 10. Plaintiff Family PAC registered as a continuing political committee on October
32 21, 2009, the very same day that it initiated this lawsuit. Attached hereto as Exhibit B is a true
33 and correct copy of the "C1" report that Family PAC filed with the PDC.
34
35
36

37 11. There are numerous connections between Family PAC and Protect Marriage
38 Washington ("PMW"), the entity that sponsored the effort to get Referendum 71 placed on the
39 ballot in an effort to repeal the legal protections offered by the domestic partnership law. For
40 one, in previously filed litigation relating to Referendum 71 (Western District Cause No. 09-CV-
41 5456 BHS), PMW was represented by the same out of state attorney, Mr. Bopp, who is now
42 representing Family PAC. In that other litigation, PMW sought unsuccessfully to amend its
43 complaint upon appeal at the eleventh hour to make the same or similar claims that Family PAC
44 is presently making in this lawsuit.
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DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) - 4

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1 12. Family PAC is just the latest addition to a web of interconnected organizations.
2
3 Family PAC is registered as an ongoing PAC, not a statewide ballot committee. Joseph
4
5 Backholm is its treasurer. Mr. Backholm is the Executive Director of Family Policy Institute of
6
7 Washington (FPIW). The Family PAC Committee Officers and the FPIW Board of Directors are
8
9 one and the same. The FPIW is also the state affiliate of an anti-gay national organization run by
10
11 James Dobson called Focus on the Family, and bills itself as connected to another anti-gay
12
13 national group, Tony Perkins' Family Research Council.

14
15 13. The FPIW created another PAC, called Vote Reject on R-71, on the 8th of October
16
17 in order to funnel more than \$200,000 into the campaign prior to the 21-day disclosure deadline
18
19 on contributions exceeding \$5,000.

20
21 14. On October 9, 2009, Dave Mortenson, a campaign consultant who filed the
22
23 paperwork to create Vote Reject on R-71, said in the Stranger newspaper, in response to the
24
25 question, "Can the group raise a large sum of money before Tuesday?" replied, "I'm pretty
26
27 optimistic, let me put it that way. A bunch of individuals contacted me to see if we could raise
28
29 some money really quick. I am not going to share who I've been talking to, but if we do get the
30
31 money, we will report it." Asked whether Vote Reject on R-71 was targeting "religious groups,
32
33 corporations, [or] wealthy donors," Mortenson said "We are working them all."
34
35 [http://slog.thestranger.com/slog/archives/2009/10/09/new-pac-plans-major-funrdraising-to-](http://slog.thestranger.com/slog/archives/2009/10/09/new-pac-plans-major-funrdraising-to-reject-r-71)
36
37 [reject-r-71](http://slog.thestranger.com/slog/archives/2009/10/09/new-pac-plans-major-funrdraising-to-reject-r-71)

38
39 15. Apparently unsuccessful at getting those donations prior to the legal deadline,
40
41 FPIW then decided to create Family PAC and sue in an effort to get the campaign finance laws
42
43 changed at the last minute. The Reject 71 PAC then received an additional \$5,000 on October
44
45 23rd from the National Organization for Marriage (NOM). NOM is a Washington, D.C.-based
46
47 organization under investigation by the Maine Ethics Commission for its financial role in the
48
49 campaign to repeal Maine's gay marriage law. The same day Family PAC filed the instant
50
51 litigation, NOM also filed a nearly-identical lawsuit challenging the constitutionality of Maine's
DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 5

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1 financial reporting requirements. NOM is the largest single contributor to a pending ballot
2 initiative in Maine, which seeks to overturn Maine's civil marriage equality law. See Kevin
3 Miller, *Anti-Gay Marriage Group Sues State*, Bangor Daily News (Oct. 23, 2009), available at
4 <http://www.bangordailynews.com/detail/126297.html#>.
5
6
7

8
9 16. The California Fair Political Practices Commission is investigating whether, in
10 2008, NOM served as a "pass-through committee" to direct two million dollars in funds toward
11 the passage of Proposition 8, which overturned a decision of the California Supreme Court
12 determining that marriage equality was required under the California State Constitution.
13
14

15
16
17 17. In September of this year, One Iowa and the Interfaith Alliance of Iowa filed a
18 formal complaint due to NOM's refusal to disclose its donors in violation of that state's election
19 law.
20
21

22
23 18. Attached hereto as Exhibit C are true and correct copies of the "C3" reports filed
24 by Vote Reject on R-71 with the PDC.
25

26
27 19. Also attached hereto as Exhibit D are true and correct copies of Protect Marriage
28 Washington's "C4" report, where it was required by law to report expenses. Although it was well
29 documented that individuals involved in gathering signatures to get Referendum 71 on the ballot
30 were paid, PMW – the referendum sponsor – has consistently failed to reflect on its "C4" reports
31 this expense. If other entities or persons paid these signature gatherers on PMW's behalf, they
32 should have been identified as in-kind contributors to PMW on the "C4" reports, but were not.
33
34 PMW has hidden from the public the amount of money it spent or that was spent on its behalf, to
35 gather the signatures in this effort to repeal a law providing fundamental legal protections to
36 thousands of Washington families. This is an example of how public disclosure of contribution
37 information is important to the effective enforcement of provisions of the Public Disclosure Law
38 that go unchallenged here. With respect to even relatively small contributions, analysis of the
39 names, addresses, and employers of contributors can suggest patterns indicative of efforts to pass
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DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 6

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1 through funds and hide violations of contribution limits (where applicable) and true identities of
2 large contributors.
3

4
5 20. Family PAC, FPTW and PMW have each asserted that those who wish to donate
6 to their campaign are fearful of possible harm or threats of harm. The irony does not go un-
7 noted that these organizations direct a large part of their resources and vitriol in state after state
8 to block the passage of laws – or attempt the repeal of laws - providing for equal treatment
9 regardless of sexual orientation for individuals who have suffered real harms throughout history.
10 PMW tried to make this assertion earlier in the campaign in another attempt to avoid compliance
11 with campaign finance reporting requirements, and demanded an emergency hearing in front of
12 the PDC. And at an August 27, 2009, Public Disclosure Commission, PMW was unable to
13 present any evidence that any PMW donor whose identity was disclosed pursuant to the Public
14 Disclosure Law had been harassed or threatened as a result. *See* [http://www.pdc.wa.gov/archive/](http://www.pdc.wa.gov/archive/commissionmeetings/minutesmaterials/pdfs/2009/Minutes.08.27.2009.pdf)
15 [commissionmeetings/minutesmaterials/pdfs/2009/Minutes.08.27.2009.pdf](http://www.pdc.wa.gov/archive/commissionmeetings/minutesmaterials/pdfs/2009/Minutes.08.27.2009.pdf). Plaintiff in the action
16 at bar has been no more successful in identifying such evidence; the record remains silent on the
17 point.
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31 21. Just last week, PMW posted this on its website: "After 27 years of relentless
32 pursuit, homosexuals finally received protected class status from the Washington State
33 Legislature in 2006, making it illegal for you to refuse to rent them a house, or hire them on
34 account of their homosexuality." *See* [http://protectmarriagewa.com/index.php/component/](http://protectmarriagewa.com/index.php/component/content/article/2-press-releases/195-important-message-from-sen-val-stevens-on-r-71)
35 [content/article/2-press-releases/195-important-message-from-sen-val-stevens-on-r-71](http://protectmarriagewa.com/index.php/component/content/article/2-press-releases/195-important-message-from-sen-val-stevens-on-r-71).
36
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41 22. Just last week, volunteers and staff at WAFST received two threatening letters,
42 true and correct copies of which are attached as Exhibits E and F. Indeed, yesterday afternoon,
43 while I was drafting this declaration, the Approve R-71 fan page on Facebook.com, which
44 WAFST maintains, received a similar threat: "Death is your value, you shall have it. . . . This is
45 your only choice if you continue to use Death and destruction as your means, I'm telling you,
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DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 7

1 your fate is Hell. And not any supernatural meaning of the words, I mean in objective reality."

2
3 Attached as Exhibit G is a true and correct copy of a "screen capture" showing this threat.

4
5 23. Just last week, the United States Senate passed a law to extend new federal
6
7 protections to people who are victims of violent crime because of their sexual orientation. The
8
9 Senate action came two weeks after the House approved the measure, 281 to 146, and would
10
11 give the federal government the authority to prosecute violent, antigay crimes when local
12
13 authorities failed to act.

14
15 24. States all over the country, including Washington State, have passed hate crimes
16
17 laws that include sexual orientation because of the violence against lesbian, gay and bisexual
18
19 people, and those perceived to be LGBT. Since 1991, more than 100,000 hate crime offenses
20
21 based on sexual orientation have been reported to the FBI. In 2007 alone, 1,265 LGBT-biased
22
23 hate crimes were reported to the FBI. Sexual orientation consistently ranks as the third-highest
24
25 motivator for hate crime incidents. Attached as Exhibit H and I are excerpts from a true and
26
27 correct copy of House Report No. 111-86 (2009) and a report from the Human Rights Campaign
28
29 that detail this history of violence.

30
31 25. Fifty-four percent of LGBT people say they are concerned about being the victim
32
33 of a hate crime. Of those polled, 20 percent of gay men and 27 percent of lesbians are "extremely
34
35 concerned." *See* Ex. I, at 10.

36
37 26. For the very groups who themselves put on the ballot a measure designed to take
38
39 away legal protections from same-sex families to assert that they should be able to fund such
40
41 efforts anonymously because *they* fear being harassed is nothing more than a manipulative
42
43 attempt to undermine laws intended to provide for accountability and transparency to the public,
44
45 in furtherance of a nation-wide strategy to diminish the legal rights of LGBT citizens.

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DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 8

71718-0002/LEGAL17193286.5

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

EXECUTED at Seattle, Washington, this 26th day of October, 2009.



ANNE LEVINSON

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DECLARATION OF ANNE LEVINSON
(No. C09-5662 RBL) – 9

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APPENDIX H

33

1 got to contrast that?

2 And we have campaigns going on right now, Your Honor. I

3 tried to do a quick count of how many potential political

4 committees might be affected if 105(8) were suddenly

5 overturned in the middle of an election.

6 And I would suggest to you it's over 1,000. We have 62

7 ballot measure committees that have registered for 2010. We

8 have 716 political committees that have registered as full

9 reporting committees. We have 663 candidate committees; of

10 those, 490 survived through -- or appear to have survived

11 through the primary.

12 So upturning the apple cart in the middle of an election

13 system for these more than 1,000 committees that have been

14 anticipating, planning, and following the calendars they do

15 every year, I would suggest to you is not supported by the

16 very thin record here in this case.

17 THE COURT: Thank you.

18 Mr. LaRue -- and I really -- there's no change in my mind

19 on the disclosure. You better focus on the \$5,000, 21-day

20 period.

21 MR. LARUE: I appreciate that, Your Honor. I won't

22 waste your time or anyone else's.

23 THE COURT: Why isn't the -- why doesn't the

24 committee for rent control issue deal with the -- adequately

25 deal with the limitation issue raised by Ms. Krier?

34

1 MS. KRIER: Your Honor, we believe that the committee

2 against rent control is dispositive for this court. We think

3 it does adequately deal with this. Hat case says you can't

4 put limits on contributions to ballot measure committees.

5 Interestingly enough, that case started out by considering

6 what level of scrutiny to apply, and they called it exacting.

7 We argued at that time it meant strict, and we think we have

8 some evidence for that.

9 THE COURT: Well, *McIntyre* seems to suggest that they

10 are synonymous. I think perhaps the difference is that if you

11 find that the burden is high, then exact means strict. If the

12 burden is not so high, exact means something less than strict,

13 which is not an easy concept to grapple with, but I think

14 that's what the cases say.

15 MR. LARUE: We think you are exactly right, actually,

16 that that is what the cases say. We suggest this is a high

17 burden, because it's a ban, as the Court as recognized.

18 But the interesting thing about *CARC*, *Citizens Against*

19 *Rent Control*, is that in spite of spending some time trying to

20 determine the level of scrutiny, they don't apply it. They

21 simply conclude you can't limit contributions to ballot

22 measure committees because there's no interest to support it.

23 THE COURT: There's no significant state or public

24 interest in curtailing debate and discussion of a ballot

25 measure and the integrity of the political system will be

35

1 adequately protected if contributors are identified in the

2 public filing, revealing the amounts contributed.

3 MR. LARUE: Exactly, Your Honor. And under the

4 State's reporting regime, as the Court recognized, those

5 reports are available online. Anyone who wants them can go

6 get them. It's not like what it was back in the '70s when you

7 had to go down to city hall and pay money and go searching.

8 Today, you go to their website and they are right there.

9 THE COURT: Now, let me say, I have a companion down

10 the hall who is the judge handling *Doe v. Reed*.

11 It was handled on an as-applied basis, as-applied

12 analysis, as I think Justice Alito in the concurring opinion

13 recognized, and as Justice Thomas in the dissent clearly

14 recognized, are problematic in terms of dealing with -- just

15 what we are dealing with now; we are in an election cycle.

16 And getting an issue resolved on an as-applied basis and

17 getting the record fully formed, so that not only the District

18 Court, but the Court of Appeals can resolve the issue on an

19 adequate record is problematic, and may be a bridge too far in

20 virtually every circumstance. By the time you get the issue

21 teed up and resolved, the election cycle is over.

22 But it was remanded back to the Court to make inquiry as

23 to threats and the potential for threats and so forth and so

24 on. What is the record here that supports the notion, as

25 Ms. Krier challenged, that in fact anybody was prevented from

36

1 making a contribution in the final days before the election

2 of -- regarding Prop 71?

3 MR. LARUE: Your Honor, making and receiving

4 contributions are two sides of the same coin.

5 In this case, the record reveals that someone was

6 prevented from receiving contributions above the \$5,000 limit,

7 and that would be my client, and that's in a verified

8 complaint.

9 THE COURT: I understand.

10 MR. LARUE: The record also reveals that there was a

11 contributor who wanted to give a \$5,000 contribution. Now, I

12 would suggest to the Court that that second record isn't

13 actually necessary. The fact that there was someone who

14 wanted to receive, and couldn't do it because of the law, that

15 burdened, impermissibly, their right to associate. But the

16 record is bigger than that.

17 We have the contributor who wanted to give -- an affidavit

18 stating that they had the money; they would have done so, had

19 this law not been in effect.

20 I believe this Court has correctly recognized that this

21 does function as a ban, and that brings us to an interesting

22 question, Your Honor; and frankly, I don't know the answer.

23 But I am going to frame the question for the Court to decide.

24 *Citizens United*, at page 898, said that bans on speech are

25 subject to strict scrutiny.

APPENDIX I

Docket No. 10-35832

In the
United States Court of Appeals
for the
Ninth Circuit

Family PAC,

Plaintiff-Appellee,

v.

Rob McKenna, et al.,

Defendants-Appellants.

ATTORNEY GENERAL
OF WASHINGTON

SEP 27 2010

GOVERNMENT COMPLIANCE
& ENFORCEMENT

Appeal from a Decision of the United States District Court for the Western District
of Washington, No. 09-cv-5662 Honorable Ronald B. Leighton

**Family PAC's Opposition to Appellant's Emergency Motion for
Stay Under Circuit Rule 27-3**

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Corporate Disclosure Statement

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, I hereby certify that Appellee Family PAC is a political action committee registered with the Washington State Public Disclosure Commission and that FPIW Action is the parent corporation of Family PAC.

Dated this 27th day of September, 2010.

/s/ Scott F. Bieniek

Scott F. Bieniek

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<i>Buckley v. American Constitutional Law Foundation</i> , 525 U.S. 182 (1999)	6
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<i>Hilton v. Braunskill</i> , 481 U.S. 770 (1987)	3, 5
<i>Long Beach Area Chamber of Commerce v. City of Long Beach</i> , 603 F.3d 684 (9th Cir. 2010)	3
<i>Lydo Enterprises, Inc. v. Las Vegas</i> , 745 F.2d 1211 (9th Cir. 1984)	4
<i>Nken v. Holder</i> , 129 S. Ct. 1749 (2009)	4
<i>Randall v. Sorrell</i> , 548 U.S. 230 (2006)	13
<i>Republican Party of Minnesota v. White</i> , 536 U.S. 765 (2002)	9, 14, 16
<i>Sammartano v. First Judicial Court</i> , 303 F.3d 959 (9th Cir. 2002)	17, 18, 19
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<i>Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme</i> , 433 F.3d 1199 (9th Cir. 2006)	19

Statutes:

2 U.S.C. § 441b	6
28 U.S.C. § 1291	1
28 U.S.C. § 1331	1
28 U.S.C. § 1343	1
42 U.S.C. § 1983	1
RCW § 42.17.040	2
RCW § 42.17.080	2
RCW § 42.17.105	2
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RCW § 42.17.510	2

Jurisdictional Statement

The action in the District Court arose under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343(a). On September 1, 2010, the District Court granted in part and denied in part Family PAC's motion for summary judgment. (App. 70a.)¹ The District Court issued its judgment on September 1, 2010. (App. 72a)

Washington delayed 15 days before filing a notice of appeal (App. 73a) and did not file this emergency motion for a stay pending appeal until September 20.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because the decision of the District Court is a final order.

Statement of Facts

Family PAC organized on October 21, 2009, as a continuing political committee to support traditional family values in Washington by soliciting and receiving contributions, and by making contributions and expenditures, to support or oppose ballot propositions. (App. 4a ¶¶ 21-22.) Family PAC's initial project was to support the effort to repeal Engrossed Second Substitute Senate Bill 5688, commonly referred to as the "everything but marriage" domestic partnership law, by urging voters to

¹ "App." refers to the *Appendix to Family PAC's Opposition to Appellant's Emergency Motion for Stay Under Circuit Rule 27-3* filed concurrently with this opposition.

“reject” Referendum 71 at the November 2009 election. (App. 4a ¶ 22.) Family PAC has indicated that it will only support or oppose ballot measures, not candidates. (App. 3a ¶ 9.)

As a continuing political committee, Family PAC has various registration and reporting requirements. *See, e.g.*, RCW §§ 42.17.040 (registration statement); 42.17.080 (periodic campaign statements); 42.17.510 (identification of sponsors); 42.17.105 (late contribution reports); and 42.17.180 (major donor reports).

In addition to the substantial reporting and disclosure requirements, RCW § 42.17.105(8) prohibited Family PAC from making or receiving contributions in excess of \$5,000 during the 21 days preceding a general election (the “\$5,000 contribution limit”). As a result, Family PAC was forced to turn away contributors willing to contribute more than \$5,000 during the 21 days preceding the Referendum 71 election.² (App. 5a ¶ 27.) Other political committees have expressed a desire to make and/or receive contributions in excess of \$5,000 during the 21-day period. (App. 29a–37a.) Family PAC has stated that it would like to solicit and receive contributions in excess of \$5,000 during the 21 days preceding future general elections to advance its purpose. (App. 5a ¶ 27.)

² For example, Focus on the Family Action contemplated making contributions of \$60,000 and \$20,000 to Family PAC for radio advertisements and get-out-the-vote activities before the Referendum 71 election but was unable to make such contributions because of the \$5,000 contribution limit. (App. 24a ¶ 13.)

The District Court granted Family PAC's motion for summary judgment with respect to the \$5,000 contribution limit and ruled that it is not narrowly tailored to serve a compelling government interest. (Wash. App. B 48:15-19.)³

Standard of Review

The Ninth Circuit reviews a district court's grant of summary judgment *de novo*. *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 689 (9th Cir. 2010).

When reviewing a motion to stay an order pending appeal pursuant to Fed. R. App.

P. 8(a)(2), the Ninth Circuit considers 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 injured 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 Assoc. v. San Francisco, 512 F.3d 1112, 1115 (9th Cir. 2008). *See also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

³ Washington attached a copy of the *Transcript of Proceedings Held Before the Honorable Ronald B. Leighton* (Sept. 1, 2010) as Appendix B to its motion. Judge Leighton read his opinion from the bench at the conclusion of that hearing.

Because Washington did not individually number the pages of its appendix, Family PAC cites to the actual transcript page number, located in the top right corner of each page.

A stay is “not a matter of right, even if irreparable injury might otherwise result to the appellant.”⁴ *Nken v. Holder*, 129 S. Ct. 1749, 1757 (2009). As the moving party, Washington bears the burden of demonstrating that the standards for a stay have been satisfied. *Id.* at 1760-61. A stay must be awarded only on a *clear* showing that the movant is entitled to such relief. *Id.* at 1761.

Washington has not met its burden and this Court should deny Washington’s emergency motion for a stay pending appeal.

Argument

After full briefing and argument on Family PAC’s motion for summary judgment, the District Court concluded that there was no genuine issue as to any material fact and that Family PAC was entitled to judgment as a matter of law with respect to the

⁴ A stay pending appeal is an equitable remedy and delay by a moving party is considered when weighing the propriety of the relief. *Lydo Enterprises, Inc. v. Las Vegas*, 745 F.2d 1211, 1213-14 (9th Cir. 1984). Here, Washington delayed 15 days from the District Court’s judgment before filing its notice of appeal and 4 additional days before filing its emergency motion in this Court. Moreover, Washington has not asked this Court to expedite the underlying appeal. Given that Washington asks for ultimate relief on the merits through this motion, this delay is significant.

The District Court heard oral argument on a fully briefed motion for summary judgment and determined that Family PAC was entitled to summary judgment with respect to the \$5,000 contribution limit. Washington now asks this Court to reverse that decision, and reinstate an unconstitutional contribution limit for yet another election cycle, on a hurried, and dilatory, motion to stay pending appeal. This delay prejudices not only Family PAC’s, but also this Court’s, ability, to address the motion. And as set forth below, Washington fails to cite the controlling Supreme Court case, *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981), in their motion.

\$5,000 contribution limit.⁵ To obtain a stay of this Order, Washington must make a “strong” showing that *it*, not Family PAC, is the one that is likely to succeed on the merits. *Hilton*, 481 U.S. at 776. Washington must also demonstrate that it (the state) will suffer irreparable harm, that Family PAC will not be injured by a stay, and that a stay is in the public interest. Washington has not met its burden and its request for a stay pending appeal should be denied.

I. Washington Failed to Make a Strong Showing That It Is Likely to Succeed on the Merits.

A. The District Court did not apply the wrong legal standard when it subjected the \$5,000 contribution limit to strict scrutiny.⁶

Washington suggests that the District Court erred by subjecting the \$5,000 contribution limit to strict scrutiny. (Memo. at 10-13.)⁷ Washington argues that the District Court’s reliance on *Citizens United v. FEC*, 130 S. Ct. 876 (2010), is misplaced and that the \$5,000 contribution limit should instead be subjected to “exacting scrutiny.”⁸ (Memo. at 11.)

⁵ Washington did not file a motion to dismiss or a motion for summary judgment in the District Court.

⁶ It is unnecessary to decide the level of scrutiny because contribution limits are not permitted in the ballot measure context. *See Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981) (not addressing level of scrutiny for this reason).

⁷ Family PAC cites to *Appellants’ Emergency Motion for Stay Under Circuit Rule 27-3* throughout simply as “Memo.”

⁸ The \$5,000 contribution limit, RCW § 42.17.105(8) and the corporate-general-

Strict scrutiny applies, *see infra*, but even if exacting scrutiny applied, it would be high exacting scrutiny that is the functional equivalent of strict scrutiny. The Supreme Court recently explained that “exacting scrutiny” requires “the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.” *Doe v. Reed*, 130 S. Ct. 2811, 2814 (2010) (*citing Davis v. FEC*, 128 S. Ct. 2759, 2817-18 (2008)). Thus, regulations that burden “core political speech” or that impose severe burdens on the freedoms of speech and association must be narrowly tailored to serve a compelling government interest. *See Buckley v. Am. Constitutional Law Found.* (“ACLF”), 525 U.S. 182, 206-09 (1999) (Thomas, J., treasury fund statute in *Citizens United*, 2 U.S.C. § 441b, are more similar than Washington recognizes.

Under § 441b, Citizens United could produce and distribute, using general-treasury funds, a feature-length documentary about Hillary Clinton at any time *except* the 30 days before a primary and the 60 days before a general election, provided that the film did not expressly advocate her election or defeat. And Citizens United could still produce a documentary about Hillary Clinton during the 30/60 day window provided that the film “was not express advocacy or its functional equivalent. *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 481 (2007). Nevertheless, the Supreme Court characterized § 441b as a “ban.” *Citizens United*, 130 S. Ct. at 898 (“Section 441b’s prohibitions on corporate independent expenditures is thus a ban on speech.”).

The \$5,000 contribution limit operates in the same manner. A person can make a contribution in excess of \$5,000 at any time *except* the 21 days preceding a general election. And during the 21-day window, an individual can make unlimited *personal* expenditures. In other words, RCW § 42.17.105(8) restricts only an individual’s freedom of association. It is a “ban” on association because it places a “Spartan limit . . . on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone.” *Citizens Against Rent Control*, 454 U.S. at 297.

concurring); *see also Citizens United*, 130 S. Ct. at 898 (applying “strict scrutiny”). Regulations that impose lesser burdens must bear a “substantial relation” to a “sufficiently important” government interest. *See Doe v. Reed*, 130 S. Ct. at 2814 (applying “substantial relation” standard to *disclosure* statute).⁹

Contribution limits are direct restraints on the freedoms of speech and association because contribution limits curtail debate and in turn limit expenditures. *Citizens Against Rent Control v. Berkeley* (“*CARC*”), 454 U.S. 290, 299 (1981). The language from *Citizens United* cited by the District Court conveyed this same point. (Wash. App. B 28:21-25, 29:1-3.) *See Citizens United*, 130 S. Ct. at 898 (“A restriction on the amount of money a person or group can spend on political communication during a campaign . . . necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.”). As a result, *Citizens United* subjected the challenged statute to “strict scrutiny.” *Id.* The District Court could have just as easily cited the language from *CARC* for the same proposition. 454 U.S. at 299 (“Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression.”).

⁹ *Doe v. Reed* explained that disclosure requirements, unlike direct restraints on the freedoms of speech and association, do not prevent anyone from speaking. 130 S. Ct. at 2818.

In other words, *Citizens United* is not a radical departure from existing precedent (Memo. at 12), but is instead consistent with the Supreme Court's prior jurisprudence. *Citizens United* is a recognition that the Supreme Court is increasingly suspect of any regulation, such as the \$5,000 contribution limit, the net effect of which is to reduce the quantity and quality of debate on a public issue. (Wash. App. B 8:3-11.) *Citizens United* indicates the Supreme Court will look more favorably on disclosure requirements because they do not reduce the quantity of speech. 130 S. Ct. at 913-17 (striking restriction on general-treasury fund electioneering communications but upholding disclosure requirements); see also *Doe v. Reed*, 130 S. Ct. at 2813-14; *CARC*, 454 U.S. at 299-300 ("The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed.").

The District Court accurately captured the holding in *Citizens United* when it stated that "limits on contributions, ceilings on contributions, time limits on contributions are bad and unconstitutional, and disclosure requirements are positive and to be encouraged and are therefore valid." Wash. App. B 8:6-10.)

Washington is correct to note that the Supreme Court has carved out a narrow exception to this general rule by allowing contribution limits to *candidates*. See *Buckley v. Valeo*, 424 U.S. 1, 23-29 (1976). Such limits are justified to prevent *quid*

pro quo corruption, *id.* at 26; *CARC*, 454 U.S. at 297, but the *quid pro quo* interest is inapplicable to ballot measure elections, *CARC*, 454 U.S. at 297; *see also California Pro-Life Council v. Getman*, 328 F.3d 1088, 1105 n.23 (9th Cir. 2003).¹⁰ The District Court correctly noted that the *quid pro quo* interest is inapplicable to the \$5,000 contribution limit.¹¹ (Wash. App. B 46:13-16.)

Thus, it was correct for the District Court to subject the \$5,000 contribution limit, RCW § 42.17.105(8), to strict scrutiny because it is a direct restraint on the freedoms of speech and association. Under strict scrutiny, Washington bears the burden of demonstrating that the \$5,000 contribution limit is narrowly tailored to a compelling government interest. *California Pro-Life Council v. Randolph*, 507 F.3d 1172, 1178 (9th Cir. 2007) (*citing Republican Party of Minnesota v. White*, 536 U.S. 765, 774-75 (2002)). Washington failed to carry that burden at the District Court, and it has not carried it here. Therefore, Washington has failed to make a strong showing that it is likely to succeed on the merits of its appeal.

¹⁰ *Citizens United* also rejected the notion that the prohibition on the use of corporate treasury funds to make electioneering could be supported by an interest in preventing *quid pro quo* corruption or the appearance thereof. 130 S. Ct. at 910-911.

¹¹ Whether the analysis in *Citizens United* is extended to *candidate* contribution limits remains to be seen. But one thing is certain, after the Supreme Court's decision in *CARC*, there does not appear to be a single court that has upheld a restriction on contributions to ballot measure committees. Washington certainly has not cited any.

B. The District Court correctly concluded that the \$5,000 contribution limit is not narrowly tailored to a compelling government interest.

Washington's motion for a stay pending appeal rests exclusively on its assumption that the District Court applied the wrong legal standard. Concluding that the District Court applied the wrong standard, Washington presumes that the \$5,000 contribution limit survives the "substantial relation" standard.

As a threshold matter, the Supreme Court has already held that contribution limits are unconstitutional as applied to ballot measure committees. *CARC*, 454 U.S. at 300. Washington does not try to distinguish, or even cite, this controlling decision in its motion. The *CARC* decision means Washington cannot meet its burden that it is likely to succeed on the merits, and so, its motion for a stay pending appeal should be denied.

Furthermore, even if this Court were to conclude that the \$5,000 contribution limit is not subject to strict scrutiny, but rather the "substantial relation" standard, Washington has failed to make a strong showing that the \$5,000 contribution limit is constitutional under that standard. Because this Court's review is *de novo*, Washington must do more than allege error, it must make a strong showing that it is likely to prevail on the merits of its appeal.

Perhaps to avoid *CARC*, Washington strenuously argues that the \$5,000 contribution limit is not a contribution limit at all, but rather, a disclosure requirement. (Memo. at 13.) Such an argument ignores the plain language of the statute. *Nothing* within RCW § 42.17.105(8) suggests it is anything but a limit on contributions during the final days of a campaign.

The argument ignores RCW § 42.17.105(1), which states that a contribution (or an aggregate of contributions) of \$1,000 or more during the 21 days preceding a general election must be reported to the Commission within 24 hours.¹² Once such a report is filed for a contributor, the committee must file a supplemental report any time the contributor makes an additional contribution (*of any size*) during that 21-day period. RCW § 42.17.105(3). And the Commission is required to publish a daily summary of all such reports. RCW § 42.17.105(7).

Washington's argument that the contribution limit is a necessary prophylactic measure to ensure that contribution information is made available to voters is identical to the argument advanced and rejected in *CARC*:

Notwithstanding *Buckley* and *Bellotti*, the city of Berkeley argues that [the contribution limit] is necessary as a prophylactic measure to make known the identity of supporters and opponents of ballot measures Here, there is no risk that the Berkeley voters will be in doubt as to the identity of those whose

¹² Once filed, reports are accessible nearly instantaneously on the Commission's website. (See App. 55a ¶ 9; *infra* at 17.)

money supports or opposes a given ballot measure since contributors must make their identities known under § 112

454 U.S. at 298. *See also*, *FEC v. Wisconsin Right to Life* (“*WRTL-IP*”), 551 U.S. 449, 479 (2007) (rejecting prophylaxis-upon-prophylaxis approach).

And even if the \$5,000 contribution limit is somehow characterized as a disclosure requirement, it cannot survive strict scrutiny, or even the “exacting scrutiny” standard urged by Washington.

First, as *CARC* explained, ballot measure contribution limits “operate as a direct restraint on freedom of expression of a group or committee desiring to engage in political dialogue concerning a ballot measure.” 454 U.S. at 299-300. All ballot measure contribution limits are unconstitutional because they are not tailored to a sufficient government interest.¹³ *Compare id.*¹⁴ (no discussion of permissible level of

¹³ Washington advanced two arguments in support of the prohibition on contributions in excess of \$5,000 during the 21 days preceding a general election. (*See* App. 38a-45a.)

First, Washington argues RCW §42.17.105(8) “require[s] that large contributions be made before the final weeks of the campaign so that information concerning these contributions may be disseminated to the public well before election day.” (App. 40a.)

As discussed, *supra*, the informational interest is adequately served by the 24-hour reporting requirement for contributions in excess of \$1,000 during the 21 days preceding an election. And nothing prohibits an individual from spending an unlimited amount of his own resources to support or oppose a ballot measure during the 21 days preceding an election. *See infra*; *see also* *CARC*, 454 U.S. at 296.

Second, Washington argues the prohibition is designed to level the playing field during the final three weeks of a campaign. (App. 43a.) The Supreme Court has repeatedly rejected the “leveling the playing field” argument. *See Citizens United*, 130 S. Ct. at 904; *Davis*, 128 S. Ct. at 2773-74; *WRTL-II*, 551 U.S. at 487; *First Nat’l*

contribution limits) *with Randall v. Sorrell*, 548 U.S. 230 (2006) (candidate contribution limits constitutional but may fall below permissible level).¹⁵ Although the \$5,000 contribution limit is somewhat of a moving target because it limits a person's total contributions to \$5,000 plus any contributions prior to the 21 day window, it is nonetheless a contribution limit.

The burden imposed by the \$5,000 contribution limit is especially harsh because it imposes a contribution limit at precisely the time when most decisions to engage in political speech are made. *Citizens United*, 130 S. Ct. at 895 (“The decision to speak is made in the heat of political campaigns, when speakers must react to messages conveyed by others.”). The District Court recognized that the \$5,000 contribution limit handicaps a ballot measure committee's ability to respond to “October surprises.” (Wash. App. B 39:18.) It also imposes a contribution limit when political speech is most critical and effective. *Citizens United*, 130 S. Ct. at 895 (“It is well

Bank of Boston v. Bellotti, 435 U.S. 765, 790-91 (1978); *Buckley*, 424 U.S. at 48-49.

¹⁴ “To place a Spartan limit -- or indeed any limit -- on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association. Section 602 does not seek to mute the voice of one individual, and it cannot be allowed to hobble the collective expressions of a group.” *CARC*, 454 U.S. at 296 (emphasis added).

¹⁵ A candidate contribution limits requires an examination of the *quid pro quo* interest that is inapplicable to ballot measure contributions. *Supra* at 8-9.

known that the public begins to concentrate on elections only in the weeks immediately before they are held.”).

Second, the \$5,000 contribution limit is underinclusive because it imposes different effective contribution limits on a speaker depending solely on when contributions are made. If Washington has an interest in preventing large ballot measure contributions (which it does not, *supra*), then it must set a uniform contribution limit. *See White*, 536 U.S. at 779-80 (regulation that fails to restrict speech implicating government’s alleged interest is underinclusive). The current statute allows a continuing political committee to make and receive unlimited contributions at any time *except* the 21 days preceding a general election.¹⁶ RCW § 42.17.105(8). And committees can make unlimited expenditures provided that they already have the cash on hand, regardless of whether the voters have the ballots in their hands or not.

For example, an individual could have contributed \$1,000,000 on October 12, 2009, and another \$5,000 during the 21 days preceding the November 2009 election, for an effective contribution limit of \$1,005,000. By contrast, his neighbor who made his first contribution on October 13, 2009, was limited to \$5,000 by virtue of the \$5,000 contribution limit. Any argument that large a contribution on day 21 is more problematic than day 22 poses a “challenge to the credulous,” *White*, 536 U.S. at 780,

¹⁶ There is even confusion over when the 21-day period begins and ends. (App. 46a-51a.)

because the underinclusiveness diminishes “the credibility of the government’s rationale for restricting speech in the first place.”¹⁷ *City of LaDue v. Gilleo*, 512 U.S. 43, 52 (1994). And, like Berkeley, Washington allows an individual to make unlimited *expenditures* at any time, and so, the \$5,000 contribution limit serves only to infringe on associational rights without serving the informational interest. *CARC*, 454 U.S. at 296.

Third, the prohibition is underinclusive because it allows bona fide political parties to make and receive contributions in excess of \$5,000 during the 21 days preceding a general election. RCW § 42.17.105(8). Failing to restrict the ability of *all* political committees to make and receive contributions in excess of \$5,000 diminishes “the credibility of the government’s rationale for restricting speech in the first place.” *City of LaDue*, 512 U.S. at 52.

Fourth, the prohibition is underinclusive because it restricts large contributions only during the 21 days preceding a *general* election. RCW § 42.17.105(8). Continuing political committees, state parties, and other organizations can make and receive contributions in excess of \$5,000 at any other time during the year, including

¹⁷ Washington’s informational interest, *supra* at 11, cannot justify the prohibition because a continuing political committee must file 24-hour reports for all contributions exceeding \$1,000 during the 21 days preceding an election. RCW § 42.17.105(1). Thus, the informational interest with respect to contributions in excess of \$5,000 is served by this more narrowly tailored provision.

the 21 days preceding a primary or special election. If Washington has an interest in preventing large contributions on the eve of an election, it would prohibit large contributions during the 21 days preceding primary and special elections. The underinclusiveness again diminishes Washington's interest. *White*, 536 U.S. at 780; *City of LaDue*, 512 U.S. at 52.

Finally, as already discussed, Washington's "informational interest" is already served by its more narrowly tailored compelled disclosure provisions. *See CARC*, 454 U.S. at 299-300 ("Here, there is no risk that the Berkeley voters will be in doubt as to the identity of those whose money supports or opposes a given ballot measure since contributors must make their identities known"). Washington requires all contributions of \$1,000 or more during the 21 days preceding an election to be reported within 24 hours. RCW § 42.17.105(1). To the extent that Washington has an interest in providing voters with information about contributions and expenditures, that interest is already served by the state's stringent disclosure requirements. This point was critical to the District Court decision, and it noted that today, with the advent of technology, there appears to be little need for the \$5,000 contribution limit. (Wash. App. B 41:13-15 ("not narrowly tailored "in this modern era when dissemination of information is so advanced and virtually instantaneous").)

Indeed, Washington filed a declaration from the Commission's Chief Technology Officer who proudly stated that "electronically filed [reports] were posted by the PDC within fifteen minutes of being electronically filed." (App. 55a ¶9.) And even "reports that were submitted on paper (filed by US Mail or hand delivered) were scanned and available on the Web site the same day there were received in the agency's office, *and often within an hour.*" (App. 55a ¶9 (emphasis added).) In other words, once a report is filed, it is available almost instantaneously on the Commission's website for the world to see. There is no need to *ban* contributions a full 21 days before an election to ensure that voters have information about contributions.

Thus, Washington failed to make a strong showing that it is likely to succeed on the merits of its appeal and its motion for a stay pending appeal should be denied.

II. Washington Will Not Be Irreparably Harmed Absent a Stay.

In the Ninth Circuit, "the fact that a case raises serious First Amendment questions compels a finding that there exists the potential for irreparable injury, or that at the very least the balance of hardships tips sharply in [Appellee's] favor." *Sammartano v. First Judicial District Court*, 303 F.3d 959, 973 (9th Cir. 2002). Here, the District Court found more than serious questions, it ruled that Family PAC established that the \$5,000 contribution is unconstitutional as a matter of law. As set forth above,

Washington failed to demonstrate a strong showing that it is likely to succeed on the merits of its appeal.

The “freedom of speech” presumption embodied in the First Amendment also means that state officials have no per se interest in regulating expressive association. Their first loyalty is to the First Amendment. Beyond that, their only interest is in enforcing laws *as they exist*, with any interest in the particular *content* of those laws being beyond their interest in the balancing of harms: “It is difficult to fathom any harm to [Appellants] as it is simply their responsibility to enforce the law, whatever it says.” *Id.*; *Ctr. for Individual Freedom v. Ireland*, 613 F. Supp. 2d at 777, 807 (W.D. W.Va. 2009) (*quoting WRTL-II*, 551 U.S. at 473-74).

Thus, Washington failed to demonstrate that it will be irreparably harmed absent a stay.

III. A Stay Will Result in Irreparable Injury to Family PAC.

As the Supreme Court noted in *CARC*, contribution limits in the ballot measure context unconstitutionally inhibit the freedoms of speech and association protected by the First and Fourteenth Amendments. 454 U.S. at 300. “Deprivations of speech rights presumptively constitute irreparable harm ‘The loss of First Amendment freedoms, even for minimal periods of time, constitute[s] irreparable injury.’” *Sumnum v. Pleasant Grove City*, 483 F.3d 1044 (10th Cir. 2007) (*quoting Elrod v.*

Burns, 427 U.S. 347, 373 (1976); *see also Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1234 (9th Cir. 2006) (*quoting Elrod*).

Family PAC forever lost its opportunity to speak in the 2009 election as a result of the enforcement of the \$5,000 contribution limit. Washington now asks Family PAC, and all Washingtonians, to forfeit their First Amendment rights for yet another election cycle. Absent a clear showing that Washington is likely to prevail on the merits of its appeal, the motion for a stay must be denied. Washington has failed to make such a showing.

IV. A Stay is Not in the Public Interest.

The Ninth Circuit has also held that “it is always in the public interest to prevent the violation of a party’s constitutional right.” *Sammartano*, 303 F.3d at 874. While the public interest in protecting First Amendment liberties has, on occasion, been overcome by “a strong showing of other competing public interests,” *Sammartano*, 303 F.3d at 974, there must be *some showing* of an *actual*, strong competing interest in order for a court to find that it is in the public interest to stay an order of the district court. *Id.* (noting that the appellees had made no showing that their challenged regulation, which infringed on appellants’ First Amendment rights, could “plausibly be justified,” and so granting appellants’ request for injunctive relief). As previously discussed, the State lacks an interest in this case.

Washington argues the sky is about to fall because the campaigns have all been operating under the assumption that the \$5,000 contribution limit would be in place during the 21 days preceding the election. (Memo. at 19-21.) Family PAC fails to see the relevance of this argument. The First Amendment is designed “to secure the widest possible dissemination of information from diverse and antagonistic sources.” *CARC*, 454 U.S. at 296. Washington asks this Court to instead reinstate the \$5,000 contribution limit and curtail speech at the very moment that it is most effective. *Citizens United*, 130 S. Ct. at 895.

It is difficult to imagine how the campaigns, or Washington voters, will be harmed by *more* speech. The District Court rendered its decision before the 21-day period commenced. All campaigns have had an opportunity to assess how it might impact their strategy. And as the District Court noted, the decision ensures that all have the opportunity and ability to respond to the inevitable “October surprise.” (Wash. App. B 39:16-21.) Voters that mail their ballots before the November 2 deadline will always cast their ballot with less information than those who wait. For voters who wait for the inevitable October surprise before casting their ballot, the District Court’s order ensures that they will cast their ballot only after the “robust debate” contemplated by the First Amendment.¹⁸

¹⁸ “The people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in

Conclusion

For the reasons set forth above, Family PAC respectfully requests that this Court deny Defendants-Appellants' Emergency Motion for a Stay Pending Appeal.

Respectfully submitted this 27th day of
September, 2010.

/s/ Scott F. Bieniek

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making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the Framers of the First Amendment. In sum, a restriction so destructive of the right of public discussion [as § 8], without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791-92 (1978).

Docket No. 10-35832

In the
United States Court of Appeals
for the
Ninth Circuit

Family PAC,
Plaintiff-Appellee,

v.

Rob McKenna, et al.,

Defendants-Appellants.

ATTORNEY GENERAL
OF WASHINGTON
SEP 27 2010
GOVERNMENT COMPLIANCE
& ENFORCEMENT

Appeal from a Decision of the United States District Court for the Western District
of Washington, No. 09-cv-5662 Honorable Ronald B. Leighton

**Appendix to Family PAC's Opposition to Appellant's
Emergency Motion for Stay Under Circuit Rule 27-3**

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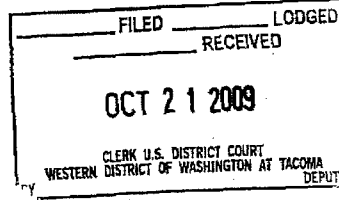
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09-CV-05662-CMP

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 RB

**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.

Verified Complaint

1

BOPP, COLESON & BOSTROM
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Terre Haute, Indiana 47807-3510
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#T-6430
185d

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

7 3. Plaintiff Family PAC challenges the PDL's threshold for reporting contributions, RCW
8 § 42.17.090(1)(b), both facially and as-applied to it, on the ground that the threshold is not
9 narrowly tailored to serve a compelling government interest in violation of the First Amendment
10 to the United States Constitution.

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

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

19 **Jurisdiction and Venue**

20 6. This case raises questions under the Constitution of the United States and 42 U.S.C. §
21 1983, and thus this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331
22 and 1343(a).

23 7. This Court also has jurisdiction under the Declaratory Judgment Act. *See* 28 U.S.C. §§
24 2201, 2202.

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

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Parties

1
2 **9.** Plaintiff Family PAC is a State Continuing Political Committee organized pursuant to
3 RCW § 42.17.040, that is a “political committee . . . of continuing existence not established in
4 anticipation of any particular election campaign” (RCW § 42.17.020(14) (definition of
5 “continuing political committee”) and has its principal place of business in Snohomish County,
6 Washington. It intends to support traditional family values in Washington State by soliciting and
7 receiving contributions, and by making contributions and expenditures to support or oppose
8 ballot propositions in the 2009 election and beyond. Its initial project is to support referendum
9 71 on SB 5688 and to encourage voters to reject SB 5688. In the future, it will only support or
10 oppose ballot measures, not candidates.

11 **10.** Defendant Sam Reed is the Secretary of State of Washington. In his official capacity,
12 Defendant Reed is responsible for receiving referendum petitions pursuant to RCW §
13 29A.72.010. The Office of the Secretary of State is also designated as a place where the public
14 may file papers or correspond with the Public Disclosure Commission and receive any form or
15 instruction from the Commission. RCW § 42.17.380.

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

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

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

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Facts

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

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

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

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

13 **18.** On January 28, 2009, Washington State Senator Ed Murray introduced Senate Bill
14 5688 (“SB 5688”), a bill designed to expand the rights, responsibilities, and obligations accorded
15 state-registered same-sex and senior domestic partners to be equivalent to those of married
16 spouses. The legislation is commonly referred to simply as the “everything but marriage”
17 domestic partnership bill.

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

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

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

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

28 **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 5688.¹

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

28 ¹ 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/
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 IF*”) (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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61. The PDL's requirement that political committees report the name and address of all contributors of more than \$25, and the occupation, employer, and employer's address of contributors of more than \$100, violates the First Amendment because the disclosure thresholds are not narrowly tailored to serve a compelling government interest.

62. WHEREFORE, Plaintiff request the following relief:

- a. Declare RCW § 42.17.090 unconstitutional to the extent that it requires Family PAC and all other similar persons to report the name and address of contributors of more than twenty-five dollars;
- b. Declare Wash. Admin. Code 390-16-034 unconstitutional to the extent that it requires a Family PAC and all other similar persons to report the occupation, employer, and employer's address of contributions of more than one hundred dollars;
- c. Order Defendants to expunge all records containing the name, address, occupation, employer, and/or employer's address for any contributor reported pursuant to RCW § 42.17.090 and/or Wash. Admin. Code 390-16-034;
- d. Enjoin Defendants from commencing any civil actions for failing to comply with RCW § 42.17.090(1)(b) or Wash. Admin. Code 390-16-034;
- e. Grant Plaintiff Family PAC its costs and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and
- f. Any and all other such relief as may be just and equitable.

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

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

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

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

66. WHEREFORE, Plaintiff request the following relief:

- a. Declare RCW § 42.17.105(8) unconstitutional to the extent that it prohibits Family PAC and all other similar persons from receiving contributions in excess of \$5,000 during the twenty-one days preceding a ballot proposition election;
- b. Enjoin Defendants from enforcing RCW § 42.17.105(8) against Family PAC and all other similar persons;
- c. Grant Plaintiff Family PAC its costs and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority; and
- d. Any and all other such relief as may be just and equitable.

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Verification

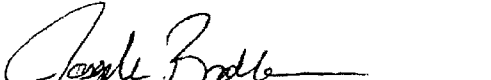
I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS CONCERNING FAMILY PAC IN THIS COMPLAINT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated this 20th day of October, 2009.


Joseph Backholm

Dated this 20th day of October, 2009.

Respectfully submitted,


Joseph Backholm
FAMILY POLICY INSTITUTE OF WASHINGTON
16108 Ash Way, Ste 111A
Lynnwood, Washington 98087
(425) 608-0242
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**Pro Hac Vice Application Pending*

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Activity in Case 3:09-cv-05662-RBL Family Pac v. Reed et al TRO Hearing

Subject: Activity in Case 3:09-cv-05662-RBL Family Pac v. Reed et al TRO Hearing
From: ECF@wawd.uscourts.gov
Date: Tue, 27 Oct 2009 11:53:33 -0700
To: ECF@wawd.uscourts.gov

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U.S. District Court

United States District Court for the Western District of Washington

Notice of Electronic Filing

The following transaction was entered on 10/27/2009 at 11:53 AM PDT and filed on 10/27/2009

Case Name: Family Pac v. Reed et al

Case Number: 3:09-cv-5662

Filer:

Document Number: 35(No document attached)

Docket Text:

MINUTE ENTRY for proceedings held before Judge Ronald B. Leighton- Dep Clerk: *Jean Boring*; Pla Counsel: *Scott Bieniek (Family Pac) pro hac vice; Joseph Backholm (local)*; Def Counsel: *Linda Dalton, Gordon Karg (ATG); Kevin Hamilton(Wash. Fam. & Ann Levinson); Ben Stafford (Wash Fam); Gordon Siveley (Weikel)*; CR: *Julaine Ryan*; TRO Hearing held on 10/27/2009. Plaintiff addresses the issue that Joseph Backholm is not admitted and cannot act as local counsel; Counsel advise that the issue regarding local counsel will be correctly promptly; Argument conducted; For the reasons orally stated, on the record, the [2] MOTION for Temporary Restraining Order and for Preliminary Injunction is DENIED. [5] MOTION for Leave to File Excess Pages is GRANTED and [4] MOTION to Consolidate Cases is DENIED. [3] MOTION to Expedite is NOTED on the Court's motion calendar for 11/6/2009. Responses shall be due by 11/3/2009. Hearing concluded. (JAB)

3:09-cv-5662 Notice has been electronically mailed to:

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Activity in Case 3:09-cv-05662-RBL Family Pac v. Reed et al TRO Hearing

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FAMILY PAC,

Plaintiff,

v.

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,

Docket No. C09-5662RBL

Tacoma, Washington
October 27, 2009

TRANSCRIPT OF COURT'S ORAL RULING
BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT COURT JUDGE.

APPEARANCES:

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4 For Defendant Weikel: GORDON W. SIVLEY
Snohomish County Deputy
5 Prosecuting Attorney
3000 Rockefeller Avenue
6 M/S 504
Everett, Washington 98201

7 For Intervenor Defendants: KEVIN J. HAMILTON
8 Perkins Coie
1201 Third Avenue, Suite 4800
9 Seattle, Washington 98101-3099

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

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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
24 the record of proceedings in the above-entitled matter.

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

October 27, 2009
Date

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

<p>Family PAC, vs. McKenna, et al,</p> <p style="text-align: center;">Plaintiff, Defendants.</p>	<p>No. 09-CV-5662-RBL DECLARATION OF MONA PASSIGNANO The Honorable Ronald B. Leighton</p>
--	--

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

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

26 9. Our attorney informed us that we could not write this check to Family PAC at this date in
27
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Declaration of
Mona Passignano
(No. 09-CV-5662-RBL)

2

BOPP, COLESON & BOSTROM
1 South Sixth Street
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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.

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Executed on: May 18, 2010.

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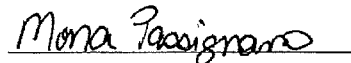
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Signed: Mona Passignano

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

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

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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

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

4

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

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

<p>Family PAC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>Rob McKenna, in his official capacity as Attorney General of Washington, and Jim Clements, David Seabrook, Jane Noland, Jennifer Joly, and Barry Sehlin, members of the Public Disclosure Commission, in their official capacities,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 3:09-cv-05662-RBL</p> <p>Declaration of Scott F. Bieniek in Support of Plaintiff's Motion for Summary Judgment</p> <p>The Honorable Ronald B. Leighton</p>
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Decl. of Scott F. Bieniek in Supp. of Pl.'s
Mot. for Summ. J.
(No. 3:09-cv-05662-RBL)

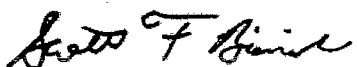
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, Indiana 47807-3510
(812) 232-2434

1 I, Scott F. Bieniek, make the following declaration pursuant to 28 U.S.C. § 1746:

- 2 1. I am an attorney at law licensed to practice in the State of Illinois.
3 2. I am an attorney at the law office of Bopp, Coleson & Bostrom in Vigo County, Indiana.
4 3. I have personal knowledge of the facts set forth in this declaration, and if called as a
5 witness, I can and would testify competently thereto.
6 4. The documents attached hereto as Exhibits 1-7 are true and correct copies of documents
7 produced by Defendants in response to Plaintiff's Request for Production of Documents.
8 5. For the convenience of the Court, the documents are organized into exhibits that relate
9 to specific arguments Plaintiff Family PAC's motion for summary judgment.
10 6. Pursuant to Local Civil Rule 10(e)(10), the exhibits are marked to designate evidence
11 referenced in Plaintiff Family PAC's motion for summary judgment.

12 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
13 AND CORRECT.

14
15 Executed this 19th day of May, 2010.

16
17 
18 _____
19 Scott F. Bieniek
20 Counsel for Plaintiff Family PAC
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1 **CERTIFICATE OF SERVICE**

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

4 On May 19, 2010, I electronically filed the foregoing document described as Declaration of
5 Scott F. Bieniek in Support of Plaintiff's Motion for Summary Judgment with the Clerk of Court
6 using the CM/ECF system which will send notification of such filing to:

7 Linda A. Dalton
8 lindad@atg.wa.gov
9 *Counsel for Defendant Rob McKenna*
10 *and Defendant Members of the Public Disclosure Commission*

11 Nancy J. Krier
12 nkrier@pdc.wa.gov
13 *Counsel for Defendant Members of the Public Disclosure Commission*

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

16 /s/ Sarah E. Troupis
17 Sarah E. Troupis
18 *Counsel for Plaintiff Family PAC*

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Decl. of Scott F. Bieniek in Supp. of Pl.'s
Mot. for Summ. J.
(No. 3:09-cv-05662-RBL)

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Terre Haute, Indiana 47807-3510
(812) 232-2434

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Exhibit 2

Exhibit 2
(No. 3:09-cv-05662-RBL)

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



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 206, PO Box 40908 * Olympia, Washington 98504-0908 * (360) 753-1111 * Fax (360) 753-1112
Toll Free 1-877-501-2828 * E-mail: pdc@pdc.wa.gov * Website: www.pdc.wa.gov

December 11, 2008

JEREMY DEUTSCH, EXECUTIVE DIRECTOR
WA STATE REPUBLICAN PARTY
2340 NORTHUP WAY, SUITE 140
BELLEVUE WA 98004

Subject: Complaint Against Evergreen Progress

Dear Mr. Deutsch:

The Public Disclosure Commission (PDC) has reviewed the complaint received from you via fax and e-mail on October 20, 2008 and via U.S. mail on October 23, 2008, alleging that Evergreen Progress, a political action committee, violated RCW 42.17.105(8) by accepting a contribution of more than \$5,000 during the 21 days before the general election. The contribution in question, a \$250,000 donation from SEIU PEA International, appeared on an LMC (last-minute contribution) report that was received by the PDC on October 17, 2008.

PDC staff spoke with Evergreen Progress' treasurer, Jason Bennett, on October 19, 2008. Mr. Bennett explained that, on October 13, they received a written pledge for \$250,000 from SEIU. The check arrived within 21 days of the general election (October 15), but the pledge was received prior to the start of the 21-day period. Mr. Bennett stated that he submitted an LMC report out of an abundance of caution while he checked with the PDC about whether the contribution could be accepted. When contacted, PDC staff informed Mr. Bennett that the contribution was received within 21 days of the election and could not be accepted. Evergreen Progress then returned the contribution before it was ever deposited, and filed an amended LMC report on October 21, showing a contribution of \$0.00 on October 15. The PDC will not be conducting a formal investigation of this matter, as RCW 42.17.020(15)(b)(iii) states that donations returned within five business days of receipt are not considered contributions.

If you have any questions, you may contact Phil Stutzman at (360) 664-8853, or by e-mail at pstutzman@pdc.wa.gov.

Sincerely,

A handwritten signature in black ink that reads "Doug Ellis".

Doug Ellis
Assistant Director

c: Evergreen Progress

Def Resp to 1st RFP & ROGs
004094

Exhibit 2, Page 2



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 206, PO Box 40908 * Olympia, Washington 98504-0908 * (360) 753-1111 * Fax (360) 753-1112
Toll Free 1-877-601-2828 * E-mail: pdcc@pdc.wa.gov * Website: www.pdc.wa.gov

December 12, 2008

BRENT LUDEMAN
SENATE REPUBLICAN CAMPAIGN COMMITTEE
PO BOX 11025
OLYMPIA, WA 98508

Subject: Complaint Filed Against The Roosevelt Fund

Dear Mr. Ludeman:

The Public Disclosure Commission (PDC) received a complaint from you on October 22, 2008, alleging that The Roosevelt Fund accepted a \$30,000 over-limit contribution from the Kalispell Tribe of Indians on October 15, 2008, an alleged violation of RCW 42.17.105(8).

When contacted by PDC staff, Jason Bennett, treasurer for The Roosevelt Fund, noted that the contribution had been refunded on October 20, 2008. He filed an amended Last Minute Contribution (LMC) report on October 23, 2008, amending the October 17, 2008 LMC report, to show zero dollars for the contribution amount. RCW 42.17.020 (15)(b)(iii) states a contribution does not include a contribution that is returned to the contributor within five business days of the date on which it is received by the political committee. Therefore, the PDC will not be conducting a formal investigation of this matter.

If you have any questions, please feel free to contact Phil Stutzman at (360) 664-8853, or by e-mail at pstutzman@pdc.wa.gov.

Sincerely,

A handwritten signature in black ink that reads "Doug Ellis".

Doug Ellis
Assistant Director

c: The Roosevelt Fund



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 206, PO Box 40908 * Olympia, Washington 98504-0908 * (360) 753-1111 * Fax (360) 753-1112
Toll Free 1-877-601-2828 * E-mail: pdcc@pdcc.wa.gov * Website: www.pdcc.wa.gov

December 12, 2008

DEL BAUSCH, CHAIR
THE ROOSEVELT FUND
PO BOX 45201
SEATTLE WA 98145-0201

Subject: Complaint filed by Brent Ludeman

Dear Mr. Bausch:

Enclosed is a copy of a letter to Brent Ludeman regarding a complaint he filed with the Public Disclosure Commission (PDC) on October 22, 2008 alleging that The Roosevelt Fund accepted a \$30,000 over-limit contribution from the Kalispell Tribe of Indians on October 15, 2008, an alleged violation of RCW 42.17.105(8). As noted in the enclosed letter, a formal investigation will not be conducted. A copy of the complaint is enclosed.

If you have any questions, you may contact Phil Stutzman, Director of Compliance, at (360) 664-8853, or by email at pstutzman@pdcc.wa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Doug Ellis".

Doug Ellis
Assistant Director

Enclosures



Def Resp to 1st RFP & ROGs
004128

Exhibit 2, Page 4

Phil Stutzman

From: Brent Ludeman [brent.ludeman@gmail.com]
Sent: Wednesday, October 22, 2008 5:36 PM
To: Phil Stutzman
Subject: Roosevelt Fund Complaint
Attachments: Kalispel 30k.pdf

Mr. Stutzman:

I have another complaint. The Roosevelt Fund received \$30,000 on 10/15/2008 from the Kalispel Indian Tribes, falling within the 21-day \$5,000 limit. Their LMC form is attached. Again, given the closeness of the election and the risk that these funds will be spent in a manner that may affect the election results, we request that you take immediate action to have the illegal contributions returned, and proceed with an investigation and penalize The Roosevelt Fund.

Regards,
Brent Ludeman

—
Brent Ludeman
Executive Director
Senate Republican Campaign Committee
Cell: 206.790.6255

10/23/2008

Def Resp to 1st RFP & ROGs
004129

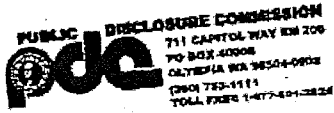
Exhibit 2, Page 5

OCT-17-2008 18:01 From:ARGO

2863238738

To:13607531112

Page:10/10



LAST MINUTE CONTRIBUTION OF \$1,000 OR MORE FAX: (360) 753-1112 Email: pdc@pdc.wa.gov

RECEIVED

OCT 17 2008

Public Disclosure Commission

The Roosevelt Fund

Name of Reporting Entity

PO Box 45201

Address

Seattle

City

WA

State

98145-0201

ZIP+4

Reporting Entity (check one):

Received a contribution of

\$30,000.00

(Amount)

on

10/15/2008

(Date)

Made a contribution of

(Amount)

on

(Date)

Contribution was received from/made to the following:

Kallispel Tribe of Indians

Name

PO Box 39

Address

Usk

City

WA

State

99180-0039

ZIP+4

If earmarked contribution, give name of conduit:

If the recipient of the contribution is a candidate, provide the following information:

Office	District	Position	Party
		Jason Bennett	
Name of person sending this notice:			
Daytime Telephone Number:		206-325-5013	

Powered by CompleteCampaigns.com 888-217-9600

Def Resp to 1st RFP & ROGs 004130

Exhibit 2, Page 6

OCT-23-2008 15:01 From:ARGO

2063230738

To:13607531112

Page:1/2



COPY

RECEIVED

OCT 23 2008

Public Disclosure
Commission

October 23, 2008

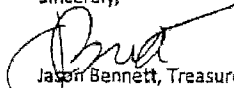
Public Disclosure Commission
PO Box 40908
Olympia, WA 98504

Dear PDC:

Thank you for the conversation with Kurt Young today regarding a \$30,000 check we received on 10/15/08 from Kalispel Tribe for the Roosevelt Fund. As we discussed relating to the Evergreen Progress contribution on the same day, we received a similar pledge on 10/13 indicating a check was in transit for the Roosevelt Fund. I wanted to submit an "LMC" (Last Minute contribution) form while we consulted your office. In an abundance of caution, we filed the LMC. We refunded the contribution and, per your recommendation, are amending our earlier LMC form to reflect \$0.00 received from Kalispel Tribe. Pursuant to RCW 42.17.020 15(b)(iii), if a contribution is returned within 5 business days it is not considered a contribution. This contribution falls within that 5 business day allowance.

Thank you again for your guidance. If you have any additional questions or concerns, please do not hesitate to contact me directly at the office: 206-325-5013.

Sincerely,


Jason Bennett, Treasurer
Roosevelt Fund

PO Box 9100
Seattle, WA 98109
206.579.0644 p
www.argostrategies.com

Def Resp to 1st RFP & ROGs
004131

Exhibit 2, Page 7

OCT-23-2008 15:01 From:ARGO

2063230738

To:13607531112

Page:2/2

COPY AMENDED

RECEIVED

OCT 23 2008



LAST MINUTE CONTRIBUTION OF \$1,000 OR MORE FAX: (360) 753-1112 Email: pdc@pdc.wa.gov

Public Disclosure Commission

Name of Reporting Entity
Roosevelt Fund

Address
PO Box 9100

City State ZIP+4
Seattle WA 98109

Reporting Entity (check one):

Received a contribution of \$0.00 on 10/15/2008
(Amount) (Date)

Made a contribution of _____ on _____
(Amount) (Date)

Contribution was received from/made to the following:

Name
Kalispel Tribe

Address
PO Box 39

City State ZIP+4
Usk WA 99180

If earmarked contribution, give name of conduit: _____

If the recipient of the contribution is a candidate, provide the following information:

Office	District	Position	Party
--------	----------	----------	-------

Name of person sending this notice: Jason Bennett

Daytime Telephone Number: 206-325-5013

AMENDED

Def Resp to 1st RFP & ROGs
004132

Exhibit 2, Page 8

Kurt Young

From: Jason Bennett [jason@argostrategies.com]
Sent: Thursday, October 23, 2008 2:44 PM
To: Kurt Young
Subject: kalispel/roosevelt

is the exact same issue. My staff kristina was waiting to hear what the PDC said regarding pledges. We hadn't synced up on it because of the BIAW drama. She returned the donation back on 10/20 and I will amend the LMC like we did with Evergreen.

By the way, I don't see that memo and amended LMC on the site and I faxed it down on Tues. Did you get it?

Thanks!

JASON BENNETT | ARGO STRATEGIES

PO Box 9100 | Seattle, WA 98109
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www.argostrategies.com | jason@argostrategies.com

10/23/2008

Def Resp to 1st RFP & ROGs
004133

Exhibit 2, Page 9

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Exhibit 4

Exhibit 4
(No. 3:09-cv-05662-RBL)

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

**RE: Whether an international union may
make an in-kind contribution valued at
more than \$5,000 to a statewide ballot
measure committee, under RCW
42.17.105(8)**

Letter to: James D. Oswald, October 1998

Staff Advisory Letter

Def Resp to 1st RFP
000599

Exhibit 4, Page 2



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112

October 5, 1998

James D. Oswald
Song Oswald & Mondress
720 3rd Avenue, Ste 1500
Seattle, WA 98104

Dear Mr. Oswald:

You have asked whether an international union may make an in-kind contribution valued at more than \$5,000 to a statewide ballot measure committee. I am writing to confirm that in my opinion such a contribution would be permissible under RCW 42.17.105(8) as long as the contribution is made and received more than 21 days prior to the November 3, 1998, general election. That is, as long as the union

- 1) obligates itself, in writing, to providing a sum certain in-kind contribution to the committee,
- 2) the committee receives written confirmation of this obligation from the union on or before October 12, 1998, and
- 3) the service being provided is made available to the committee starting on the date that the written confirmation is received, or at least no later than October 12, 1998.

As you noted during our conversation, one of the purposes of RCW 42.17.105(8) is to require that large contributions be made before the final weeks of the campaign so that information concerning these contributions may be disseminated to the public well before election day.

Nevertheless, in order not to violate WAC 390-16-245, it is necessary to distinguish this in-kind contribution of personal services from a pledge. A pledge of over \$5,000 may not be made or redeemed during the 21 days before the primary election.

There is no statute or rule that defines the word "pledge." However, according to one dictionary definition, a pledge is a formal promise to do or not do something. In this case, although the service will be rendered over the course of several weeks, the obligation to provide a guaranteed dollar value of staff time will be made and received on a specific date. I believe this degree of obligation and commitment is what distinguishes this in-kind contribution from a promise of a future contribution. By their nature, many types of in-kind contributions are utilized over time (e.g., office space,

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)



Def Resp to 1st RFP
000600

Exhibit 4, Page 3

James D. Oswald
October 5, 1998
Page 2

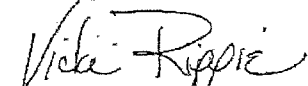
office equipment, media time buys, etc.), but that does not mean that they have not been received, according to WAC 390-05-215, for reporting and limit purposes prior to being fully utilized.

You stated during our telephone conversation that the union is not a lobbyist employer. Therefore, this in-kind contribution is reportable by the union on a C-7 report if the union's aggregate contributions exceed \$11,500. Please see the enclosed instruction sheet for more information.

In addition, the recipient political committee must report receipt of the in-kind contribution as part of its 21 day pre-general C-4 report, if it receives the contribution by October 6, 1998, or on its 7 day pre-general report, if it receives the contribution between October 7 and October 12, 1998.

This response does not constitute formal advice of the Public Disclosure Commission. The Commission is next scheduled to meet on October 27, 1998, and a copy of this correspondence will be furnished to the members prior to that meeting. If the Commission disagrees with any of the statements contained in this letter or wishes to provide you with further clarification, I will contact you by the end of the month.

Sincerely,



Vicki L. Rippie, Assistant Director
Public Information and Policy Development

Enclosure: C-7 report

Def Resp to 1st RFP
000601

Exhibit 4, Page 4

Lori Anderson

From: Lori Anderson
Sent: Monday, October 26, 2009 3:37 PM
To: 'Janet Tu'
Subject: RE: I-276

All candidates except those running for statewide office. Statewide candidates have a limit of \$50,000. Since the \$50,000/\$5,000 limit was put in place for statewide/all other candidates respectively, * contribution limits have been imposed that have restricted some candidates even more. All political committees, including ballot measure committees, are subject to the \$5,000 limitation.

In 1992, Initiative 134 imposed more restrictive limits on statewide and legislative candidates. The legislature has since extended those limits to judicial candidates and county office and port commissioner candidates where there are more than 200,000 registered voters in the county or port district. A few cities have imposed and are enforcing their own limits.

*A bona fide party state committee is not subject to this limitation.

Lori Anderson
Staff - WA St Public Disclosure Commission
(360) 664-2737 - phone
1-877-601-2828 toll free in WA State
(360) 753-1112 - fax

From: Janet Tu [mailto:jt@seattletimes.com]
Sent: Monday, October 26, 2009 3:31 PM
To: Lori Anderson
Subject: RE: I-276

Thank you. And the \$5,000 limit applies both to candidates' campaigns and ballot measures, correct?

Janet Tu, Staff Reporter
The Seattle Times
P.O. Box 70, Seattle, WA 98111
tel: 206-464-2272 | mobile: 206-463-5900
jt@seattletimes.com
www.seattletimes.com

From: Lori Anderson [mailto:landerson@pdc.wa.gov]
Sent: Monday, October 26, 2009 3:18 PM
To: Janet Tu
Subject: RE: I-276

Staff recollection is that the threshold changed from \$5 to \$15 and then \$25, but no one knows the dates. We would need to do a legislative history search in order to figure out the dates and that would likely take a day or so.

Def Resp to 1st RFP & ROGs
003652

Exhibit 4, Page 5

I suspect the \$5,000 limit was to level the playing field in the last three weeks before the election.

Lori Anderson
Staff - WA St Public Disclosure Commission
(360) 664-2737 - phone
1-877-601-2828 toll free in WA State
(360) 753-1112 - fax

From: Janet Tu [mailto:jtu@seattletimes.com]
Sent: Monday, October 26, 2009 2:53 PM
To: Lori Anderson
Subject: RE: I-276

Thanks, Lori.

Do you happen to know why (and when) the reporting threshold was changed from \$5 to \$25?

Are there any specific explanations on the \$5,000 limit during the last 21 days of the election?

Thanks,
Janet

Janet Tu | Staff Reporter
The Seattle Times
P.O. Box 70, Seattle, WA 98111
tel. 206 464-2272 | recorder: 206 428-5000
jtu@seattletimes.com
www.seattletimes.com

From: Lori Anderson [mailto:landerson@pdc.wa.gov]
Sent: Monday, October 26, 2009 2:23 PM
To: Janet Tu
Subject: I-276

The original threshold for not reporting the contributor's name & address was \$5. (Section 6) Section 1 contains all of the explanatory statements.

Lori Anderson
Staff - WA St Public Disclosure Commission
(360) 664-2737 - phone
1-877-601-2828 toll free in WA State
(360) 753-1112 - fax

Lori Anderson

From: Allan Brettman [allanbrettman@news.oregonian.com]
Sent: Friday, October 23, 2009 3:57 PM
To: Lori Anderson
Subject: RE: Vancouver mayor's race

Donald Powell, a \$150 contributor to Pollard's campaign as of 9/11/09, is listed as an executive with Portland General Electric. He never worked there. I called him today. He said his occupation involves politics, Democratic side only. Said he was busy and we didn't have time to chat long.

>>> "Lori Anderson" <landerson@pdc.wa.gov> 10/23/2009 3:44 PM >>>
The campaign needs to be in substantial compliance. What is incorrect?

Lori Anderson
Staff - WA St Public Disclosure Commission
(360) 664-2737 - phone
1-877-601-2828 toll free in WA State
(360) 753-1112 - fax

-----Original Message-----

From: Allan Brettman [mailto:allanbrettman@news.oregonian.com]
Sent: Friday, October 23, 2009 3:31 PM
To: Lori Anderson
Subject: Re: Vancouver mayor's race

Thanks.

Is it a big deal, little deal, or no deal at all if the campaign lists incorrect information about a contributor's (\$100 and up) occupation and employer?

Allan Brettman
Staff Writer
The Oregonian
allanbrettman@news.oregonian.com
503-294-5900 (o)
503-913-4188 (m)
877-477-7083 (fax)

>>> "Lori Anderson" <landerson@pdc.wa.gov> 10/23/2009 2:33 PM >>>
No complaints have been filed in the Vancouver mayor's race, Al. The attached spreadsheet shows how much mayoral candidates from around the state have raised and spent so far. \$0 means that the candidate chose the reporting option where they don't file reports and are limited to raising and spending \$5,000. Highlight = incumbent mayor.

Lori Anderson
Staff - WA St Public Disclosure Commission

(360) 664-2737 - phone

1-877-601-2828 toll free in WA State

(360) 753-1112 - fax

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Exhibit 5

Exhibit 5
(No. 3:09-cv-05662-RBL)

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



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX: (360) 753-1112

TO: Members, Public Disclosure Commission

FROM: Vicki L. Rippie, Assistant Director
Public Information and Policy Development

DATE: March 18, 1996

SUBJECT: Interpretation of RCW 42.17.105(8) Regarding the End Date of the Provision Restricting Contributions Within 21 Days of a General Election

RCW 42.17.105(8) was enacted in 1985. It created a period within 21 days of a general election when candidates for statewide office could not accept more than \$50,000 from one source and candidates for other offices and all political committees could not accept more than \$5,000 from any one source.

RCW 42.17.105(8) says:

"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." (Emphasis added)

Since its enactment, this provision has been interpreted as beginning at 12:01 a.m. on the third Tuesday before a general election. This "begin" date corresponds with the due date of the 21-Day Pre-General C-4 report as well as the onset of the period when notice of contributions of over \$500 have to be telephoned or faxed in to the PDC office.

Not too long ago, staff discovered in the files the attached interpretation adopted on April 28, 1992, that says that the 21-day period ends at 11:59 p.m. on election day. This part of the interpretation was never implemented. Staff continued to advise filers in the instruction manuals and other hand-outs that the period terminated at the end of Monday, the day before the election. Most assuredly, this failure to implement the new interpretation was not intentional. It occurred at a time when staff was emersed in analyzing the effects of pending legislation, including Initiative 134.

Since none of the current members of the Commission were on the board when this interpretation was adopted, and implementing the 1992 interpretation would mean we'd be changing the advice given to filers, we thought it best to bring this issue back to you for further consideration.

- over -

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)

Def Resp to 1st RFP
000697

Exhibit 5, Page 2

Supporters of including election day in the restricted period might argue that, especially regarding ballot issues, the interpretation issued in 1992 would prevent political committees and candidates (who are not subject to overall limits) from receiving large sums of money on election day to do last-minute polling for get-out-the-vote campaigns and possibly to buy additional broadcast advertising.



It should also be noted, however, that including election day in the period (as written in the 1992 interpretation) means that the 21 day provision actually runs 22 days. Further, unless a candidate or committee is able to charge the cost of services rendered by a polling firm, broadcaster or other vendor, the candidate or committee would have to solicit the over-\$5,000 contribution, get it in hand, and take it to the service provider, all early enough on election day for the funds to have an impact.

I certainly regret that the Commission's initial decision was not implemented properly. (In case you're wondering, I know of no other circumstance -- before or since April of 1992 -- where this has occurred.)

Attachment: Interpretation No. 105-92-1



October 1996

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15 Start Date of 21 Day Prov.	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 1996

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 Historical End Date	5 End Date by Interpretation	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Def Resp to 1st RFP
000698



INTERPRETATION

DATE:	NUMBER: 105-92-1
CANCELLED:	APPROVED: 4/28/92
SEE ALSO:	

WITHIN 21 DAYS OF A GENERAL ELECTION, DEFINITION

"Within 21 days of a general election" as that phrase is used in RCW 42.17.105(8) means the period beginning at 12:01 a.m. PST on the third Tuesday before the general election held in November and ending at 11:59 p.m. PST on the day of the election.

Def Resp to 1st RFP
000699

Exhibit 5, Page 4

Regular Commission Meeting Minutes
for March 26, 1996
Page 5 of 21

Commissioner Brazier believes that a chief executive should not solicit the employees of any board or commission. Others felt the proposed interpretation of 'agency' was too broad.

Voting in favor: Commissioner Marchisio
Voting against: Commissioners Whiteside, Brazier, Maehara,
and Cotherr

Motion fails.

RCW 42.17.105(8)

Ms. Rippie discussed the interpretation of RCW 42.17.105(8), which prohibits a person from making or a candidate or political committee from accepting from any one person contributions exceeding \$5,000 within 21 days of a general election. Staff has been advising filers that the period terminated at the end of Monday, the day before the election. However, an interpretation adopted by the Commission in 1992 was recently discovered and it says the 21-day period ends at 11:59 p.m. on Tuesday, election day. The staff's failure to implement the 1992 interpretation was inadvertent. Since none of the current members of the Commission were on the board when this interpretation was adopted, and since implementing the 1992 interpretation would mean changing advice given to filers, staff thought it best to bring the issue back to the Commission for further consideration.

MOTION 96-145

Moved by Commissioner Brazier, seconded by Commissioner Cotherr:

The Commission repeal the 1992 interpretation of RCW 42.17.105(8) and adopt an interpretation that reads: 'Within 21 days of a general election' as that phrase is used in RCW 42.17.105(8) means the period beginning at 12:01 a.m. PST on the third Tuesday before the general election held in November and ending at 11:59 p.m. PST on the day before the election.

The motion received unanimous approval.

Regular Commission Meeting Minutes
for March 26, 1996
Page 5 of 21

Commissioner Brazier believes that a chief executive should not solicit the employees of any board or commission. Others felt the proposed interpretation of 'agency' was too broad.

Voting in favor: Commissioner Marchisio
Voting against: Commissioners Whiteside, Brazier, Maehara,
and Cothorn

Motion fails.

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The motion received unanimous approval.

Def Resp to 1st RFP
000763

Exhibit 5, Page 6

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The Honorable RONALD B. LEIGHTON

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

FAMILY PAC,

Plaintiff,

v.

ROB MCKENNA, in his official capacity
as Attorney General of Washington, and
JIM CLEMENTS, DAVE SEABROOK,
JANE NOLAND, JENNIFER JOLY and
BARRY SEHLIN, members of the Public
Disclosure Commission, in their official
capacities,

Defendants.

NO. C09-5662 RBL

DECLARATION OF
MICHAEL T. SMITH (#2)

I, Michael T. Smith, declare as follows:

1. I am over the age of 18 and competent to testify on the matters contained in this declaration.

2. I was appointed the first Chief Technology Officer for the Washington State Public Disclosure Commission (PDC) in March of 2000 and continue to serve the PDC in that capacity. Prior to joining the PDC, I worked for the Washington State Health Care Authority, the Department of Health, the Department of Ecology and the Office of the Superintendent of Public Instruction. I have also served as a management consultant for a private firm in Olympia, providing technology consulting services to the Office of Financial Management, the

DECLARATION OF
MICHAEL T. SMITH (#2)
NO. C09-5662 RBL

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 Department of Social and Health Services and the Governor's Office. In total, I have worked
2 in the technology field for 18 years.

3 3. I understand a copy of a declaration I filed in another federal court case, *Human*
4 *Life of Washington v. Brumsickle* (U.S. District Court Case No. 08-0590), was provided to this
5 court as part of the State's response to the motion for temporary restraining order and
6 preliminary injunction. This declaration supplements and updates that information.

7 4. As the PDC's Chief Technology Officer, I supervise the information technology
8 (IT) unit that provides data entry into and maintains the agency's website and database, which
9 is located at www.pdc.wa.gov. Providing campaign, lobbyist and other information to the
10 public as directed in Chapter 42.17 RCW is key to the PDC's mission. With respect to this, the
11 PDC's mission statement states in pertinent part that the PDC was created and empowered by
12 Initiative of the People to "provide timely and meaningful public access to accurate
13 information about the financing of political campaigns, lobbyist expenditures and the financial
14 affairs of public officials and candidates." Our vision statement describes that "We build
15 confidence in the political process and government." Given today's technology-driven and
16 information-driven culture, the work of the IT division is a critical part of achieving the
17 agency's mission and vision.

18 5. The PDC's website and database and our state's campaign finance and lobbying
19 disclosure laws have resulted in national public recognition by several organizations, which I
20 understand is detailed in Interim Executive Director Doug Ellis's declaration. In addition to
21 those recognitions and awards, the PDC's website was also nominated in 2004 for the "Best
22 Government and Law Website" by "The Webby Awards." The Webby Awards are determined
23 by the International Academy of Digital Arts & Sciences.

24 6. The PDC website provides information on the agency, Commission meetings,
25 state disclosure laws and Commission rules, enforcement cases, stakeholder meetings, filer
26 resource information, sample forms, manuals and brochures, a training video for filers, training

1 schedules for filers, news releases, historical reports and Fact Books, a lobbyist directory,
2 lobbyist expenditure reports, links to other websites (such as the Secretary of State, the Federal
3 Election Commission, voter registration sites, and others), and instructions on how to search
4 the database, among other information. A copy of the current home page of the PDC website
5 is attached as Exhibit A.

6 7. One of the agency's long-standing objectives is to increase compliance with the
7 laws and rules, without enforcement actions, and to emphasize prevention over enforcement.
8 One way to do this is to provide information on the website, for the public and the media.
9 Another way to do this is to provide customer service to persons who have questions about the
10 data, or about filing. These are tasks that the IT unit works on every day.

11 8. The website also provides a searchable database of campaign finance
12 information. A copy of the current page with links to the database is attached as Exhibit B.
13 The data is extracted from reports filed with the PDC, and placed into the database. The
14 searchable database contains information on state office candidates, state ballot campaigns, all
15 electronically filing campaigns, and certain local campaigns. A person can also search lists of
16 candidates registered by election year, lists of political committees registered by election year,
17 contribution and expenditure totals, detailed contributions, detailed expenditures, debt, surplus
18 funds, and independent expenditures (for and against). A person can search by contributor
19 name, city, state, zip code, and occupation or employer. A person can also view images of
20 actual reports filed with the PDC. The online data is available back to 2000, when the current
21 query system on the website was established. Attached at Exhibit C is a General Summary
22 Report that I printed on June 14, 2010 showing the number of pages that were viewed through
23 that date. A summary of pages viewed in chart format through June 14, 2010 is attached as
24 Exhibit D. The total number of pages viewed is 6,502,434. The total number of visitors to the
25 website as of June 14 was 1,128,050. The current total number of visitors per month is
26

DECLARATION OF
MICHAEL T. SMITH (#2)
NO. C09-5662 RBL

3

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 approximately 13,412, and approximately more than 708 visitors per day. Monthly pages
2 viewed typically peak in the fall, near the election dates.

3 9. As described in our fiscal year 2009 *Annual Report* (July 1, 2008 – June 30,
4 2009):

- 5 • Campaign and lobbying reports that were electronically filed were posted by
6 the PDC within fifteen minutes of being electronically filed (1,684 total e-
7 filers, including lobbyists).
- 8 • Campaign and lobbying reports that were submitted on paper (filed by US
9 Mail or hand delivered) were scanned and available on the Web site the same
10 day they were received in the agency's office, and often within an hour.
- 11 • In total, 97,946 reports totaling 386,981 pages filed with the PDC were
12 available on the Internet within hours of receipt. In fiscal year 2009, the PDC
13 website received 40,423 unique visitors, and 596,223 web pages were viewed.
14 (This was about half the number of pages viewed due to improvements made
15 in our website to reduce the number of pages needed to find the specific
16 sought-for data).

17 10. The PDC has an online electronic filing program called ORCA (Online
18 Reporting of Campaign Activity). This program allows candidates and campaign committees
19 to file electronically, rather than on paper. By statute, candidates and political committees
20 must file electronically, if they spend or expect to expend more than \$10,000. Other
21 campaigns not meeting the threshold are encouraged to, and often do, file electronically.
22 ORCA software and training is provided at no cost by the PDC. Increasing the number of
23 candidates submitting reports to our agency using the free PDC software aids the public's
24 immediate access to campaign finance information. It also aids candidates and campaign
25 committees by making their information, and that of opposing campaigns, easily accessible to
26 them.

11. The most significant trend in PDC customer characteristics is that an increasing
number of filers and members of the public have access to ever-evolving technological
resources and they rightfully expect the PDC to utilize the latest technology to meet their

1 needs. Legislative investments (through passage of legislation and appropriations) have
2 enabled the PDC to keep pace with public and filer expectations, and since 1999, the
3 increasing expectation is that filed reports and committee filings be made available
4 electronically. For example, in June 2000, 46 persons filed their PDC reports electronically.
5 Two years later, that number had risen to 370. By March 2006, the agency served 1,954
6 electronic filers. Of the candidates seeking office in 2006, 95% of legislative candidates filed
7 their disclosure reports electronically, and 67% of the local candidates filed their disclosure
8 reports electronically. Both of these numbers are steady increases from the previous year. Of
9 the 576 political committees active in the 2006 election, 61% filed electronically, which is a
10 20% increase from the 2004 election. As of June 1, 2010, there are currently 4,933 electronic
11 filers - 463 candidates, 661 political committees, 3,129 personal financial affairs filers, 435
12 lobbyists and 245 lobbyist employers. The PDC continues to increase the number of
13 electronically filing candidates and political committees through outreach and training, both in
14 our Olympia office and at locations around the state.

15 12. The PDC's performance measures for fiscal year 2009 show that 99.3 percent of
16 candidates, lobbyists, lobbyist employers and public officials meet the statutory filing
17 deadlines. We believe the extremely high compliance rate is a combination of a culture of
18 disclosure in Washington State, plus the ease with which persons can file, particularly
19 electronically. Large committees, small committees and new committees have all filed with
20 success.

21 13. The PDC produces election "fact books" in even-numbered years that
22 summarize the contribution and expenditure data for campaigns. The data for the fact books is
23 extracted by the IT staff from reports filed with the PDC.

24 14. In addition, the IT staff continually works to provide more information and
25 more features and resources to the filers and the public. This is an ongoing task in order to
26 enable filers to file more expeditiously and to provide more timely information to the public,

1 consistent with the legislature's expectations expressed in statute that information from filers
2 be provided electronically via the PDC's website. Here are a few examples of recent and
3 expected upgrades and other activities:

- 4 • In 2006, IT staff planned, designed and launched an electronic version of
5 the C6 form to facilitate filing of timely and accurate independent
6 expenditure information so the public has prompt access to this growing
7 sector of campaign spending. This coincided with the new state
8 electioneering communications law and its mandatory electronic filing
9 component. The C6 form accommodates three kinds of reporting (that
10 required under RCW 42.17.100, RCW 42.17.103 and RCW 42.17.565) in
11 order to simplify disclosure by non-political committees. If a person,
12 other than a political committee, makes an expenditure supporting or
13 opposing a candidate or ballot measure, and that expense is not a
14 contribution, then it is reported on the C6 form.
- 15 • Electronic filing systems for lobbyists and lobbyist employers was
16 developed in 2001 and is anticipated will be updated. Online reports
17 summarizing lobbyist spending are available on the website at
18 <http://www.pdc.wa.gov/Public/Lobbyist/Default.aspx>. Mandatory
19 electronic filing for lobbyists has been the subject of a recent study
20 commissioned by the legislature and the PDC, and depending upon future
21 legislation and funding, there may be enhanced electronic reporting by
22 lobbyists and lobbyist employers in the future.
- 23 • Another feature, called "RSS" (real simple syndication), launched in 2007,
24 enables a person to obtain automatic updates of PDC information via
25 email or a RSS-enabled browser. At this time, an RSS feed is available
26 for a free subscription service to the PDC News (newsletter) and also
allows users to track individual campaigns or races.
- For the 2007 election, IT staff also compiled, developed and produced
4,750 of the Candidate Campaign Materials CDs. These are CDs that
contain campaign materials and information, and are provided free-of-
charge to candidates and campaigns. Due to the increased amount of
information available on the PDC website, there is also a reduced need
currently to produce CDs.
- A new electronic filing system for personal financial affairs statements (F1
forms) was launched on January 13, 2008 to facilitate filing of timely and
accurate F1 reports.

- 1 • A new feature on the website launched in April 2008 called the
- 2 "Gubernatorial Money Map" provides a map of Washington State
- 3 counties. A person can hover his or her computer's mouse over a county,
- 4 and see hourly updates of contributions to the gubernatorial candidates.
- 5 The information for this feature is extracted from contribution reports filed
- 6 with the PDC, including address information such as zip codes.

- 7 • An updated and enhanced query system is being developed for the
- 8 website, and we expect to launch it in June 2010. This will replace the
- 9 system designed in 2008 and facilitate even faster searches on our website,
- 10 with updated technologies and designs found on most modern websites.

- 11 • A new feature launched in 2010 allows campaigns to electronically file
- 12 their candidate or committee registrations forms (C1 or C1pc).

- 13 • Another new feature launched in 2010 was an online database of
- 14 enforcement cases, which allows persons to search by section of law,
- 15 among other search factors.

- 16 • The Commission now streams all meetings over the Internet allowing
- 17 persons who may not be able to attend in person to participate in the
- 18 process.

19 15. In addition, the IT unit's tasks include systematically upgrading programs to
20 make them as error retardant and user friendly as possible.

21 16. I know the media use our data to provide information and analysis to voters and
22 I have helped to respond to their requests for information concerning our data. The National
23 Institute on Money in State Politics uses our information and makes frequent requests for
24 copies of our data.

25 I declare under penalty of perjury under the laws of the state of Washington that the
26 foregoing is true and correct and of my own knowledge.

DATED and SIGNED this ____ day of June, 2010 at Olympia, Washington.

MICHAEL T. SMITH

Exhibit A

[Sitemap](#) [Contact Us](#) [Comments](#)

Building Confidence in the Political Process
PDC Public Disclosure Commission

[HOME](#) | [PUBLIC RESOURCES](#) | [FILER RESOURCES](#) | [SEARCH THE DATABASE](#) | [VIEW ACTUAL REPORTS](#)
[ABOUT US](#) | [COMMISSION MEETINGS](#) | [HISTORICAL DATA](#) | [LAWS & RULES](#) | [ENFORCEMENT & COMPLIANCE](#) | [STAKEHOLDER MEETINGS](#) | [LINKS](#) | [ACCOUNTABILITY](#)

PDC News BOOKMARK]

May 27, 2010
 The Commission approved language for an interpretation regarding Public Service Announcements by State Elected Officials & Municipal ...
[Read More](#)

[Past PDC News](#)

[Media Releases](#)

Manuals & Brochures

Get it here
 Click for more details...

WASHINGTON STATE
 PUBLIC DISCLOSURE COMMISSION
IN NATIONAL SURVEY



Grading State Disclosure
 2008



About this Web Site

The Washington State Public Disclosure Commission (PDC) Website is divided into five (5) sections.

PDC Home

Find information on Commission meeting agendas, minutes, enforcement activity, laws, rules, rulemaking and stakeholder meetings.

Public Resources

Look-up information on the financing of political campaigns and lobbyist expenditures.

Filer Resources

Browse for information about filing requirements, access forms, manuals, brochures, electronic filing options, and training schedules.

Search the Database

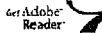
Access the most recent campaign finance data.

View Actual Reports

Find actual reports filed with the Public Disclosure Commission.

Training Videos

Adobe Reader® is required to view PDF files. Click the image to go to Adobe's web site.



How to Search for Campaign Finance Information

Click the [Search the Database](#) tab located above to display a list of registered candidates, political committees and their campaign contributions and expenditures.

How to Search for Reports Filed with the Commission

To view images of reports filed by political committees, lobbyists, lobbyist employers and other candidates that have a Public Disclosure Commission filing requirement, click the [View Actual Reports](#) tab above.

For information on making your search more precise or getting useful results, please read our tips on [detailed search instructions](#).

Requests for PDC Public Records

Can't find what you're looking for on the web site?

Click [instructions](#) for requesting manuals, brochures, reports, forms or any other Public Disclosure Commission public record not found on this website.

Filer Resource Quick Links

- [L2 & L3 Lobbyist/Lobbyist Employer Login](#)
- [C6 Advertising Login](#)
- [F1 Personal Financial Affairs Login](#)
- [Electronic C1/C1PC Registration](#)

[HOME](#) / [PRIVACY NOTICE](#) / [EMPLOYMENT](#) / [SITE MAP](#)
 PUBLIC DISCLOSURE COMMISSION / 711 CAPITOL WAY #206 / PO BOX 40908 / OLYMPIA, WA 98504-0908
 TOLL FREE - 1-877-601-2828 / PHONE 360-753-1111 / FAX (360)753-1112 / EMAIL pd@pdc.wa.gov
 OFFICE HOURS: 8:00AM - 5:00PM Monday - Friday - Closed Weekends & State Holidays.

Access Washington

Exhibit B

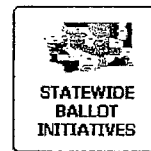
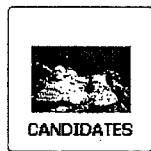


[Sitemap](#) [Contact Us](#) [Comments](#)

PDC Website Search

- [HOME](#)
 - [PUBLIC RESOURCES](#)
 - [FILER RESOURCES](#)
 - [SEARCH THE DATABASE](#)
 - [VIEW ACTUAL REPORTS](#)
- [CANDIDATES](#)
 [POLITICAL COMMITTEES](#)
 [STATEWIDE BALLOT INITIATIVES](#)
 [PARTY COMMITTEES](#)
 [CAUCUS COMMITTEES](#)
 [ADVANCED SEARCH](#)

SEARCH THE DATABASE



Welcome to the Public Disclosure Commission's Search the Database website. From here, you have access to most of the reports filed with the Public Disclosure Commission since 1996. The reports are categorized by who filed them - simply click one of the buttons above to find what records are available in that category.

Terms used in the reports are defined in the glossary and the help file explains how to search for reports and navigate through the results. The glossary and [help file](#) will be available from other webpages - look for these icons:

[HOME](#) / [PRIVACY NOTICE](#) / [EMPLOYMENT](#) / [SITE MAP](#)

PUBLIC DISCLOSURE COMMISSION / 711 CAPITOL WAY #206 / PO BOX 40908 / OLYMPIA, WA 98504-0908

TOLL FREE - 1-877-601-2828 / PHONE 360-753-1111 / FAX (360)753-1112 / EMAIL pdcc@pdcc.wa.gov

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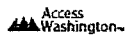


Exhibit B
Page 1 of 1

EXHIBIT **B**

Exhibit C


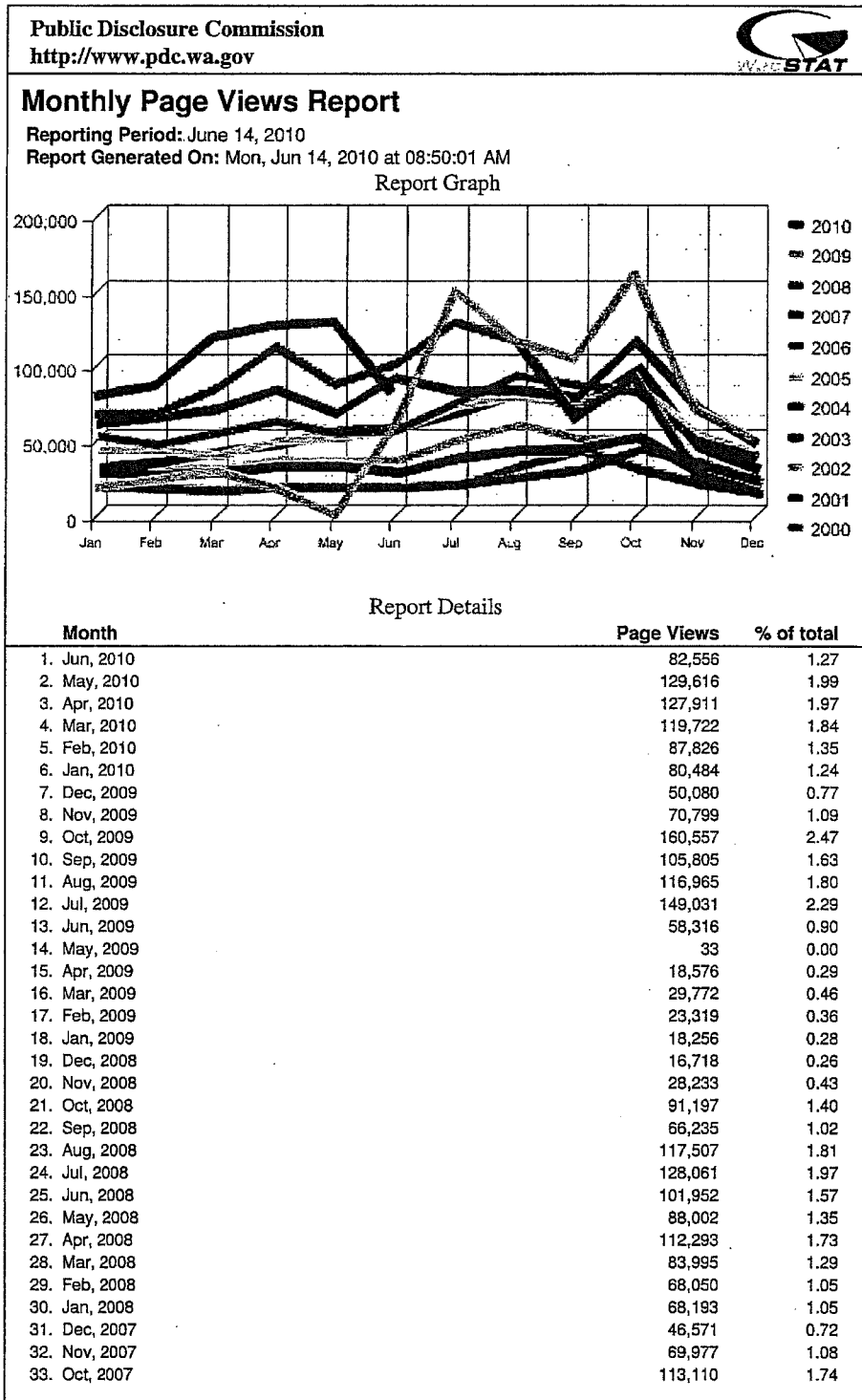
Public Disclosure Commission http://www.pdc.wa.gov					
General Summary Report					
Report Generated On: Mon, Jun 14, 2010 at 08:55:00 AM					
Summary					
Time Period	Page Views	New Visitors	Return Visitors	Total Visitors	
Today	925	68	77	145	
Yesterday	3,491	207	176	383	
Last Seven Days	47,370	2,949	2,704	5,653	
This Month's Daily Avgs	5,898.29	372.43	336.43	708.86	
This Month's Totals	82,576	5,214	4,710	9,924	
Last Month's Totals	129,616	9,398	7,612	17,010	
Site History					
First Page View	Sat, Jul 1, 2000 at 02:53:08 pm				
Last Page View	Mon, Jun 14, 2010 at 08:54:27 am				
Total Page Views To Date	6,502,454				
Total Visitors To Date	1,128,065				
Date of Highest Page Views	11,182 (Mon, Jul 28, 2008)				

Exhibit D



34. Sep, 2007	77,587	1.19
35. Aug, 2007	82,432	1.27
36. Jul, 2007	81,676	1.26
37. Jun, 2007	89,388	1.37
38. May, 2007	67,416	1.04
39. Apr, 2007	82,558	1.27
40. Mar, 2007	69,895	1.07
41. Feb, 2007	63,853	0.98
42. Jan, 2007	60,359	0.93
43. Dec, 2006	37,783	0.58
44. Nov, 2006	48,712	0.75
45. Oct, 2006	80,338	1.24
46. Sep, 2006	85,763	1.32
47. Aug, 2006	90,374	1.39
48. Jul, 2006	73,351	1.13
49. Jun, 2006	55,358	0.85
50. May, 2006	53,251	0.82
51. Apr, 2006	61,131	0.94
52. Mar, 2006	53,203	0.82
53. Feb, 2006	45,446	0.70
54. Jan, 2006	51,590	0.79
55. Dec, 2005	39,190	0.60
56. Nov, 2005	52,184	0.80
57. Oct, 2005	82,612	1.27
58. Sep, 2005	72,790	1.12
59. Aug, 2005	77,882	1.20
60. Jul, 2005	71,540	1.10
61. Jun, 2005	55,644	0.86
62. May, 2005	49,654	0.76
63. Apr, 2005	48,768	0.75
64. Mar, 2005	37,511	0.58
65. Feb, 2005	42,217	0.65
66. Jan, 2005	41,848	0.64
67. Dec, 2004	27,397	0.42
68. Nov, 2004	43,672	0.67
69. Oct, 2004	94,062	1.45
70. Sep, 2004	69,679	1.07
71. Aug, 2004	79,063	1.22
72. Jul, 2004	66,087	1.02
73. Jun, 2004	55,626	0.86
74. May, 2004	53,664	0.83
75. Apr, 2004	44,728	0.69
76. Mar, 2004	39,735	0.61
77. Feb, 2004	32,517	0.50
78. Jan, 2004	28,782	0.44
79. Dec, 2003	21,099	0.32
80. Nov, 2003	26,036	0.40
81. Oct, 2003	49,149	0.76
82. Sep, 2003	41,250	0.63
83. Aug, 2003	40,300	0.62
84. Jul, 2003	35,408	0.54
85. Jun, 2003	25,663	0.39
86. May, 2003	29,558	0.45
87. Apr, 2003	29,114	0.45
88. Mar, 2003	25,727	0.40
89. Feb, 2003	23,476	0.36
90. Jan, 2003	25,584	0.39
91. Dec, 2002	16,211	0.25
92. Nov, 2002	24,119	0.37
93. Oct, 2002	47,759	0.73
94. Sep, 2002	47,047	0.72
95. Aug, 2002	57,173	0.88

96. Jul, 2002	47,039	0.72
97. Jun, 2002	33,814	0.52
98. May, 2002	32,736	0.50
99. Apr, 2002	33,190	0.51
100. Mar, 2002	27,537	0.42
101. Feb, 2002	27,381	0.42
102. Jan, 2002	25,132	0.39
103. Dec, 2001	17,149	0.26
104. Nov, 2001	29,268	0.45
105. Oct, 2001	39,084	0.60
106. Sep, 2001	25,385	0.39
107. Aug, 2001	20,947	0.32
108. Jul, 2001	16,134	0.25
109. Jun, 2001	13,405	0.21
110. May, 2001	13,713	0.21
111. Apr, 2001	13,593	0.21
112. Mar, 2001	11,854	0.18
113. Feb, 2001	12,710	0.20
114. Jan, 2001	14,188	0.22
115. Dec, 2000	9,738	0.15
116. Nov, 2000	15,759	0.24
117. Oct, 2000	26,061	0.40
118. Sep, 2000	38,683	0.59
119. Aug, 2000	28,993	0.45
120. Jul, 2000	16,234	0.25
Total: »		6,502,434 100.00%

- 1 • A new feature on the website launched in April 2008 called the
2 "Gubernatorial Money Map" provides a map of Washington State
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- 16 • The Commission now streams all meetings over the Internet allowing
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21 16. I know the media use our data to provide information and analysis to voters and
22 I have helped to respond to their requests for information concerning our data. The National
23 Institute on Money in State Politics uses our information and makes frequent requests for
24 copies of our data.

25 I declare under penalty of perjury under the laws of the state of Washington that the
26 foregoing is true and correct and of my own knowledge.

DATED and SIGNED this 16th day of June, 2010 at Olympia, Washington.


MICHAEL T. SMITH

Activity in Case 3:09-cv-05662-RBL Family Pac v. Reed et al Motion He...

Subject: Activity in Case 3:09-cv-05662-RBL Family Pac v. Reed et al Motion Hearing
From: ECF@wawd.uscourts.gov
Date: Wed, 1 Sep 2010 11:26:03 -0700
To: ECF@wawd.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

United States District Court for the Western District of Washington

Notice of Electronic Filing

The following transaction was entered on 9/1/2010 at 11:26 AM PDT and filed on 9/1/2010

Case Name: Family Pac v. Reed et al

Case Number: 3:09-cv-05662-RBL

Filer:

Document Number: 86(No document attached)

Docket Text:

MINUTE ENTRY for proceedings held before Judge Ronald B. Leighton- Dep Clerk: *Jean Boring*; Pla Counsel: *Joe LaRue*; Def Counsel: *Nancy Krier / Linda Dalton*; CR: *Teri Hendrix*; Motion Hearing held on 9/1/2010: ORAL ARGUMENT conducted on [66] MOTION for Summary Judgment filed by Family Pac. For the reasons orally stated on the record, Plaintiff's Motion for Summary Judgment is DENIED in part and GRANTED in part. (JAB)

3:09-cv-05662-RBL Notice has been electronically mailed to:

David J. Burman dburman@perkinscoie.com, docketsea@perkinscoie.com, jmccluskey@perkinscoie.com

Gordon W. Sivley gsivley@co.snohomish.wa.us, cpeterson@co.snohomish.wa.us

Linda Anne Dalton lindad@atg.wa.gov, gceef@atg.wa.gov, nerissar@atg.wa.gov

Nancy J Krier nkrier@pdc.wa.gov, pdc@pdc.wa.gov

Kevin J Hamilton KHAMILTON@PERKINSCOIE.COM, CANDERSON@PERKINSCOIE.COM, docketsea@perkinscoie.com

Nicholas Peter Gellert NGellert@perkinscoie.com, Rkelly@perkinscoie.com, docketsea@perkinscoie.com

James Bopp, Jr jboppjr@aol.com

Activity in Case 3:09-cv-05662-RBL Family Pac v. Reed et al Motion He...

William B. Stafford WStafford@perkinscoie.com, CAnderson@perkinscoie.com,
DBurman@perkinscoie.com, JMcCluskey@perkinscoie.com, KHamilton@perkinscoie.com,
NGellert@perkinscoie.com, RKelly@perkinscoie.com

Scott F Bieniek sbieniek@bopplaw.com

Randy Elf relf@bopplaw.com

Barry Bostrom bbostrom@bopplaw.com

Zachary Kester zkester@bopplaw.com

Joseph E La Rue jlarue@bopplaw.com

3:09-cv-05662-RBL Notice will not be electronically mailed to:

AO 450 (Rev. 5/85) (Mod. 10/93) Judgment in a Civil Case o

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

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The Honorable RONALD B. LEIGHTON

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

FAMILY PAC,

Plaintiff,

v.

ROB MCKENNA, in his official capacity
as Attorney General of Washington, and
JIM CLEMENTS, DAVE SEABROOK,
JANE NOLAND, JENNIFER JOLY and
BARRY SEHLIN, members of the Public
Disclosure Commission, in their official
capacities,

Defendants.

NO. C09-5662 RBL

NOTICE OF APPEAL

TO: CLERK OF THE ABOVE ENTITLED COURT

AND TO: ALL PARTIES OF RECORD

Notice is hereby given, pursuant to Fed. R. App. P. 3 and Ninth Circuit Rule 3-1, that
Washington State Attorney General ROB MCKENNA, in his official capacity as Attorney
General of Washington, and JIM CLEMENTS, DAVE SEABROOK, JANE NOLAND,
JENNIFER JOLY and BARRY SEHLIN, members of the Public Disclosure Commission, in
their official capacities, Defendants in the above-named case, appeal that portion of the

NOTICE OF APPEAL
NO. C09-5662 RBL

1

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 Judgment (Dkt. #87) filed on September 1, 2010 that found RCW 42.17.105(8) to be
2 unconstitutional. The Defendants' Representation Statement is attached to this Notice, as
3 required by Ninth Circuit Rule 3-2.
4

5 DATED this 16th day of September, 2010.

6 ROBERT M. MCKENNA
7 Attorney General

8 s/ Linda A. Dalton
9 LINDA A. DALTON, WSBA #15467
10 Senior Assistant Attorney General
11 NANCY J. KRIER, WSBA #16558
12 General Counsel for the Public Disclosure
13 Commission and Special Assistant
14 Attorney General
15 Attorneys for Defendants
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SEP 27 2010

GOVERNMENT COMPLIANCE
& ENFORCEMENT

9th Circuit Case Number(s) 10-35832

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)