

Executive Summary and Staff Analysis
Washington Education Association Political Action Committee and
Working Together for the 17th PAC
PDC Case No. 15-043

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 15-043, a 45-day citizen action complaint (Citizen Action Complaint) filed on November 10, 2014, by James Abernathy of The Freedom Foundation against the Washington Education Association Political Action Committee (WEA-PAC) and Working Together for the 17th PAC (WT 17 PAC).

Background

The Citizen Action Complaint was filed with the Washington Attorney General's Office and the Clark County Prosecuting Attorney's Office, and referred to the PDC for investigation and possible action on November 25, 2014. On December 31, 2014, the complainant filed a final 10-day notice under RCW 42.17A.765(4) stating that he will commence an action in Superior Court if the state has not acted by the expiration of the 10-day period, which is January 10, 2015.

Allegations

The complaint alleged that WEA-PAC and Working Together for the 17th PAC each violated the state's false political advertising law (RCW 42.17A.335) by sponsoring political advertising and electioneering communications in the form of a television commercial, flyers, and website content that contained false statements about the Freedom Foundation and Lynda Wilson, a candidate for State Representative in the 17th Legislative District in 2014. The statements at issue concerned the Freedom Foundation's alleged "support" for and "connection" to Ms. Wilson.

Investigative Findings

WEA-PAC is a political committee formed by The Washington Education Association that reports to the Public Disclosure Commission (PDC). Working Together for the 17th PAC registered with the PDC in July 2014, and in September stated it would be a single year election committee supporting Monica Stonier, an incumbent State Representative in the 17th Legislative District seeking re-election in 2014. WEA-PAC also supported Representative Stonier's re-election campaign. Rep. Stonier's opponent was Lynda Wilson. The Freedom Foundation is a not-for-profit organization in the State of Washington. The Freedom Foundation states that as a not-for-profit organization, it does not endorse or campaign on behalf of individual candidates for political office.

Evidence and PDC Analysis

PDC staff reviewed the statements in communications sponsored by WEA-PAC and WT 17 PAC to determine whether they violated the law. The statements included the following:

“Lynda Wilson (R) is a member of the extreme Freedom Foundation, which supports providing more wasteful tax loopholes for profitable Wall Street banks and other big corporations. They stand up for big corporations at the expense of working families.”

“Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.”

“Lynda Wilson’s connection to the Freedom Foundation is documented by the Public Disclosure Commission and electlyndawilson.com.”

“Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation[.]”

For statements to violate RCW 42.17A.335, as alleged, they must be a false statement of endorsement of a candidate or a false statement of material fact about a candidate, must constitute libel or defamation per se, be sponsored with actual malice (which means to act with knowledge of falsity or with reckless disregard as to truth or falsity), and be proven by clear and convincing evidence.¹

WEA-PAC and Working Together for the 17th PAC provided the following information as the basis for the statements included in their political advertising and electioneering communications:

- Tom McCabe and Scott Roberts, respectively the Freedom Foundation’s CEO and Citizen Action Network Director, acting in their official capacity as agents of the Freedom Foundation, appeared at Ms. Wilson’s place of business during the 2014 campaign and made statements in support of Ms. Wilson’s candidacy in a YouTube video.
- Ms. Wilson included a picture on her 2014 campaign Web site of her signing the Freedom Foundation’s “Pledge,” in which candidates agreed not to accept campaign contributions from labor unions if the source of the funds was member dues. The Web posting also provided information concerning a recent Freedom Foundation study relating to the issue of labor unions and member dues being used to make political contributions.
- The photograph of Ms. Wilson signing the Freedom Foundation pledge was also featured on the “front/landing page” of the Freedom Foundation’s Web site with a hyperlink to a page with a larger image of Ms. Wilson signing the pledge.

¹ The complete text of the relevant statutes is included at the end of this summary.

- A Freedom Foundation podcast featuring Ms. Wilson as a guest was broadcast in June of 2014, in which Jamie Lund, Freedom Foundation Senior Policy Analyst, discussed the Freedom Foundation pledge with Ms. Wilson. During the Podcast Mr. Lund spoke favorably about Ms. Wilson as the first candidate to sign the pledge.
- Tom McCabe made a \$125 monetary contribution to the 2014 Lynda Wilson campaign.
- Ms. Wilson is a member of the Freedom Foundation, and described her affiliation in the 2014 Primary Election Voters Guide under “community service.” Ms. Wilson’s spouse Tracy Wilson is a trustee of the Freedom Foundation.

Conclusion

Staff found no evidence that WEA-PAC and Working Together for the 17th PAC ever stated that the Freedom Foundation formally endorsed Ms. Wilson, only that it supported her. WEA-PAC and Working Together for the 17th PAC made statements about Ms. Wilson’s connection to and relationship with the Freedom Foundation, but no evidence was found that the communications contained any false statements of material fact about Ms. Wilson.

For these reasons, staff concludes there is insufficient evidence to establish a violation by either committee of RCW 42.17A.335(1)(a) (false statements of material fact about a candidate) or RCW 42.17A.335(1)(c) (false claims of support or endorsement).

Recommendation

PDC staff recommends that the Commission: (1) enter an order dismissing the allegations contained in the Citizen Action Complaint that WEA-PAC and Working Together for the 17th PAC violated RCW 42.17A.335(1)(a) and RCW 42.17A.335(1)(c); and (2) recommend to the Attorney General that no further action be taken on the Citizen Action Complaint.

Applicable Statutes, Rules, and Interpretations

RCW 42.17A.335 States, in part, the following: “(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office; (b) ...

(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, "libel or defamation per se" means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

(3) It is not a violation of this section for a candidate or his or her agent to make statements described in subsection (1)(a) or (b) of this section about the candidate himself or herself because a person cannot defame himself or herself. It is not a violation of this section for a person or organization referenced in subsection (1)(c) of this section to make a statement about that person or organization because such persons and organizations cannot defame themselves.”

(4) Any violation of this section shall be proven by clear and convincing evidence. If a violation is proven, damages are presumed and do not need to be proven.

RCW 42.17A.005(1) states that "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17 and RCW 42.17A

WEA-PAC & Working Together for
the 17th PAC

Respondent.

PDC Case No. 15-043

Report of Investigation

I.

Background

- 1.1 The Washington Education Association has had a political committee registered with the Public Disclosure Commission (PDC) under several names dating back to the 1970's, and has been filing committee reports under the name Washington Education Association PAC since 1996. Washington Education Association PAC (WEA-PAC) filed an amended Committee Registration (C-1pc) on October 6, 2014, disclosing the name of the new committee treasurer.
- 1.2 On July 15, 2014, Working Together for the 17th PAC (WT 17 PAC) filed a C-1pc registering with the PDC as a "new" political committee, and listing Jay Petterson as the committee treasurer. Working Together for the 17th PAC filed an amended C-1pc report on September 10, 2014, disclosing that New Direction PAC was its "Parent Committee" and listing Adam Glickman, from the Service Employees International Union, as a director. The amended C-1pc indicated WT 17 PAC would be a single year election committee supporting Monica Stonier, an incumbent State Representative in the 17th Legislative District and a candidate seeking re-election to that office in 2014. Representative Stonier's opponent was Lynda Wilson.
- 1.3 On November 10, 2014, James Abernathy of the Freedom Foundation (FF) filed a 45-day citizen action complaint letter with the Washington State Attorney General's Office and the office of the Clark County Prosecuting Attorney by, pursuant to RCW 42.17A.765(4). The complaint alleged that the WEA-PAC and WT 17 PAC violated RCW 42.17A by sponsoring political advertising containing false claims that FF supported the candidacy of Lynda Wilson. **Exhibit #1.**

- 1.4 On November 25, 2014, the Attorney General's Office (AGO) referred the 45-day citizen action complaint (complaint) to the Public Disclosure Commission (PDC) for review and possible investigation. On December 2, 2014, the AGO asked that the PDC review allegations against both WEA-PAC and WT 17 PAC.

II.

Allegations & Summary of Investigative Findings

- 2.1 The complaint alleged that WEA-PAC and WT 17 PAC both violated RCW 42.17A.335(1)(c) by sponsoring electioneering communications and independent expenditures containing false claims that FF supported Lynda Wilson, a candidate for State Representative in the 17th Legislative District, including by publishing a television commercial, mailing flyers, and placing content on a Web site.
- 2.2 The complaint objected to certain other statements concerning FF in the WEA-PAC and WT 17 PAC communications, including statements that purported to describe FF's public policy positions. Staff did not investigate these statements, however, because Washington's false political advertising law does not address statements made *about* non-candidates, except to the extent the statements may relate to a non-candidate's endorsement of a candidate.
- 2.3 The complaint alleged that WEA-PAC and WT 17 PAC's made "false statements of material fact about a candidate" in violation of RCW 42.17A.335(1)(a). However, the only statements alleged to be false in the complaint concerned FF, the organization's purported "support" for Lynda Wilson, or Ms. Wilson's "connection" to FF. In his complaint and in attached exhibits, Mr. Abernathy consistently described the alleged false statements as statements "about the Freedom Foundation."
- 2.4 WEA-PAC and WT 17 PAC's responses to the citizen action letter noted that the statements in the committee's political advertisements did not concern whether FF had formally endorsed Lynda Wilson's candidacy; rather, the communications represented that Ms. Wilson had FF's "support." The Respondents provided the following information as the basis for the committees' statements in their advertising that FF supported Ms. Wilson, and that she was in fact connected with FF:
- Tom McCabe and Scott Roberts, respectively FF's CEO and Citizen Action Network Director, in their official capacity as agents of FF, appeared at Ms. Wilson's place of business during the 2014 campaign and made statements in support of Ms. Wilson's candidacy in a YouTube video.
 - Ms. Wilson included a picture on her 2014 campaign Web site of her signing FF's "Pledge," in which candidates agreed not to accept campaign contributions from labor unions if the source of the funds were member dues. The Web posting also provided information concerning a recent FF study relating to the issue of labor unions and member dues being used to make political contributions.

- The photograph of Ms. Wilson signing the FF pledge was also featured on the “front/landing page” of FF’s Web site with a hyperlink to a page with a larger image of Ms. Wilson signing the pledge.
- A FF podcast featuring Ms. Wilson as a guest was broadcast in June of 2014, in which Jamie Lund, FF Senior Policy Analyst, discussed the FF pledge with Ms. Wilson. During the Podcast Mr. Lund “lauded” Ms. Wilson as the first candidate to sign the pledge.
- After the 2014 general election, FF included a link on its Web site entitled “*big governments union lose big in national and state elections.*” The linked information asserted that Ms. Wilson’s victory in her race against Monica Stonier was “a worthwhile reminder of the limits of union’s political influence, despite their vast financial coffers of coercively collected union dues.”
- Tom McCabe made a monetary contribution to the 2014 Lynda Wilson campaign. PDC staff reviewed Monetary Contributions reports (C-3 reports) filed by Ms. Wilson, and confirmed that Tom McCabe’s name was disclosed on a C-3 report as having made a \$125 contribution to Ms. Wilson’s campaign on February 20, 2014.
- Ms. Wilson is a member of the FF, and described her affiliation in the 2014 Primary Election Voters Guide under “community service.” Ms. Wilson’s spouse Tracy Wilson is a trustee of FF; as such, the Respondents stated that his duties included setting the compensation for FF CEO Tom McCabe.

III. **Detailed Findings**

- 3.1 The complaint contained ten exhibits, including: (1) a CD-ROM of television political advertising sponsored by WEA-PAC; (2) three direct mail electioneering communications (one sponsored by WEA-PAC and two sponsored by WT 17 PAC); (3) a link to a broadcast advertisement sponsored by WEA-PAC; (4) an email sent from Mr. Abernathy to Comcast cable demanding that the WEA-PAC broadcast advertisement be pulled until the alleged false statements about FF were removed; (5) an emailed response received by Mr. Abernathy from a Comcast representative concerning the advertisement; (6) two emails sent from Mr. Abernathy to Jay Petterson, treasurer for WT 17 PAC concerning the alleged false statements being made about FF; and (7) Mr. Petterson’s mailed response to Mr. Abernathy.

James Abernathy Correspondence with WT 17 PAC

- 3.2 On October 22, 2014, James Abernathy, General Counsel for FF, sent an email to WT 17 PAC asking them to remove “all false statements” about FF in the electioneering communications and independent expenditures sponsored by WT 17 PAC in opposition to Lynda Wilson. The statements at issue included a statement on the committee’s Web

site asserting that “Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy.”

- 3.3 On October 23, 2014, Mr. Abernathy sent an email to WT 17 PAC acknowledging that the group’s Web site had been slightly changed, but stating that the changes did not remedy the situation. Mr. Abernathy requested WT 17 PAC make additional changes to the site, including the statement that “Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.”
- 3.4 On October 29, 2014, Jay Petterson, Treasurer for WT 17 PAC, responded by letter to Mr. Abernathy, informing him that the PAC would not be making any further changes to its Web site, and would not be removing the statements made about the FF, Mr. McCabe, and his position with the FF.

WEA-PAC Political Advertisement

- 3.5 In his complaint, Mr. Abernathy alleged that WEA-PAC produced and distributed political advertisements in 2014 in the form of electioneering communications opposing Ms. Wilson, including a WEA-PAC television commercial and direct mail piece that contained alleged false statements concerning FF’s support for Ms. Wilson. Mr. Abernathy stated that FF is a not-for-profit, non-partisan organization, and the statements concerning FF’s support for Ms. Wilson were false.
- 3.6 Mr. Abernathy stated that FF does not support candidates seeking election to office and the statement FF “... *supports big corporations and tax loopholes is also false...*” He said the statements made by WEA-PAC injured FF as an organization, and that WEA-PAC “...*knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of the statements.*”
- 3.7 Mr. Abernathy included with his complaint Exhibit A, a copy of an electioneering communication produced and sponsored by WEA-PAC. The communication asked if Ms. Wilson will put “...*schools before a corporate tax loophole,*” concluding, “*We don’t think so.*” The advertisement went on to state:

“Lynda Wilson (R) is a member of the extreme Freedom Foundation, which supports providing more wasteful tax loopholes for profitable Wall Street banks and other big corporations. They stand up for big corporations at the expense of working families.”

WEA-PAC Response

3.8 On December 12, 2014, Michael Gawley and Shelby A. Hopkins submitted a response to the citizen action letter on behalf of WEA-PAC. **Exhibit #2.** The response included several embedded Web links that the committee believed “*show clearly that the FF supported Lynda Wilson in her candidacy.*”

3.9 WEA-PAC’s response referred to an April 23, 2014, YouTube video posting, showing a meeting hosted by Ms. Wilson at her place of business. The video began with an image of Ms. Wilson’s campaign yard sign, with the on-screen title “Freedom Foundation – Fighting Labor Union Political Manipulation.” The video included Tom McCabe and Scott Roberts, FF CEO and Citizen Action Network Director, and showed both men making statements in support of Ms. Wilson’s candidacy during the video, including the following:

“For every dollar they [unions] spend defending their idea, is a dollar they don’t have to spend against our good candidates [gesturing at Ms. Wilson] that are trying to move forward. It’s a very, very good idea.” – Scott Roberts

“You have a great candidate in the 17th District, a great candidate...Frank Chopp...is coming down to campaign against Lynda, which tells me he’s worried about this seat, and that’s good news...It’d be great if we could continue the momentum and pick up two or three [seats] every year, and eventually, hopefully in the next cycle, the Republicans could take over the House, and Lynda could be the next speaker of the House.” — Tom McCabe

3.10 WEA-PAC’s response stated that during the 2014 election cycle, a picture of Ms. Wilson signing the FF’s “pledge” (in which candidates agreed not to not accept campaign contributions from labor unions “if they are taken by force as workplace representation dues or fees”) was prominently featured on the “front/landing page” of FF’s Web site, with a link to a page with a larger image of Ms. Wilson signing the pledge.

3.11 The response stated that the same photograph of Ms. Wilson signing FF’s pledge was also featured on Ms. Wilson’s campaign Web site in a June 12, 2014 posting. The Web posting showed a photograph of Ms. Wilson and Mr. McCabe with a copy of FF’s pledge, together with information concerning a recent FF study relating to the issue of labor unions and member dues monies being used to make political contributions.

3.12 The response letter also referred to a FF Podcast featuring Ms. Wilson as a guest that was broadcast in June of 2014, in which Jamie Lund, FF Senior Policy Analyst, discussed the FF pledge with Ms. Wilson. The letter indicated that Mr. Lund “lauded” Ms. Wilson as the first candidate to sign the pledge. The response went on to state, “*One need only listen to the jovial tenor and tone of the broadcast to reach the logical conclusion that it is supportive of Ms. Wilson, while being equally derisive of her opponent Ms. Monica Stonier.*”

- 3.13 The response letter stated after the 2014 general election, FF included a link on its Web site entitled “*big governments union lose big in national and state elections.*” The linked information asserted that Ms. Wilson’s victory in her race against Monica Stonier was “a worthwhile reminder of the limits of union’s political influence, despite their vast financial coffers of coercively collected union dues.”
- 3.14 The response letter indicated that Mr. McCabe made a monetary contribution to the 2014 Lynda Wilson campaign. PDC staff reviewed Monetary Contributions reports (C-3 reports) filed by Ms. Wilson, and confirmed that Tom McCabe’s name was disclosed on a C-3 report as having made a \$125 contribution to Ms. Wilson’s campaign on February 20, 2014.
- 3.15 The response letter stated that “...Ms. Wilson is a member of the FF, and proudly states so in her submission to the 2014 Primary Election Voters Guide under “Community Service”. In addition, the letter stated that Lynda Wilson’s spouse Tracy Wilson is a trustee of FF, and that his duties include setting the compensation for Tom McCabe as FF CEO.
- 3.16 PDC staff reviewed Ms. Wilson’s Personal Financial Affairs Statement (F-1 report) filed on January 6, 2014. Ms. Wilson’s F-1 Supplement form discloses her spouse’s position as a trustee for FF.

Working Families for the 17th PAC

- 3.17 Mr. Abernathy alleged that WT 17 PAC produced and distributed political advertisements in opposition to Ms. Wilson containing false statements about FF’s support for candidates for political office. He stated that the committees “...*knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of these statements.*”
- 3.18 Mr. Abernathy alleged that WT 17 PAC made false statements about FF’s support for Ms. Wilson in several political advertisements, including the statement that “*Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy,*” and a direct mail advertisement describing Ms. Wilson’s “connection” to FF, and the organization’s support for her. (The advertisement included the statement “Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of The Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy.”) Finally, Mr. Abernathy’s complaint addressed a Web site sponsored by WT 17 PAC, which included the statement, “*Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy.*”

WT 17 PAC Response

- 3.19 On December 16, 2014, Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP submitted a response on behalf of WT 17 PAC. **Exhibit #3.** Mr. Iglitzin stated that the alleged false statements about FF made in WT 17 PAC's political advertisements were true, and did not constitute libel or defamation.
- 3.20 Mr. Iglitzin stated that that WT 17 PAC's statement that Lynda Wilson "is supported" by FF is "*absolutely 100% true*" and that the evidence was "*...persuasively and comprehensively set forth by Mr. Gawley and Ms. Hopkins in WEA-PAC's December 12, 2014 letter.*" He stated that he would not be repeating that response in full, but will instead provide highlights.
- 3.21 Mr. Iglitzin stated that on April 23, 2014, Mr. McCabe and Mr. Roberts gave speeches and made statements at Ms. Wilson's place of business, and that the "*...presence of these Freedom Foundation representatives, in their capacity as agents of FF, at Ms. Wilson's place of business during the campaign season is enough, even without more, to establish FF's support of Ms. Wilson.*" He stated that organizations like FF "*...do not appear at a candidate's private business and give speeches if they do not to at least some extent support that candidate...*" He concluded by stating that the content of the statements made by Mr. McCabe and Mr. Roberts at Ms. Wilson's place of business "strongly confirms" FF's "*...actual support for Ms. Wilson.*"
- 3.22 Mr. Iglitzin stated that Ms. Wilson posted a photograph of her with Mr. McCabe on her campaign Web site in June of 2014 holding a copy of FF's pledge, which Ms. Wilson had signed. He stated that it is reasonable to infer that FF did not object to Ms. Wilson's use of the photograph; he indicated that this "*clearly states or implies Freedom Foundation's support of her.*" He stated that FF "*...cannot acquiesce in this implicit statement of its support for Ms. Wilson when communicated by Ms. Wilson, [and then] accuse Working Together PAC of acting with actual malice when it makes what is essentially the exact same assertion.*"
- 3.23 Mr. Iglitzin also referred to the June 12, 2014 FF podcast that featured Ms. Wilson and Jamie Lund discussing her candidacy, and the FF pledge that she has signed as a candidate. He stated that "*Absent evidence that Freedom Foundation's podcast has ever featured a guest whose politics and policies it does not support, the inference would be unmistakable from the mere fact of Ms. Wilson's appearance on this podcast that Freedom Foundation supports her.*" He stated that the WEA-PAC's response concerning the podcast confirms the conclusion that FF supported Ms. Wilson, that Mr. McCabe also made a personal contribution to Ms. Wilson's campaign. He added that "*one may reasonably infer that the politically sophisticated Mr. McCabe would not financially support a candidate for public office whom the organization he runs does not itself support.*"
- 3.24 Mr. Iglitzin stated WT 17 PAC did not make a statements in its political advertisements or on its Web site that FF *endorsed* Lynda Wilson; instead, the committee used the term

“support,” which he stated “*cannot be read as meaning the same thing as the term endorse.*”

Additional Information

- 3.25 Ms. Wilson’s campaign made fifteen expenditures totaling more than \$46,000 to Allied Communication Strategies, a political consulting firm founded by FF CEO Tom McCabe, along with two fellow former staff members of the Building Industry Association of Washington, Brian Minnich and Erin Shannon.

IV. Scope

- 4.1 PDC staff reviewed the following:

- The Citizen Action Letter filed by James Abernathy on behalf of the Freedom Foundation, with attached evidence;
- a December 12, 2014, response letter filed on behalf of the WEA-PAC by Michael J. Gawley and Shelby A. Hopkins; and
- a December 16, 2014, response letter filed on behalf of the Working Together for the 17th PAC by Dmitri Iglitzin, an attorney with the law firm Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP.

- 4.2 PDC staff also reviewed Ms. Wilson’s 2014 Campaign Summary Receipts & Expenditures reports (C-4 reports), and Ms. Wilson’s Personal Financial Affairs Statement (F-1 report) filed in January 2014.

V. Law

- 5.1 **RCW 42.17A.335** States in part the following: “(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

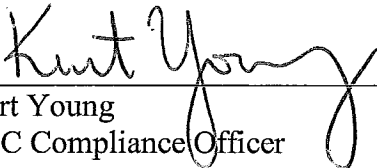
(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, "libel or defamation per se" means statements that

tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

(3) It is not a violation of this section for a candidate or his or her agent to make statements described in subsection (1)(a) or (b) of this section about the candidate himself or herself because a person cannot defame himself or herself. It is not a violation of this section for a person or organization referenced in subsection (1)(c) of this section to make a statement about that person or organization because such persons and organizations cannot defame themselves.”

Respectfully submitted this 7th day of January, 2015.


Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** November 10, 2014, 45-Day Citizen Action Complaint filed by James Abernathy of the Freedom Foundation, pursuant to RCW 42.17A.765(4) alleging violations of RCW 42.17A.335 by WEA-PAC and WT 17 PAC.
- Exhibit #2** December 12, 2014, response letter submitted by Michael Gawley and Shelby A. Hopkins on behalf of WEA-PAC.
- Exhibit #3** December 16, 2014, response letter submitted by Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP on behalf of WT 17 PAC.

NOV 13 2014

James Abernathy
General Counsel
The Freedom Foundation
P.O. Box 552
Olympia, WA 98507

RECEIVED

November 7, 2014

NOV 10 2014

Bob Ferguson
Attorney General
1220 Main St. Suite 549
Vancouver, WA 98660-2964

OFFICE OF THE ATTORNEY GENERAL
VANCOUVER OFFICE

Dear Mr. Ferguson,

By way of introduction, my name is James Abernathy. I am General Counsel at the Freedom Foundation, a not-for-profit organization in the State of Washington. This letter is written to you pursuant to RCW 42.17A.765(4) to notify you in writing that there is reason to believe that at least one provision of RCW 42.17A was violated in Washington.

Specifically, both the Washington Education Association Political Action Committee (“WEA”) and the Working Together for the 17th Political Action Committee (“Working Together”) violated RCW 42.17A.335(1)(c), which provides

(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances: ... (c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

The WEA violated this provision by publishing a TV commercial and mailing fliers in Clark County, Washington which make directly and/or indirectly a false claim which states and/or implies that the Freedom Foundation supported a candidate for office in the 17th District. First, the WEA published and caused to be aired on television political advertising which violates RCW 42.17A.335(1)(c). (See enclosed Exhibit I on the enclosed CD-ROM.) Second, the WEA published and mailed fliers which also violate RCW 42.17A.335(1)(c). One such flier is enclosed as Exhibit A. Each of these is political advertising which constitute, in the least, a false claim implying an organization’s support or endorsement of a person.

The WEA’s statements are false. The Freedom Foundation does not support any candidate for any political office. The Freedom Foundation is a nonpartisan not-for-profit organization. The WEA’s statement that the Freedom Foundation supports big corporations and tax loopholes is also false. Further, these statements do not constitute privileged

communications, and the WEA knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of these statements. Lastly, the WEA is at fault because it produced, paid for, and caused these false statements to be published and distributed to the public, as can be seen on the publications themselves. The WEA's statements injure the Freedom Foundation as an organization, exposes it to contempt, and deprives it of public confidence. Not only do these statements bring contempt upon and deprive the Freedom Foundation of the confidence of the public who supports it, they also threaten the Freedom Foundation as a not-for-profit organization because such organizations are prohibited from endorsing or campaigning on behalf of individual candidates. RCW 42.17A.335(4) provides that damages are presumed if a violation is proven.

Upon learning of the television commercial, the Freedom Foundation contacted the cable company airing the commercial (Comcast) by phone and by e-mail to lodge a complaint stating that the WEA commercial contained defamatory statements against the Freedom Foundation. (See enclosed Exhibits D and E.) The WEA pulled the ad less than 24 hours later. (See enclosed Exhibit F.) In other words, the WEA did not even attempt to substantiate its statements because it knew it could not. Yet, the WEA continued to publish and distribute these false statements. This constitutes compelling evidence that the WEA knew from the beginning that its statements were false, or, in the least, displayed a reckless disregard for the truth or falsity of its statements. At the least, the WEA knew its statements were false due to the Freedom Foundation's complaint *but continued* to make these statements in its political advertising.

Working Together also violated RCW 42.17A.335(1)(c). First, Working Together authored, paid for, and caused to be published a website at the address wilsonfactcheck.com. This website's original website contained the following false statement:

Lynda Wilson is supported by the extreme Freedom Foundation, which favors providing more wasteful tax loopholes to profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.

Second, this false statement was also made on a flier paid for, published, and mailed by Working Together. (See enclosed Exhibit B.) This statement violates RCW 42.17A.335(1)(c) because Working Together directly made a false claim stating that Freedom Foundation endorsed a candidate even though this is patently false.

Freedom Foundation contacted Working Together by e-mail to inform it of the defamatory statements on its website. Freedom Foundation's first e-mail to Working Together is enclosed as Exhibit G (also sent by a written letter via regular mail). Working Together did not even attempt to substantiate its false statement in a response. In fact, Working Together did not respond to the Freedom Foundation at all. Instead, Working Together altered the language on its website after receiving the Freedom Foundation's letter/email. However, the statements still violated RCW 42.17A.335(1)(c). The website's altered language states

Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that

benefit the corporations and the wealthy. This means they pay less than their fair share, and the working families get stuck with the bill.

See a copy of the website enclosed as Exhibit C. This altered statement still violates RCW 42.17A.335(1)(c) because Working Together directly made a false claim that, in the least, implied that the Freedom Foundation endorses a candidate, even though the statement is patently false.

The Freedom Foundation sent a second e-mail to Working Together to inform it that its altered language still violated RCW 42.17A.335(1)(c). (See enclosed Exhibit H.) Working Together responded by letter dated October 29, 2014 attempting to substantiate its altered statements. (See enclosed Exhibit J.) Working Together's response did not address the original language on its website; nor did it address its flier (exhibit B). Additionally, Working Together's response did not adequately address its altered false statements on its altered website. (But even if it did, that still leaves its fliers and original website language unsubstantiated.) Further, Working Together did not change the altered language subsequent to the Freedom Foundation's second e-mail. Working Together's conduct constitutes compelling evidence it knew from the beginning that its statements in its fliers and original website were false, or, in the least, displayed a reckless disregard for the truth or falsity of its statements. At the least, Working Together knew its statements were false after the Freedom Foundation's emails *but continued* to make these statements in its political advertising.

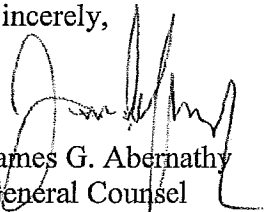
Similar to the WEA's statements, Working Together's statements are also false. The Freedom Foundation does not support any candidate for any political office. The Freedom Foundation is a nonpartisan not-for-profit organization. Working Together's statement that the Freedom Foundation supports big corporations and tax loopholes is false as well. Further, these statements do not constitute privileged communications, and Working Together knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of these statements. Lastly, Working Together is at fault because it produced, paid for, and caused these false statements to be published and distributed to the public, as can be seen on the publications themselves. Working Together's statements injure the Freedom Foundation as an organization, because they expose it to contempt and deprive it of public confidence. Not only do these statements bring contempt upon and deprive the Freedom Foundation of the confidence of the public who supports it, they also threaten the Freedom Foundation as a not-for-profit organization because such organizations are prohibited from endorsing or campaigning on behalf of individual candidates. RCW 42.17A.335(4) provides that damages are presumed if a violation is proven.

Working Together's and the WEA's conduct clearly violates RCW 42.17A.335(1)(c). Further, their conduct also violates RCW 42.17A.335(1)(a) because they engaged in political advertising that contains false statements of material fact about a candidate for public office. The evidence enclosed in this letter alone shows beyond a reasonable doubt or, at least by clear and convincing evidence, that Working Together in the WEA have violated the law as described above. In the least, there is reason to believe the above cited statutes were violated. Moreover, there is also reason to believe these two political action committees made false statements on publications not included in this letter. After all, political advertising and electioneering are

multi-pronged efforts which utilize varying forms of media. Even if not, however, the enclosed evidence is more than enough to show that Working Together and the WEA clearly violated the law.

Please contact me at (360) 956-3482 or jabernathy@myfreedomfoundation.com if you have any questions. Thank you for your consideration of this matter.

Sincerely,



James G. Abernathy
General Counsel
The Freedom Foundation

Enc.

Hello

Lynda Wilson,

The taxpayers

need to pay up.

We're counting

on you for some

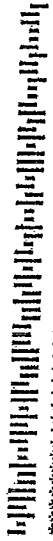
big tax loopholes.

Exhibit A

Paid for by Washington
Education Action
Political Action Committee
P.O. Box 9100
Federal Way, WA 98063

No candidate authorized this ad. It is paid for by the Washington Education
Association Political Action Committee, P.O. Box 9100, Federal Way, WA.
Top Five Contributors: Washington Education Association, representing
more than 82,000 teachers and school employees across Washington.

© 1997 107-2



*****ECRWSH**C081

DOUG AND KRISTINE PALIN
OR CURRENT RESIDENT
17311 NE 40TH ST
VANCOUVER WA 98682-5603

651

PERMIT NO. 1000
US POSTAGE
PAID
CAMPAIGN MAIL

Do you think Lynda Wilson will ever put our schools before corporate tax loopholes?

We don't think so.

Lynda Wilson (R) is a member of the extreme Freedom
Foundation, which supports providing more
wasteful tax loopholes for profitable Wall
Street banks and other big corporations.
They stand up for big corporations at the expense
of working families.

There are more than 650 wasteful
corporate tax loopholes in Washington state.

**Why not vote for someone who will work to close the
wasteful loopholes and invest the savings in our local schools?**

Exhibit A



BUT THROWING AWAY TAXPAYER MONEY DOESN'T SEEM TO BOTHER LYNDA WILSON

Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.

FACT CHECK | WilsonFactCheck.com

Lynda Wilson's connection to the Freedom Foundation is documented by the Washington Public Disclosure Commission and electlyndawilson.com. Wilson criticized the end of the government shutdown in a letter from the Clark County Republican Party Board of Directors, 10/18/13.



The wasteful government shutdown didn't bother Lynda Wilson either

The Federal Government shutdown was one of the worst examples of government waste in recent memory. But Lynda Wilson actually thought the shutdown didn't last long enough. Seriously. When our Republican Congresswoman Jaime Herrera-Beutler voted to end the federal government shutdown last year, Lynda Wilson actually signed a letter denouncing her.

VOTE NO ON LYNDA WILSON. WRONG WHEN IT MATTERS MOST.

No candidate authorized this ad. It is paid for by Working Together for the 17th PAC (New Direction) 6715 NE 63rd Street, Suite 103 - #217, Vancouver, WA 98661.
Top 5 Contributors: DIME PAC, Washington Federation of State Employees, Harry Truman Fund, Service Employees International Union WA State Council PAC

Exhibit B

LYNDA WILSON FACT CHECK

Lynda Wilson: Opposes common sense paid sick leave

Since unplanned medical emergencies can threaten a family's financial security, paid sick leave is crucial for working parents who need to spend a day at home with a sick child or loved one. But Lynda Wilson opposes paid sick leave for working parents — forcing local families to face potentially devastating financial consequences when a loved one becomes ill.

**Just one more example of how
Lynda Wilson is always wrong
when it matters most**



FACT CHECK

Lynda Wilson testified against the sick leave provisions contained in House Bill 1313.

THROWING AWAY TAXPAYER MONEY DOESN'T SEEM TO BOTHER LYNDA WILSON

Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.

The wasteful government shutdown didn't bother Lynda Wilson either

The Federal Government shutdown was one of the worst examples of government waste in recent memory. But Lynda Wilson actually thought the shutdown didn't last long enough. Seriously. When our Republican Congresswoman Jaime Herrera-Beutler voted to end the federal government shutdown last year, Lynda Wilson actually signed a letter denouncing her.



FACT CHECK

Lynda Wilson's connection to the Freedom Foundation is documented by the Washington Public Disclosure Commission and on electlyndawilson.com.
Wilson criticized the end of the government shutdown in a letter from the Clark County Republican Party Board of Directors, 10/18/13.

Lynda Wilson wants to get politicians involved in women's health care

Although women don't turn to elected leaders for advice about mammograms or cancer treatments, Lynda Wilson believes that politicians should be involved in a woman's personal/medical decisions about her pregnancy. Lynda Wilson even wants to ban abortion for a woman who has been the victim of rape or incest. Another example of how Lynda Wilson and her Republican supporters are always wrong when it matters most.



FACT CHECK

On the 2014 LIFE PAC questionnaire, Lynda Wilson said it is never permissible to have an abortion in the cases of rape or incest.

Vote NO on Lynda Wilson
Wrong When It Matters Most

SHARE

NO CANDIDATE AUTHORIZED THIS AD. IT IS PAID FOR BY WORKING TOGETHER FOR THE 17TH PAC
(NEW DIRECTION) 6715 NE 63RD STREET, SUITE 103 - #217, VANCOUVER, WA 98661. TOP 5
CONTRIBUTORS: DIME PAC, WASHINGTON FEDERATION OF STATE EMPLOYEES, HARRY TRUMAN
FUND, SERVICE EMPLOYEES INTERNATIONAL UNION WA STATE COUNCIL PAC

From: James Abernathy
To: "mary_kelly@cable.comcast.com"
Subject: Commercial
Date: Thursday, October 16, 2014 4:27:33 PM
Attachments: IMG_0549.MOV

Commercial is attached.

Please confirm receipt. Thanks!

James Abernathy
General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit D

From: James Abernathy
To: "mary_kelly@cable.comcast.com"
Subject: Complaint
Date: Thursday, October 16, 2014 5:00:05 PM
Attachments: IMG_0549.MOV

To whom it may concern,

Your company is currently airing a political ad which supports Monica Stonier in the 17th Legislative District in the State of Washington. This ad states several blatant lies. The ad states that the Freedom Foundation supports big corporations and tax loopholes. Both of these statements are patently false. The Freedom Foundation does not support big corporations. The Freedom Foundation supports a free market. Further, the Freedom Foundation is opposed to tax loopholes. Tax loopholes are crony capitalism, which the Freedom Foundation does not support. The Freedom Foundation demands that the ad be pulled down until the lying and defamatory statements about it are removed. If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent, including litigation if necessary.

The commercial is attached.

James Abernathy

General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit E

From: [Kelly, Mary M](#)
To: [James Abernathy](#)
Subject: RE: Complaint
Date: Friday, October 17, 2014 10:56:07 AM

James, the client is pulling the ad.

Mary Kelly, Political Sales Manager
Comcast Spotlight – Oregon
O: 503.535.6114 | C: 971.212.9097

From: James Abernathy [mailto:jabernathy@myfreedomfoundation.org]
Sent: Thursday, October 16, 2014 5:01 PM
To: Kelly, Mary M
Subject: Complaint

To whom it may concern,

Your company is currently airing a political ad which supports Monica Stonier in the 17th Legislative District in the State of Washington. This ad states several blatant lies. The ad states that the Freedom Foundation supports big corporations and tax loopholes. Both of these statements are patently false. The Freedom Foundation does not support big corporations. The Freedom Foundation supports a free market. Further, the Freedom Foundation is opposed to tax loopholes. Tax loopholes are crony capitalism, which the Freedom Foundation does not support. The Freedom Foundation demands that the ad be pulled down until the lying and defamatory statements about it are removed. If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent, including litigation if necessary.

The commercial is attached.

James Abernathy
General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit F

From: James Abernathy
To: "JAY@BLUEWAVEPOLITICS.COM"
Subject: Defamation
Date: Wednesday, October 22, 2014 11:08:32 AM

To whom it may concern,

My name is James Abernathy and I'm General Counsel at The Freedom Foundation. Working Together for the 17th PAC is the creator of the website at the address wilsonfactcheck.com. This website contains several blatant lies about The Freedom Foundation. The website states,

"Lynda Wilson is supported by the extreme Freedom Foundation, which favors providing more wasteful tax loopholes to profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill."

These statements are patently false and Working Together for the 17th PAC knows they are false. Further, Working Together for the 17th PAC cannot substantiate the statements. First, The Freedom Foundation does not support big corporations. The Freedom Foundation supports a free market. Second, The Freedom Foundation is opposed to tax loopholes of any kind. Tax loopholes are crony capitalism, which the Freedom Foundation does not support. Third, The Freedom Foundation does not support Lynda Wilson. The Freedom Foundation is a nonprofit organization and does not support candidates or campaign on their behalf. The Freedom Foundation demands that the website be removed until the lying and defamatory statements are removed. If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent of the law, including litigation if necessary. Again, the statements about Freedom Foundation on the website are lies and cannot be substantiated.

I thank you for your urgent attention to this matter. Please contact me at this e-mail address or the phone number below if you have any questions.

James Abernathy

General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit G

From: James Abernathy
To: "JAY@BLUEWAVEPOLITICS.COM"
Subject: Altered Website
Date: Thursday, October 23, 2014 11:44:24 AM

To whom it may concern,

I am writing to follow up an e-mail I sent to you yesterday, October 22, 2014, at 11:41 AM, regarding lies you published about the Freedom Foundation. Since then, you have slightly changed the language on the website wilsonfactcheck.com that lies about the Freedom Foundation. However, this change does not remedy the lies being published about the Freedom Foundation. The website now states:

"Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill."

As you recall, I outlined three lies contained in the previous language on the website. First, the Freedom Foundation does not support big corporations. Second, the Freedom Foundation is opposed to tax loopholes of any kind. The altered language still contains the lies that the Freedom Foundation supports, and/or opposes eliminating, tax loopholes (thus supporting big corporations and the wealthy). Both of these statements are false. The phrase "which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy" on the website refers to the Freedom Foundation, even though this claim is not true. Further, you cannot substantiate this claim. The especially disconcerting aspect of all this is that you know you cannot substantiate this claim, yet you still publish it. Third, the altered language still sends the message that the Freedom Foundation supports Lynda Wilson. This is a lie, and you know it is a lie.

Once again, the Freedom Foundation demands that the website be removed until the lying and defamatory statements about the Freedom Foundation are removed. Unless you can substantiate the claims, immediately remove all references to the Freedom Foundation supporting or opposing any issue, cause, or candidate. Further, unless you can substantiate the claims, immediately remove all language which sends the message; and/or creates the impression, that Freedom Foundation supports or opposes any issue, cause, or candidate.

If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent of the law, including litigation if necessary. Again, the statements about Freedom Foundation on the website are lies and cannot be substantiated.

I thank you for your urgent attention to this matter. Please contact me at this e-mail address or the phone number below if you have any questions.

James Abernathy
General Counsel | Freedom Foundation

Exhibit H

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit H

October 29, 2014

James Abernathy
General Counsel, Freedom Foundation
PO Box 552
Olympia, Washington 98507

Re: Response to demand to remove Working Together for the 17th PAC website

Dear Mr. Abernathy,

On October 22, 2014, you wrote to us concerning what you described as “several blatant lies about The Freedom Foundation” on the Working Together for the 17th PAC’s website, a claim you reiterated in your follow-up email sent the very next day. Specifically, you raised three assertions relating to the statement then on the website that Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors providing more wasteful tax loopholes to profitable big corporations and the wealthy.

Subsequent to our receipt of your October 22 e-mail, the content of the website changed. We then received an e-mail from you, on October 23, renewing and reiterating your accusations and concerns.

For the reasons set forth below, your assertion that the content of the website as it appeared on October 23, 2014, and thereafter, is untrue, lacks merit. Specifically, the three claims you make as to the falsity of the content of the website are completely at odds with the facts in our possession. For that reason, “removal” of our website, which you have requested, would be an unnecessary and unwarranted restriction of our free speech rights.

“First, the Freedom Foundation does not support big corporations.”

Although the website currently does not make the opposite assertion, such an assertion would in fact be true. The Freedom Foundation, through its policies and positions, does support big corporations. For example, the Freedom Foundation supports right-to-work legislation. As the Freedom Foundation’s own website proudly boasts, “Last week, pro-union blogger David Goldstein asked the question ‘Is the Freedom Foundation Plotting to Transform Washington into a ‘Right to Work’ State, One City at a Time?’ to which we replied ‘yes.’”¹

According to the Economic Policy Institute and many other research institutions, workers earn less under right-to-work laws. Rigorous studies—using regression analysis to hone in on the effect of right-to-work laws— show that right-to-work laws reduce wages by \$1,500 a year, for both union and nonunion workers, after accounting for different costs of living in the states.² When workers are paid less, corporations pocket more money.

¹ See <http://www.myfreedomfoundation.com/blogs/liberty-live/freedom-update-episode-34>.

² See, e.g., <http://www.epi.org/publication/working-hard-indiana-bad-tortured-uphill>, citing Gould and Shierholz, 2011.

As the Freedom Foundation supports legislation that ensures that profits remain with big corporations at the expense of their workers, the Freedom Foundation inherently supports these big corporations. Our statement is the simple, logical, and reasonable inference based on the documented effect of right-to-work laws on employee wages—otherwise known as our protected opinion.

“Second, The Freedom Foundation is opposed to tax loopholes of any kind.”

Contrary to this assertion, the Freedom Foundation does in fact *oppose* legislation that would attempt to bring uniformity to Washington’s tax system by eliminating “preferential tax rates.” For example, the Freedom Foundation admitted that HB 2038’s proposed changes to Washington State’s tax system would “eliminate preferential tax rates.”³ As you know, “preferential tax rates” are nothing more than tax loopholes for categories of taxpayers, such as big corporations. And yet the Freedom Foundation clearly opposed HB 2038.

Some of the beneficiaries of those “preferential tax rates” that HB 2038 would have eliminated are “big corporations and the wealthy.” The truth is that the Freedom Foundation’s opposition to legislation such as HB 2038 establishes its desire to protect wasteful tax loopholes for such entities. To instead insist that the Freedom Foundation does not support tax loopholes for big corporations and the wealthy does not pass any straight-face test.

“Third, the altered language still sends the message that the Freedom Foundation supports Lynda Wilson.”

The website language currently asserts that Lynda Wilson is supported “by Tom McCabe, CEO of the Freedom Foundation.” According to Washington State’s Public Disclosure Commission, Mr. McCabe donated \$125 to Ms. Wilson’s campaign on or about February 10, 2014. Thus, the website language is completely accurate, and it is not made any less so by the fact that people might assume, no doubt rightly, that Mr. McCabe’s personal support for Ms. Wilson is closely related to the policies and activities of the organization he directs.

Conclusion

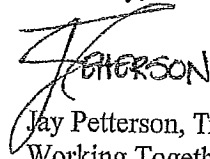
The Freedom Foundation’s demands that our website be removed are without merit. While the Freedom Foundation may be embarrassed by the fact that the support of your organization and/or your organization’s CEO for big corporations, wasteful tax loopholes, and Ms. Wilson is being made public to the community at large, the fact of the matter is that communicating these facts is not lying, not defamatory, and not actionable at law.

If the Freedom Foundation’s position on any of the above-referenced issues has changed, and you now (for example) support measures designed to eliminate or reduce tax loopholes for big corporations, please identify which such measures you support so we can consider updating our website accordingly. Likewise, if the Freedom Foundation now opposes right-to-work efforts,

³ See <http://archive.myfreedomfoundation.com/blog/liberty-live/detail/hb-2038-beer-for-kids.html>.

please let us know. Finally, if Mr. McCabe no longer supports Ms. Wilson's campaign, we will certainly take that into account in our communications with the public going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "PETTERSON". The signature is stylized with a large, sweeping initial letter.

Jay Petterson, Treasurer
Working Together for the 17th PAC

Exhibit 3

RECEIVED

DEC 15 2014

Public Disclosure Commission

VIA USPS MAIL
AND ELECTRONIC TRANSMISSION

December 12, 2014

Andrea McNamara Doyle
Executive Director

Philip E. Stutzman
Director of Compliance

Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: November 7, 2014 Freedom Foundation
Citizen Action Notice – WEA-PAC, a political committee
Response to Allegations

Dear Ms. Doyle and Mr. Stutzman:

We write in response to Mr. Stutzman's letter of December 8, 2014, in which he requested that WEAPAC respond to the Freedom Foundation's ("FF") November 7, 2014 complaint that WEAPAC "violated RCW 42.17A.335(1)(c) by publishing. . . false claims that the Freedom Foundation supported Lynda Wilson, a candidate for State Representative in the 17th Legislative District."

In short, the FF complains that WEAPAC violated RCW 42.17A.335(1)(c) when it published a TV commercial and mailed fliers it claims "make directly and/or indirectly a false claim which states and/or implies the FF supported a candidate for office in the 17th District." FF's claims are both legally and factually unupportable.

As to the law, as we are sure you are aware, two prior versions of RCW 42.17A.335 have been found by the Washington State Supreme Court to be facially unconstitutional under the First Amendment. The current version fares no better. One need look no further than the operative provisions at issue in the statute to conclude that it is unquestionably and impermissibly vague in its proscriptions, in addition to the fact that it contemplates having a governmental Commission, whose members are appointed by an elected office

DEC 15 2014

Public Disclosure Commission

holder, make *post hoc* determinations as to the “truth” or “falsity” of political discourse, including that of his or her political opponents.

Specifically, the subsection upon which the FF premises its complaint, RCW 42.17A.335(1)(c), seeks to prohibit:

Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

While it may be possible in this context to constitutionally define the term “endorsement”, it is clearly not so with respect to the term “support.” For example, as used here, does “support” mean make a contribution to the campaign? Make independent expenditures in support of the candidate?¹ Refrain from contributing to the opponent’s campaign? Refrain from making independent expenditures in support of the opponent’s campaign? Publically praise the candidate? Publically deride the opponent? Subjectively agree with the candidate’s position on one or more issues? Disagree with the opponent’s position? The list goes on.

The fact that, before engaging in political discourse, the statute seeks to require one to first contemplate such questions, let alone settle upon a prospective answer, in the hopes that he or she lands on the same answer as the *post hoc* determination of an appointed governmental committee, under pain of legal sanction and for “getting it wrong”, makes clear that it cannot survive constitutional scrutiny. This, of course, without even addressing whether one might be found to have impermissibly “implied” something at odds with the Commission’s conclusion, a conclusion, one must remember, that is necessarily reached by committee.

Or, as complained of in the instant complaint - whether WEAPAC “ma[d]e directly and/or *indirectly* a false claim which state[d] and/or *implied* the Freedom Foundation supported a candidate for office in the 17th District” – i.e. whether any statements WEAPAC made ‘*indirectly implied*’ any of the above possibilities. The folly of such an exercise makes self-evident that the statute cannot withstand First Amendment scrutiny.

As to the facts, attached hereto, with several web-links imbedded herein, are numerous publically available examples which show clearly that the FF supported Lynda Wilson in her candidacy.

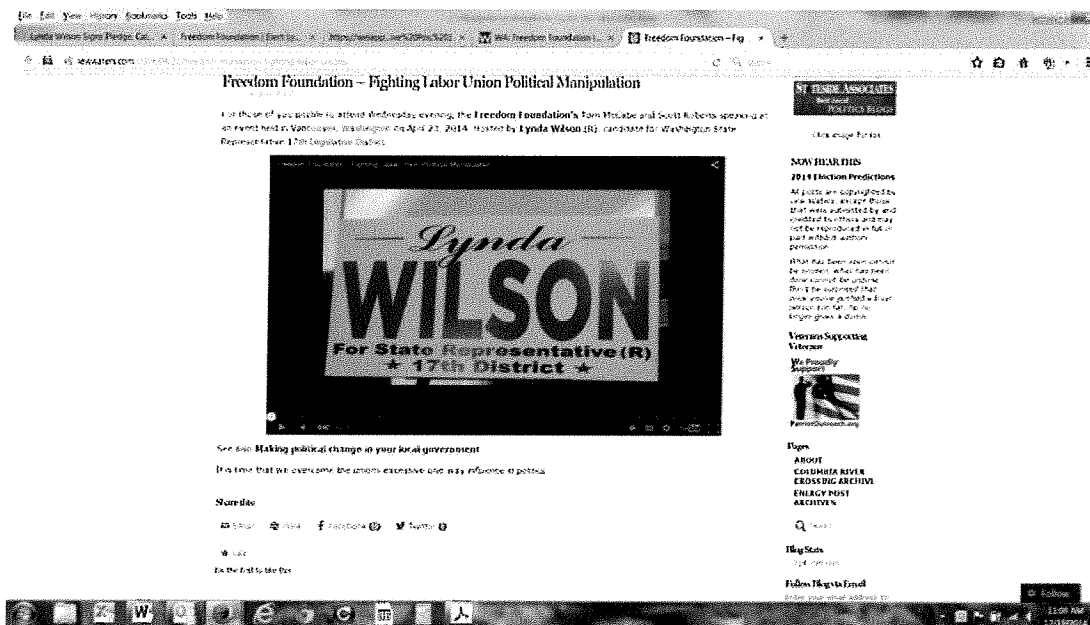
First, and perhaps most telling, immediately below is a screen shot of a YouTube video of an April 23, 2014 FF meeting hosted by Ms. Wilson at her place of business, at which Mr. Tom McCabe, the Chief Executive Officer of the FF, along with another of FF’s

¹ Both of which, of course, are defined by statute, unlike the amorphous term “support”. See RCW 42.17A.005(13) (“contribution”) and RCW 42.17A.005(26) (“independent expenditures”).

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principal employees, Mr. Scott Roberts, Citizen Action Network Director of the FF, are the featured speakers. You will note that the video begins with a screen shot of Ms. Wilson's campaign yard sign.



https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA

From there, the speech is replete with statements of support for Ms. Wilson and her campaign. For example, at the 33:45 minute mark, Mr. Roberts states:

“For every dollar they [unions] spend defending their idea, is a dollar they don’t have to spend against *our* good candidates [gesturing at Ms. Wilson] that are trying to move forward. It’s a very, very good idea.”

https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA#t=2025

Continuing, at the 38:45 minute mark, Mr. McCabe states:

“You have a great candidate in the 17th District, a great candidate.” [followed by his leading applause for Ms. Wilson.]

“And she was telling me earlier that Frank Chopp. . . is coming down to campaign against Lynda, which tells me he’s worried about this seat, and that’s good news.”

“It’d be great if we could continue the momentum and pick up two or three [seats] every year, and eventually, hopefully in the next cycle, the Republicans could take over the House, and Lynda could be the next speaker of the House.”

https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA#t=2325

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Public Disclosure Commission

Even based on this single example, for the FF to claim that it was not supportive of Ms. Wilson's candidacy in the 17th District House race is laughable.

While this single example belies their claim, it is far from unique. Up until at least December 8, 2014, a picture of Ms. Wilson, signing the FF's "Pledge" was prominently featured on the front/landing page of FF's Web Site. *Attached*. The hyperlink attached to that image lead to a page with an even larger image of Ms. Wilson signing the FF's "Pledge", whose primary thrust was for candidates to pledge to not accept campaign contributions from unions "if they are taken by force as workplace representation dues or fees." *Also attached*.

http://www.myfreedomfoundation.com/sites/default/files/documents/2014candidatePledge_GiveItBackToTheWorker_0.pdf

Moreover, Ms. Wilson's signing of the pledge featured prominently on her campaign website in a June 12, 2014 posting, showing her with a smiling Mr. McCabe, and citing a "recent study" by the FF relating to the issue.²

<http://electlyndawilson.com/lynda-wilson-signs-pledge-calls-on-monica-stonier-to-the-same/>



² Of course, as demonstrated by the instant complaint, the FF knows well how to avail itself of the provisions of RCW 42.17A.340. Had the FF thought that Ms. Wilson's use of the picture of her and the FF CEO on her campaign website falsely stated or implied its support of her candidacy, it undoubtedly would have also filed a complaint against Ms. Wilson for so falsely stating or implying such support, which it did not.

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Similarly, Ms. Wilson was a featured guest on a FF Podcast, broadcast on or about June 11, 2014, which featured the pledge, and in which she was lauded by Mr. Jamie Lund, FF Senior Policy Analyst, for having been the first candidate to sign it. One need only listen to the jovial tenor and tone of the broadcast to reach the logical conclusion that it is supportive of Ms. Wilson, while being equally derisive of her opponent Ms. Monica Stonier.

<http://www.myfreedomfoundation.com/blogs/freedom-daily/freedom-daily-june-12-2014-%E2%80%93-host-jami-lund-guests-lynda-wilson-and-max-nelsen>



Immediately following the election, the FF pointed out Ms. Wilson's victory in her race as "a worthwhile reminder of the limits of unions' political influence, despite their vast financial coffers of coercively collected union dues."

<http://www.myfreedomfoundation.com/blogs/liberty-live/big-government-unions-lose-big-in-national-and-state-elections>

In addition to publically singing her praises on YouTube, Mr. McCabe went further and contributed to Ms. Wilson's 2014 17th District election campaign.

<http://www.pdc.wa.gov/MvcQuerySystem/CandidateData/showReport?repno=10056828>

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All of this support should come as no surprise, as Ms. Wilson is a member of the FF, and proudly states so in her submission to the 2014 Primary Election Voters Guide, under "Community Service".

<https://weiapplets.sos.wa.gov/MyVote/OnlineVotersGuide/GetCandidateStatement?electionId=53&candidateId=32400&raceJurisdictionName=Legislative&Display=Statewide&partyName=%28Prefers%20Republican%20Party%29&raceName=Legislative%20District%2017%20-%20State%20Representative%20Pos.%201>

Not to be outdone, her husband, Mr. Tracy S. Wilson, serves as one of FF's trustees. As a trustee, Mr. Wilson sets the compensation level for Mr. McCabe's services as FF's CEO. See FF's 2013 IRS Form 990 at Part VII (A) (14) (listing Mr. Wilson as Trustee), and see, IRS Form 990 Part VI, Sec. B, Line 15 (listing duties of Trustees in setting compensation level of CEO), both attached. See also Linda Wilson's F-1 Supplement (on file with the PDC) showing her spouse as a Trustee of FF, attached.

Again, for FF to claim that it does not support one of its own members, and the spouse of one of its trustees, is laughable. Instead, this complaint should be seen for exactly what it is: A part of FF's long term plan to engage its political opponents, namely unions, in litigation and related activities in order to force them to spend time and money in defense.

In addition to Mr. Roberts' comments to that effect, above, at that same meeting Mr. McCabe proclaimed that suing unions over alleged campaign finance violations, through exactly the process FF is using here, is part three - "my favorite part" - of its four-part plan to attack unions. "It forces them to spend money, and allows you to get into their books and records."

https://www.youtube.com/watch?v=ex3Bv0-IDVA&feature=player_detailpage#t=976

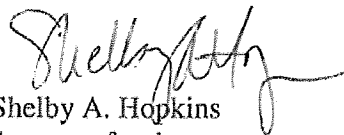
The Commission should see this complaint for what it is, find it to be unfounded and enter an appropriate Order of Dismissal.

Sincerely,



Michael J. Gawley
Attorney for the
Washington Education Association
Political Action Committee

Sincerely,



Shelby A. Hopkins
Attorney for the
Washington Education Association
Political Action Committee

MG/kjw

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Winning Office Without Exploiting Workers | www.myfreedomfoundation.com



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Winning Office Without Exploiting Workers

December 1, 2014



Jami Lund
Senior Policy Analyst

Before the election, the Freedom Foundation prepared a study documenting how union executives divert mandatory workplace representation dues into the campaigns of their favored candidates. Our report showed that 76 percent of all union political funds in Washington state come from general fund transfers, not voluntary contributions from union members.

We urged candidates to sign a pledge to refuse or return union donations if they are taken by force as workplace representation dues or fees.

Seventy-six candidates for state and county office signed the pledge, 18 of whom won their positions. Some were in easy races, others in extremely difficult races, but a number were in close races where union officials spent tens of thousands of dollars to defeat them.

The lesson for lawmakers at both the national and local levels should be clear. Voters are

<http://www.myfreedomfoundation.com/blogs/liberty-live/winning-office-without-exploiting-workers>[12/8/2014 3:55:18 PM]

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Public Disclosure Commission

Form 990 **Return of Organization Exempt From Income Tax** OMB No 1545-0047
 Department of the Treasury Internal Revenue Service Under section 501(c), 527, or 4047(a)(1) of the Internal Revenue Code (except private foundations) **2013**
 Do not enter Social Security numbers on this form as it may be made public. Information about Form 990 and its instructions is at www.irs.gov/form990. Open to Public Inspection

A For the 2013 calendar year, or tax year beginning and ending

B Check if applicable:
 Address change
 Name change
 Initial return
 Termination
 Amended return
 Application pending

C Name of organization: **Evergreen Freedom Foundation**
Doing Business As **Freedom Foundation**

D Employer identification number: **94-3136961**

Number and street (or P O box if mail is not delivered to street address) Room/suite: **PO Box 552**

E Telephone number: **360-956-3482**

City or town, state or province, country, and ZIP or foreign postal code: **Olympia, WA 98507**

G Gross receipts \$: **1,766,236.**

H(a) Is this a group return for subordinates? Yes No
H(b) Are all subordinates included? Yes No
 If "No," attach a list (see instructions)

F Name and address of principal officer: **Tom McCabe**
same as C above

I Tax-exempt status: 501(c)(3) 501(c) () (insert no.) 4947(b)(1) or 527

J Website: **www.myfreedomfoundation.org**

K Form of organization: Corporation Trust Association Other

L Year of formation: **1991** **M** State of legal domicile: **WA**

Part I Summary

1 Briefly describe the organization's mission or most significant activities. **To advance individual liberty, free enterprise, and limited, accountable government.**

2 Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets.

3 Number of voting members of the governing body (Part VI, line 1a) **3** **14**

4 Number of independent voting members of the governing body (Part VI, line 1b) **4** **14**

5 Total number of individuals employed in calendar year 2013 (Part V, line 2a) **5** **34**

6 Total number of volunteers (estimate if necessary) **6** **25**

7a Total unrelated business revenue from Part VIII, column (C), line 12 **7a** **0.**

7b Net unrelated business taxable income from Form 990-T, line 34 **7b** **0.**

	Prior Year	Current Year
8 Contributions and grants (Part VIII, line 1b)	2,305,520.	1,357,097.
9 Program service revenue (Part VIII, line 2g)	883,350.	372,150.
10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	12,704.	17,220.
11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11c)	38,569.	19,769.
12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	3,240,143.	1,766,236.
13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	0.	0.
14 Benefits paid to or for members (Part IX, column (A), line 4)	0.	0.
15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	1,286,834.	1,354,464.
16a Professional fundraising fees (Part IX, column (A), line 11e)	0.	0.
b Total fundraising expenses (Part IX, column (D), line 25) 155,131.		
17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	949,739.	909,286.
18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	2,236,573.	2,263,750.
19 Revenue less expenses. Subtract line 18 from line 12	1,003,570.	<497,514.>
20 Total assets (Part X, line 16)	Beginning of Current Year 1,715,857.	End of Year 1,242,870.
21 Total liabilities (Part X, line 26)	196,181.	181,084.
22 Net assets or fund balances. Subtract line 21 from line 20	1,519,676.	1,061,786.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here Signature of officer: **Tom McCabe**
 Type or print name and title: **Tom McCabe, Chief Executive Officer**

Paid Preparer Use Only Print preparer's name: **David A. Coates, CPA** Preparer's signature: **[Signature]**
 Firm's name: **Frost & Company, P.S.**
 Firm's address: **P O Box 7609 Olympia, WA 98507-7609**

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

032001 10-29-13 LHA For Paperwork Reduction Act Notice, see the instructions.

Form 990 (2013) **Evergreen Freedom Foundation** 94-3136961 Page 7

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's current officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter 0 in columns (D), (E), and (F) if no compensation was paid.
 - List all of the organization's current key employees, if any. See instructions for definition of "key employee."
 - List the organization's five current highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
 - List all of the organization's former officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
 - List all of the organization's former directors or trustees that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.
- List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below line)	(C) Position <small>(do not check more than one box, unless person is both an officer and a director/trustee)</small>					(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee			
(1) Hans Stokor Chair	2.00	X		X			0.	0.	0.
(2) Steve Neighbors Vice Chair	1.00	X		X			0.	0.	0.
(3) Lou Novak Secretary	1.00	X		X			0.	0.	0.
(4) Tim McMahon Treasurer	1.00	X		X			0.	0.	0.
(5) Roger Bowlin Trustee	1.00	X					0.	0.	0.
(6) Bill Conner Trustee	1.00	X					0.	0.	0.
(7) Robert Jankelson Trustee	1.00	X					0.	0.	0.
(8) Barbara Kenney Trustee	1.00	X					0.	0.	0.
(9) Richard Rokes Trustee	1.00	X					0.	0.	0.
(10) Alvin Starkenburg Trustee	1.00	X					0.	0.	0.
(11) Harry Truitt Trustee	1.00	X					0.	0.	0.
(12) Dr. John Vacko Trustee	1.00	X					0.	0.	0.
(13) Elaine Chandler Trustee	1.00	X					0.	0.	0.
(14) Tracy Wilson Trustee	1.00	X					0.	0.	0.
(15) Jonathan D. Hechtle Past CEO	40.00			X			110,229.	0.	0.
(16) Tom S McCabe CEO	40.00			X			5,099.	0.	0.
(17) Jenny M. Andrews VP of Development	40.00				X		104,618.	0.	0.

332007 10-29-13

Form 990 (2013)

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Schedule O (Form 990 or 990-EZ) (2013)		Page 2
Name of the organization	Evergreen Freedom Foundation	Employer identification number 94-3136961

self-employment, the Foundation can require resolution of the matter within seven days or the employee can be terminated.

All contracts are reviewed by management to ensure no conflicts of interest exist between trustees, employees and third-party vendors. If lawsuits are undertaken for third parties, the Foundation's general counsel checks for any prior involvement with interested parties to the litigation that might involve a conflict of interest. If a conflict exists in a contract or a lawsuit, the Foundation will not enter into the contract or represent the third party.

Form 990, Part VI, Section B, Line 15:

Explanation: The CEO of the Foundation sets the compensation level for all new hires, and determines increases for current employees. The Board of Trustees sets the compensation level for the CEO. The annual compensation budget is reviewed by the Board of Trustees and compared to the financial health of the Foundation.

Form 990, Part VI, Section C, Line 19:

Explanation: Interested persons are given access to governing documents, policies and financial statements via guidestar.org and other similar websites, and upon written request or in person.

Form 990, Part IX, Line 11g, Other Fees:

Other:

Program service expenses	216,820.
Management and general expenses	22,636.
Fundraising expenses	53,171.

332212
09-24-13

Schedule O (Form 990 or 990-EZ) (2013)

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Information Continued

F-1 Supplement

Name Tracy S Wilson	
ENTRY NO. 3	Reporting For: Set <input type="checkbox"/> Spouse <input checked="" type="checkbox"/> Registered Domestic Partner <input type="checkbox"/> Dependent <input type="checkbox"/>
LEGAL NAME: Freedom Foundation	POSITION OR PERCENT OF OWNERSHIP
TRADE OR OPERATING NAME: Freedom Foundation	Trustee
ADDRESS: PO Box 652 Olympia, WA 98507	
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION: Policy Think Tank	

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin

DMITRI IGLITZIN
Iglitzin@workerlaw.com

Original via US First Class Mail
And email to: pdc@pdc.wa.gov

December 15, 2015

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DEC 16 2014

Philip E. Stutzman
Director of Compliance
Washington State Public Disclosure Commission
711 Capitol Way S.
P.O. Box 40908
Olympia, WA 98504-0908

Public Disclosure Commission

RE: November 7, 2014, Freedom Foundation 45-Day Citizen Action Complaint
Response of Working Together for the 17th PAC
Our File No. 2960-019

Dear Mr. Stutzman:

We are writing on behalf of our client, Working Together for the 17th PAC (“Working Together PAC”), in response to your December 8, 2014, letter to Jay Petterson regarding the 45-Day Citizen Action Complaint brought against Working Together PAC by James Abernathy, General Counsel for Freedom Foundation, on or about November 7, 2014 (“Citizen Action Complaint”). For the following reasons, as well as for the reasons set forth by Michael J. Gawley and Shelby A. Hopkins on behalf of their client, Washington Education Association Political Action Committee (“WEA PAC”), in their letter to the PDC dated December 12, 2014, regarding the same Citizen Action Complaint, the PDC should conclude that the Citizen Action Complaint is wholly without merit.

1. The Citizen Action Complaint Is Meritless Because In Order for a Violation of RCW 42.17A.335(1) To Have Occurred, Working Together PAC Must Have Made “A Statement Constituting Libel or Defamation Per Se,” and Working Together PAC’s Statement That “Lynda Wilson is Supported By The Extreme Freedom Foundation” Does Not Constitute Libel Or Defamation Per Se

RCW 42.17A.335(1)(a) through (c) is not a model of clarity. It sets forth one criterion that must necessarily be established in order for a violation to have occurred – “to sponsor with actual malice a statement constituting libel or defamation per se” – and sets forth, in the alternative, three “circumstances” under which this might have occurred, one of which must also necessarily be proven. Thus, in order for this statute to have been violated, the statement(s) that allegedly violated it must *not only* fit within the scope of one of the three “circumstances” set forth in the statute, they must *also* inherently constitute “libel or defamation per se.”

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Philip E. Stutzman
December 15, 2014
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“When statutory language is plain and unambiguous, the statute’s meaning must be derived from the wording of the statute itself.” *Post v. City of Tacoma*, 167 Wn.2d 300, 310, 217 P.3d 1179 (2009). In this case, the wording of the statute itself requires that the alleged violator must have sponsored “a statement constituting libel or defamation per se.”

This is not only the plain and unambiguous meaning of the statute, it is also the constitutionally compelled meaning. Were the statute to be interpreted otherwise, a sponsor of a communication could be found guilty of violating state law for merely making knowingly false statements of fact. Yet we know that it would be constitutionally impermissible for the State of Washington to punish political speech solely for being “false,” even “knowingly false.” *See, e.g., State ex rel. Public Disclosure Com’n v. 119 Vote No! Committee*, 135 Wn.2d 618, 627-628, 957 P.2d 691 (1998) (even assuming that “malicious falsehoods against candidates” are beyond constitutional protection, such statements may not be made the basis for a violation unless they are at least defamatory); *Rickert v. State, Public Disclosure Com’n*, 161 Wn.2d 843, 852-853, 168 P.3d 826 (2007) (even assuming that protection of political candidates could be a compelling interest, prior statute prohibiting maliciously false statements about candidates would still be unconstitutional “because there is no requirement that the prohibited statements tend to be harmful to a candidate’s reputation, i.e., defamatory ... the PDC’s claim that it must prohibit arguably false, but nondefamatory, statements about political candidates to save our elections conflicts with the fundamental principles of the First Amendment.”).

See also the recent decision in *281 Care Comm. v. Arneson*, 766 F.3d 774, 793-96 (8th Cir. 2014), which struck down on constitutional grounds Minnesota’s Fair Campaign Practices Act, which made it a crime to knowingly or with reckless disregard for the truth make a false statement about a proposed ballot initiative. As was noted in that decision, quoting the plurality opinion in *United States v. Alvarez*, — U.S. —, 132 S.Ct. 2537, 2550, 183 L.Ed.2d 574 (2012):

The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the unformed, the enlightened; to the straight-out lie, the simple truth.... The First Amendment itself ensures the right to respond to speech we do not like, and for good reason. Freedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person. And suppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates.

766 F.3d at 779.

For these same reasons, the federal district court in Ohio also recently struck down that state’s law prohibiting knowingly making a false statement concerning the voting record of a candidate or public official, stating compellingly:

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Philip E. Stutzman
December 15, 2014
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Lies have no place in the political arena and serve no purpose other than to undermine the integrity of the democratic process. The problem is that, at times, there is no clear way to determine whether a political statement is a lie or the truth. What is certain, however, is that *we do not want the Government (i.e., the Ohio Elections Commission) deciding what is political truth*—for fear that the Government might persecute those who criticize it. Instead, in a democracy, *the voters should decide*. And thus today the Court must decide *whether Ohio's political false-statements laws are the least restrictive means of ensuring fair elections. The short answer is no.*

List v. Ohio Elections Com'n, 2014 WL 4472634, 1 (S.D. Ohio, 2014) (emphasis in original).

Where a statute is susceptible of several interpretations, some of which might render it unconstitutional, the court, without doing violence to the legislative purpose, must adopt a construction which will sustain its constitutionality if at all possible to do so. *State ex rel. Morgan v. Kinnear*, 80 Wn.2d 400, 402, 494 P.2d 1362 (1972). Because it is clearly possible to read the statute consistently with its plain language, as described above, and thereby require proof of “a statement constituting libel or defamation per se” as one element of a violation of RCW 42.17A.335(1)(c), such proof must therefore be required in this case.

It takes no great effort to demonstrate, however, that the allegedly false statement made by Working Together PAC, even if false, did not constitute “libel or defamation per se.” RCW 42.17A.335(2) defines “libel or defamation per se” as meaning “statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.” Freedom Foundation is not a “living person”; thus, the first prong of this definition clearly does not apply. Nor has Freedom Foundation established, or even alleged, that the statement it objects to is of the type that would “tend” to “injure” it in its “business or occupation” in any constitutionally significant way.

To the extent that Freedom Foundation has any “business or occupation” at all, there is no evidence that the putatively false statement by Working Together PAC that it supported Lynda Wilson was of the sort that might tend to inflict any injury on it in relation to that business or occupation. Freedom Foundation has not shown, or even alleged, that it lost revenue, profits, donations, or any other material thing, including goodwill, as a result of the statement in question, or that the statement was of the type that would tend to cause such a loss. While it may be true that consistent with its current status as a section 501(c)(3) organization, Freedom Foundation is restricted in its ability to directly or indirectly participate in any political campaign on behalf of (or in opposition to) any candidate for elective public office, Freedom Foundation has not shown that the statement made by Working Together PAC in any way *impacted* its Internal Revenue Code 501(c)(3) status, or that it was the type of statement that *could* cause such an impact. Freedom Foundation asserts that Working Together PAC’s statements “threaten the Freedom foundation as a not-for-profit organization,” but no evidence exists that the statement in question was ever communicated to the Internal Revenue Service (“IRS”), much less that

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communication of this statement by any party to the IRS would have any impact at all on Freedom Foundation's 501(c)(3) status.

Finally, Freedom Foundation attempts to conflate the issue of injury with the question of damages, noting that RCW 42.17A.335(4) provides that damages are "presumed" if a violation is proven. In order for the issue of damages to arise at all, however, a violation must be "proven," and violations themselves are not "presumed." In this case, Freedom Foundation has the burden of proving that Working Together PAC's statement that it supported Lynda Wilson was the kind of statement that meets the high threshold of being "defamatory," as explained and addressed in the court decisions cited above, among others, such that it would "tend" to injure it in some legally significant way. Freedom Foundation has presented no evidence to support this assertion, much less evidence that would prove this assertion by clear and convincing evidence, as is required by RCW 42.17A.335(4).

For all of these reasons, even if it were the case that the statement made by Working Together PAC that Lynda Wilson "is supported by" Freedom Foundation was both false and made with actual malice, which it is not, Freedom Foundation has not shown (and cannot show) that this statement constituted "libel or defamation per se," as required by the statute and the First Amendment to the United States Constitution. Freedom Foundation's allegations against Working Together PAC are therefore without merit.

2. Additionally, the Citizen Action Complaint Is Meritless Because In Fact, Freedom Foundation Did And Does Support Lynda Wilson

RCW 42.17A.335(1)(c) makes it a violation to sponsor with actual malice a statement constituting libel or defamation per se that "makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement." The statement allegedly made by Working Together PAC was that "Lynda Wilson is supported by the extreme Freedom Foundation." Thus, the language of the statute could only be violated if this statement of "support" violates the prohibition against falsely stating or implying such support.

Yet the evidence is overwhelming that far from being knowingly false or made with reckless disregard of its truth or falsity (the definition of "actual malice"), Working Together PAC's statement that Lynda Wilson "is supported by" Freedom Foundation is absolutely, 100% true.

The evidence on this point was persuasively and comprehensively set forth by Mr. Gawley and Ms. Hopkins in WEA PAC's December 12, 2014, letter and will not be repeated here in full. We will simply highlight a few key points.

First, on April 23, 2014, Tom McCabe, the Chief Executive Officer of Freedom Foundation, along with another major Freedom Foundation representative, Scott Roberts, gave speeches at Ms. Wilson's place of business. The very presence of these Freedom Foundation representatives, in their capacity as agents of Freedom Foundation, at Ms. Wilson's place of

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business during the campaign season is enough, even without more, to establish Freedom Foundation's support of Ms. Wilson; it is beyond reasonable dispute that organizations do not appear at a candidate's private place of business and give speeches if they do not *to at least some extent* support that candidate. The content of the speeches, however, strongly confirms what was already obvious from the appearance of the speakers at this location, i.e., Freedom Foundation's actual support for Ms. Wilson. See https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA and the discussion in Mr. Gawley and Ms. Hopkins' letter of the statements made at that event.

Second, as was noted by WEA PAC, on or about June 12, 2014, Ms. Wilson posted on her campaign website a picture of herself and Mr. McCabe holding Freedom Foundation's "Pledge." <http://electlyndawilson.com/lynda-wilson-signs-pledge-calls-on-monica-stonier-to-the-same/2/>. It is reasonable to infer that because there is no evidence that Freedom Foundation ever objected to the use by Ms. Wilson of this photograph, which clearly "states or implies" Freedom Foundation's support of her, that Freedom Foundation did not dispute or disagree with this statement being made by Ms. Wilson. Obviously, Freedom Foundation cannot acquiesce in this implicit statement of its support for Ms. Wilson when communicated by Ms. Wilson, then accuse Working Together PAC of acting with actual malice when it makes what is essentially the exact same assertion.

Third, Freedom Foundation *featured* Ms. Wilson on its June 12, 2014, podcast. <http://www.myfreedomfoundation.com/blogs/freedom-daily/freedom-daily-june-12-2014-%E2%80%93-host-jami-lund-guests-lynda-wilson-and-max-nelsen>. Absent evidence that Freedom Foundation's podcast has *ever* featured a guest whose politics and policies it does not support, the inference would be unmistakable from the mere fact of Ms. Wilson's appearance on this podcast that Freedom Foundation supports her. In fact, however, the content of the podcast, as explained by WEA PAC, further confirms that conclusion.

Fourth, Mr. McCabe himself Mr. McCabe contributed to Ms. Wilson's 2014 17th District election campaign. <http://www.pdc.wa.gov/MvcQuerySystem/CandidateData/showReport?repno=100568289>. One may reasonably infer that the politically sophisticated Mr. McCabe would not financially support a candidate for public office whom the organization he runs did not itself support.

It is worth noting, finally, that although Freedom Foundation cites to and quotes the language of RCW 42.17A.336(1)(c), which contains the prohibition against falsely stating or implying "support or endorsement," Freedom Foundation does not appear to explicitly accuse Working Together PAC of falsely stating that Freedom Foundation "supported" Ms. Wilson (perhaps because the truth of that statement is readily evident, as explained above), but instead of falsely stating that Freedom Foundation "endorsed" Ms. Wilson. It is apparent from the language of the Working Together PAC flyer and website in question, however, that no such "endorsement" statement was ever made, and the rules of statutory interpretation, and specifically the rule against surplusage, means that the term "support," as used in the statutory provision, cannot be read as meaning the same thing as the term "endorse." See, e.g., *Veit, ex rel. Nelson v. Burlington N. Santa Fe Corp.*, 171 Wn.2d 88, 113, 249 P.3d 607 (2011).

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This evidence provides a separate and independent basis for finding Freedom Foundation's assertion that Working Together PAC violated RCW 42.17A.335(1)(c) wholly lacking in merit.

3. Working Together PAC Also Did Not Violate RCW 42.17A.335(1)(a)

In the second-to-last paragraph of its Citizen Action Complaint, Freedom Foundation suggests that in addition to violating subsection (1)(c), Working Together PAC's conduct also violated RCW 42.17A.335(1)(a). For the following reasons, this allegation is also plainly without merit.

Subsection (1)(a) makes it an offense to sponsor with actual malice a statement constituting libel or defamation per se that contains "a false statement of material fact about a candidate for public office." Due to the only cursory analysis given to this allegation in the Citizen Action Complaint, it is hard to know precisely what Freedom Foundation is basing it on. However, under no possible legal or factual theory does Freedom Foundation's accusation hold water.

Freedom Foundation presumably contends that the "false" statements it earlier alleged were made by Working Together PAC were false statements of material fact about Ms. Wilson. However, aside from not being false, which is of course a total defense to this allegation, the statement that Freedom Foundation "is supported by the extreme Freedom Foundation" is not a statement "constituting libel or defamation per se," as would be required by RCW 42.17A.335(2) and the First Amendment. Presumably, Freedom Foundation does not mean to suggest that its mere support of a candidate would tend to expose that person "to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation." And such a position, if taken, would of course be inconsistent by the warm embrace given by Freedom Foundation and its representatives to Ms. Wilson, both literally and figuratively, in the months leading up to the election.

The other statements made by Working Together PAC that Freedom Foundation objects to – i.e., that Freedom Foundation supports big corporations and tax loopholes – were similarly not false statements of material fact about a candidate for public office, first because they are not false, as was amply demonstrated by Working Together PAC through Jay Petterson's October 29, 2014, letter to James Abernathy (Exhibit J to the Citizen Action Complaint), but also because they are self-evidently not "about" Ms. Wilson, but instead are about Freedom Foundation, which is *not* a candidate for public office. If Freedom Foundation believes that it was libeled by Working Together PAC, it has the right to bring an action so alleging in superior court (subject, however, to the strictures of Civil Rule 11 and the ethical and legal obligation to not bring a wholly frivolous lawsuit against another party); however, it cannot invoke the assistance of the Public Disclosure Commission because these statements do not damage the integrity of elections or distort the electoral process.

DEC 16 2014

Philip E. Stutzman
December 15, 2014
Page 7 of 7

Public Disclosure Commission

In light of the foregoing, this portion of the Citizen Action Complaint is also devoid of merit.

Taken as a whole, for all of the reasons set forth above, the Citizen Action Complaint is devoid of merit in its entirety. We ask that it be summarily and swiftly dismissed.

Respectfully submitted this 15th day of December, 2015.



Dmitri Iglitzin
Counsel for Working Together for the 17th Political Action Committee

cc: Jay Petterson

James Abernathy
General Counsel
The Freedom Foundation
P.O. Box 552
Olympia, WA 98507

November 7, 2014

Bob Ferguson
Attorney General
1220 Main St. Suite 549
Vancouver, WA 98660-2964

NOV 13 2014
RECEIVED

NOV 10 2014

OFFICE OF THE ATTORNEY GENERAL
VANCOUVER OFFICE

Dear Mr. Ferguson,

By way of introduction, my name is James Abernathy. I am General Counsel at the Freedom Foundation, a not-for-profit organization in the State of Washington. This letter is written to you pursuant to RCW 42.17A.765(4) to notify you in writing that there is reason to believe that at least one provision of RCW 42.17A was violated in Washington.

Specifically, both the Washington Education Association Political Action Committee ("WEA") and the Working Together for the 17th Political Action Committee ("Working Together") violated RCW 42.17A.335(1)(c), which provides

(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances: ... (c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

The WEA violated this provision by publishing a TV commercial and mailing fliers in Clark County, Washington which make directly and/or indirectly a false claim which states and/or implies that the Freedom Foundation supported a candidate for office in the 17th District. First, the WEA published and caused to be aired on television political advertising which violates RCW 42.17A.335(1)(c). (*See* enclosed Exhibit I on the enclosed CD-ROM.) Second, the WEA published and mailed fliers which also violate RCW 42.17A.335(1)(c). One such flier is enclosed as Exhibit A. Each of these is political advertising which constitute, in the least, a false claim implying an organization's support or endorsement of a person.

The WEA's statements are false. The Freedom Foundation does not support any candidate for any political office. The Freedom Foundation is a nonpartisan not-for-profit organization. The WEA's statement that the Freedom Foundation supports big corporations and tax loopholes is also false. Further, these statements do not constitute privileged

communications, and the WEA knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of these statements. Lastly, the WEA is at fault because it produced, paid for, and caused these false statements to be published and distributed to the public, as can be seen on the publications themselves. The WEA's statements injure the Freedom Foundation as an organization, exposes it to contempt, and deprives it of public confidence. Not only do these statements bring contempt upon and deprive the Freedom Foundation of the confidence of the public who supports it, they also threaten the Freedom Foundation as a not-for-profit organization because such organizations are prohibited from endorsing or campaigning on behalf of individual candidates. RCW 42.17A.335(4) provides that damages are presumed if a violation is proven.

Upon learning of the television commercial, the Freedom Foundation contacted the cable company airing the commercial (Comcast) by phone and by e-mail to lodge a complaint stating that the WEA commercial contained defamatory statements against the Freedom Foundation. (See enclosed Exhibits D and E.) The WEA pulled the ad less than 24 hours later. (See enclosed Exhibit F.) In other words, the WEA did not even attempt to substantiate its statements because it knew it could not. Yet, the WEA continued to publish and distribute these false statements. This constitutes compelling evidence that the WEA knew from the beginning that its statements were false, or, in the least, displayed a reckless disregard for the truth or falsity of its statements. At the least, the WEA knew its statements were false due to the Freedom Foundation's complaint *but continued* to make these statements in its political advertising.

Working Together also violated RCW 42.17A.335(1)(c). First, Working Together authored, paid for, and caused to be published a website at the address wilsonfactcheck.com. This website's original website contained the following false statement:

Lynda Wilson is supported by the extreme Freedom Foundation, which favors providing more wasteful tax loopholes to profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.

Second, this false statement was also made on a flier paid for, published, and mailed by Working Together. (See enclosed Exhibit B.) This statement violates RCW 42.17A.335(1)(c) because Working Together directly made a false claim stating that Freedom Foundation endorsed a candidate even though this is patently false.

Freedom Foundation contacted Working Together by e-mail to inform it of the defamatory statements on its website. Freedom Foundation's first e-mail to Working Together is enclosed as Exhibit G (also sent by a written letter via regular mail). Working Together did not even attempt to substantiate its false statement in a response. In fact, Working Together did not respond to the Freedom Foundation at all. Instead, Working Together altered the language on its website after receiving the Freedom Foundation's letter/email. However, the statements still violated RCW 42.17A.335(1)(c). The website's altered language states

Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that

benefit the corporations and the wealthy. This means they pay less than their fair share, and the working families get stuck with the bill.

See a copy of the website enclosed as Exhibit C. This altered statement still violates RCW 42.17A.335(1)(c) because Working Together directly made a false claim that, in the least, implied that the Freedom Foundation endorses a candidate, even though the statement is patently false.

The Freedom Foundation sent a second e-mail to Working Together to inform it that its altered language still violated RCW 42.17A.335(1)(c). (See enclosed Exhibit H.) Working Together responded by letter dated October 29, 2014 attempting to substantiate its altered statements. (See enclosed Exhibit J.) Working Together's response did not address the original language on its website; nor did it address its flier (exhibit B). Additionally, Working Together's response did not adequately address its altered false statements on its altered website. (But even if it did, that still leaves its fliers and original website language unsubstantiated.) Further, Working Together did not change the altered language subsequent to the Freedom Foundation's second e-mail. Working Together's conduct constitutes compelling evidence it knew from the beginning that its statements in its fliers and original website were false, or, in the least, displayed a reckless disregard for the truth or falsity of its statements. At the least, Working Together knew its statements were false after the Freedom Foundation's emails *but continued* to make these statements in its political advertising.

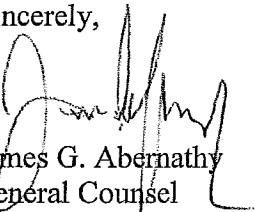
Similar to the WEA's statements, Working Together's statements are also false. The Freedom Foundation does not support any candidate for any political office. The Freedom Foundation is a nonpartisan not-for-profit organization. Working Together's statement that the Freedom Foundation supports big corporations and tax loopholes is false as well. Further, these statements do not constitute privileged communications, and Working Together knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of these statements. Lastly, Working Together is at fault because it produced, paid for, and caused these false statements to be published and distributed to the public, as can be seen on the publications themselves. Working Together's statements injure the Freedom Foundation as an organization, because they expose it to contempt and deprive it of public confidence. Not only do these statements bring contempt upon and deprive the Freedom Foundation of the confidence of the public who supports it, they also threaten the Freedom Foundation as a not-for-profit organization because such organizations are prohibited from endorsing or campaigning on behalf of individual candidates. RCW 42.17A.335(4) provides that damages are presumed if a violation is proven.

Working Together's and the WEA's conduct clearly violates RCW 42.17A.335(1)(c). Further, their conduct also violates RCW 42.17A.335(1)(a) because they engaged in political advertising that contains false statements of material fact about a candidate for public office. The evidence enclosed in this letter alone shows beyond a reasonable doubt or, at least by clear and convincing evidence, that Working Together in the WEA have violated the law as described above. In the least, there is reason to believe the above cited statutes were violated. Moreover, there is also reason to believe these two political action committees made false statements on publications not included in this letter. After all, political advertising and electioneering are

multi-pronged efforts which utilize varying forms of media. Even if not, however, the enclosed evidence is more than enough to show that Working Together and the WEA clearly violated the law.

Please contact me at (360) 956-3482 or jabernathy@myfreedomfoundation.com if you have any questions. Thank you for your consideration of this matter.

Sincerely,



James G. Abernathy
General Counsel
The Freedom Foundation

Enc.

Hello

Lynda Wilson,

The taxpayers

need to pay up.

We're counting

on you for some

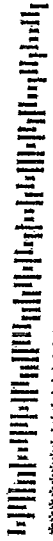
big tax loopholes.

Exhibit A

Paid for by Washington
Education Action
Political Action Committee
P.O. Box 9100
Federal Way, WA 98063

No candidate authorized this ad. It is paid for by the Washington Education
Association Political Action Committee, P.O. Box 9100, Federal Way, WA.
Top Five Contributors: Washington Education Association, representing
more than 82,000 teachers and school employees across Washington.

© 2008 107-2



*****ECRWSH**C081

DOUG AND KRISTINE PALIN
OR CURRENT RESIDENT
17311 NE 40TH ST
VANCOUVER WA 98682-5603

651

PRBRT STD
US POSTAGE
PAID
CAMPAIGN MAIL

Do you think Lynda Wilson will ever put our schools before corporate tax loopholes?

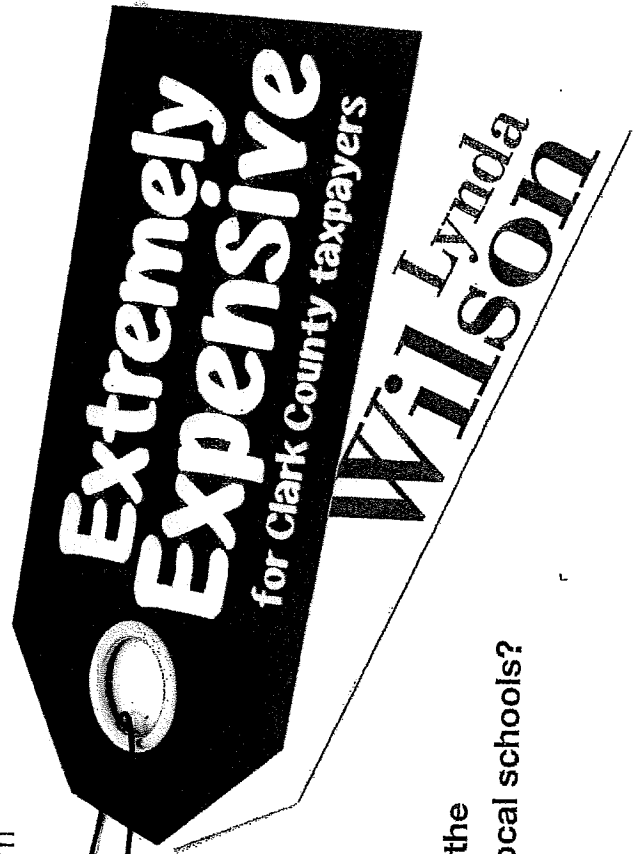
We don't think so.

Lynda Wilson (R) is a member of the extreme Freedom
Foundation, which supports providing more
wasteful tax loopholes for profitable Wall
Street banks and other big corporations.
They stand up for big corporations at the expense
of working families.

There are more than 650 wasteful
corporate tax loopholes in Washington state.

**Why not vote for someone who will work to close the
wasteful loopholes and invest the savings in our local schools?**

Exhibit A

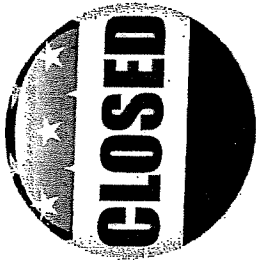


BUT THROWING AWAY TAXPAYER MONEY DOESN'T SEEM TO BOTHER LYNDA WILSON

Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.

FACT CHECK | WilsonFactCheck.com

Lynda Wilson's connection to the Freedom Foundation is documented by the Washington Public Disclosure Commission and electlyndawilson.com. Wilson criticized the end of the government shutdown in a letter from the Clark County Republican Party Board of Directors, 10/18/13.



The wasteful government shutdown didn't bother Lynda Wilson either

The Federal Government shutdown was one of the worst examples of government waste in recent memory. But Lynda Wilson actually thought the shutdown didn't last long enough. Seriously. When our Republican Congresswoman Jaime Herrera-Beutler voted to end the federal government shutdown last year, Lynda Wilson actually signed a letter denouncing her.

VOTE NO ON LYNDA WILSON. WRONG WHEN IT MATTERS MOST.

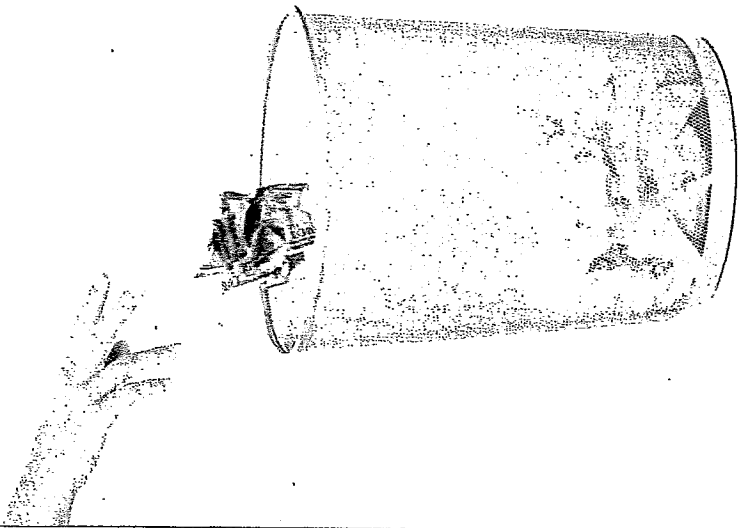
No candidate authorized this ad. It is paid for by Working Together for the 17th PAC (New Direction) 6715 NE 63rd Street, Suite 103 - #217, Vancouver, WA 98661.
Top 5 Contributors: DIME PAC, Washington Federation of State Employees, Harry Truman Fund, Service Employees International Union WA State Council PAC

Exhibit B

PART STD
US POSTAGE
PAID
RIDGEFIELD, WA
PERMIT NO. 94



NO ONE WOULD THROW THEIR OWN MONEY AWAY



17 322 ECRVSHR 006
Betsy and Leslie Brosius
Or Current Resident
14717 NE 50th Ave
Vancouver, WA 98686-2075

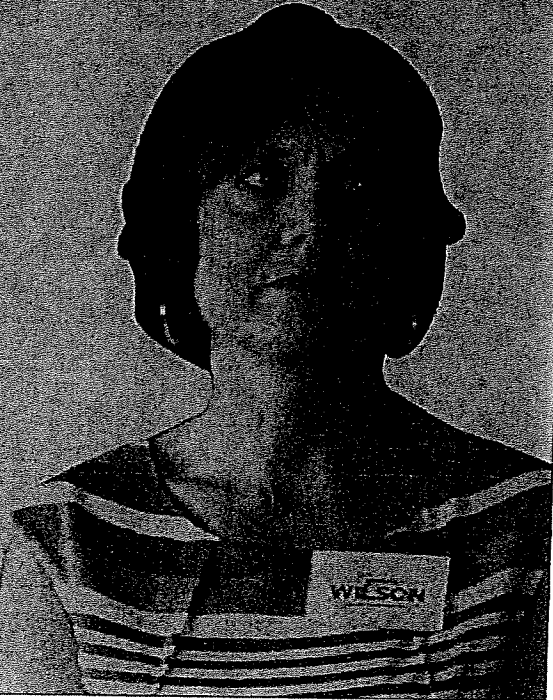
Exhibit B

LYNDA WILSON FACT CHECK

Lynda Wilson: Opposes common sense paid sick leave

Since unplanned medical emergencies can threaten a family's financial security, paid sick leave is crucial for working parents who need to spend a day at home with a sick child or loved one. But Lynda Wilson opposes paid sick leave for working parents — forcing local families to face potentially devastating financial consequences when a loved one becomes ill.

**Just one more example of how
Lynda Wilson is always wrong
when it matters most**



FACT CHECK

Lynda Wilson testified against the sick leave provisions contained in House Bill 1313.

THROWING AWAY TAXPAYER MONEY DOESN'T SEEM TO BOTHER LYNDA WILSON

Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.

The wasteful government shutdown didn't bother Lynda Wilson either

The Federal Government shutdown was one of the worst examples of government waste in recent memory. But Lynda Wilson actually thought the shutdown didn't last long enough. Seriously. When our Republican Congresswoman Jaime Herrera-Beutler voted to end the federal government shutdown last year, Lynda Wilson actually signed a letter denouncing her.



FACT CHECK

Lynda Wilson's connection to the Freedom Foundation is documented by the Washington Public Disclosure Commission and on electlyndawilson.com.
Wilson criticized the end of the government shutdown in a letter from the Clark County Republican Party Board of Directors, 10/18/13.

Lynda Wilson wants to get politicians involved in women's health care

Although women don't turn to elected leaders for advice about mammograms or cancer treatments, Lynda Wilson believes that politicians should be involved in a woman's personal/medical decisions about her pregnancy. Lynda Wilson even wants to ban abortion for a woman who has been the victim of rape or incest.

Another example of how Lynda Wilson and her Republican supporters are always wrong when it matters most.



FACT CHECK

On the 2014 LIFE PAC questionnaire, Lynda Wilson said it is never permissible to have an abortion in the cases of rape or incest.

Vote NO on Lynda Wilson
Wrong When It Matters Most

SHARE

NO CANDIDATE AUTHORIZED THIS AD. IT IS PAID FOR BY WORKING TOGETHER FOR THE 17TH PAC
(NEW DIRECTION) 6715 NE 63RD STREET, SUITE 103 - #217, VANCOUVER, WA 98661. TOP 5
CONTRIBUTORS: DIME PAC, WASHINGTON FEDERATION OF STATE EMPLOYEES, HARRY TRUMAN
FUND, SERVICE EMPLOYEES INTERNATIONAL UNION WA STATE COUNCIL PAC

From: James Abernathy
To: "mary_kelly@cable.comcast.com"
Subject: Commercial
Date: Thursday, October 16, 2014 4:27:33 PM
Attachments: IMG_0549.MOV

Commercial is attached.

Please confirm receipt. Thanks!

James Abernathy

General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit D

From: James Abernathy
To: "mary_kelly@cable.comcast.com"
Subject: Complaint
Date: Thursday, October 16, 2014 5:00:05 PM
Attachments: IMG_0549.MOV

To whom it may concern,

Your company is currently airing a political ad which supports Monica Stonier in the 17th Legislative District in the State of Washington. This ad states several blatant lies. The ad states that the Freedom Foundation supports big corporations and tax loopholes. Both of these statements are patently false. The Freedom Foundation does not support big corporations. The Freedom Foundation supports a free market. Further, the Freedom Foundation is opposed to tax loopholes. Tax loopholes are crony capitalism, which the Freedom Foundation does not support. The Freedom Foundation demands that the ad be pulled down until the lying and defamatory statements about it are removed. If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent, including litigation if necessary.

The commercial is attached.

James Abernathy

General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit E

From: [Kelly, Mary M](#)
To: [James Abernathy](#)
Subject: RE: Complaint
Date: Friday, October 17, 2014 10:56:07 AM

James, the client is pulling the ad.

Mary Kelly, Political Sales Manager
Comcast Spotlight – Oregon
O: 503.535.6114 | C: 971.212.9097

From: James Abernathy [mailto:jabernathy@myfreedomfoundation.org]
Sent: Thursday, October 16, 2014 5:01 PM
To: Kelly, Mary M
Subject: Complaint

To whom it may concern,

Your company is currently airing a political ad which supports Monica Stonier in the 17th Legislative District in the State of Washington. This ad states several blatant lies. The ad states that the Freedom Foundation supports big corporations and tax loopholes. Both of these statements are patently false. The Freedom Foundation does not support big corporations. The Freedom Foundation supports a free market. Further, the Freedom Foundation is opposed to tax loopholes. Tax loopholes are crony capitalism, which the Freedom Foundation does not support. The Freedom Foundation demands that the ad be pulled down until the lying and defamatory statements about it are removed. If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent, including litigation if necessary.

The commercial is attached.

James Abernathy
General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit F

From: James Abernathy
To: "JAY@BLUEWAVEPOLITICS.COM"
Subject: Defamation
Date: Wednesday, October 22, 2014 11:08:32 AM

To whom it may concern,

My name is James Abernathy and I'm General Counsel at The Freedom Foundation. Working Together for the 17th PAC is the creator of the website at the address wilsonfactcheck.com. This website contains several blatant lies about The Freedom Foundation. The website states,

"Lynda Wilson is supported by the extreme Freedom Foundation, which favors providing more wasteful tax loopholes to profitable big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill."

These statements are patently false and Working Together for the 17th PAC knows they are false. Further, Working Together for the 17th PAC cannot substantiate the statements. First, The Freedom Foundation does not support big corporations. The Freedom Foundation supports a free market. Second, The Freedom Foundation is opposed to tax loopholes of any kind. Tax loopholes are crony capitalism, which the Freedom Foundation does not support. Third, The Freedom Foundation does not support Lynda Wilson. The Freedom Foundation is a nonprofit organization and does not support candidates or campaign on their behalf. The Freedom Foundation demands that the website be removed until the lying and defamatory statements are removed. If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent of the law, including litigation if necessary. Again, the statements about Freedom Foundation on the website are lies and cannot be substantiated.

I thank you for your urgent attention to this matter. Please contact me at this e-mail address or the phone number below if you have any questions.

James Abernathy

General Counsel | Freedom Foundation

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit G

From: James Abernathy
To: "JAY@BLUEWAVEPOLITICS.COM"
Subject: Altered Website
Date: Thursday, October 23, 2014 11:44:24 AM

To whom it may concern,

I am writing to follow up an e-mail I sent to you yesterday, October 22, 2014, at 11:41 AM, regarding lies you published about the Freedom Foundation. Since then, you have slightly changed the language on the website wilsonfactcheck.com that lies about the Freedom Foundation. However, this change does not remedy the lies being published about the Freedom Foundation. The website now states:

"Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill."

As you recall, I outlined three lies contained in the previous language on the website. First, the Freedom Foundation does not support big corporations. Second, the Freedom Foundation is opposed to tax loopholes of any kind. The altered language still contains the lies that the Freedom Foundation supports, and/or opposes eliminating, tax loopholes (thus supporting big corporations and the wealthy). Both of these statements are false. The phrase "which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy" on the website refers to the Freedom Foundation, even though this claim is not true. Further, you cannot substantiate this claim. The especially disconcerting aspect of all this is that you know you cannot substantiate this claim, yet you still publish it. Third, the altered language still sends the message that the Freedom Foundation supports Lynda Wilson. This is a lie, and you know it is a lie.

Once again, the Freedom Foundation demands that the website be removed until the lying and defamatory statements about the Freedom Foundation are removed. Unless you can substantiate the claims, immediately remove all references to the Freedom Foundation supporting or opposing any issue, cause, or candidate. Further, unless you can substantiate the claims, immediately remove all language which sends the message; and/or creates the impression, that Freedom Foundation supports or opposes any issue, cause, or candidate.

If this demand is not met, Freedom Foundation will pursue its rights to the fullest extent of the law, including litigation if necessary. Again, the statements about Freedom Foundation on the website are lies and cannot be substantiated.

I thank you for your urgent attention to this matter. Please contact me at this e-mail address or the phone number below if you have any questions.

James Abernathy
General Counsel | Freedom Foundation

Exhibit H

JAbernathy@myfreedomfoundation.com
360.956.3482 | PO Box 552 Olympia, WA 98507
myFreedomFoundation.com

Exhibit H

October 29, 2014

James Abernathy
General Counsel, Freedom Foundation
PO Box 552
Olympia, Washington 98507

Re: Response to demand to remove Working Together for the 17th PAC website

Dear Mr. Abernathy,

On October 22, 2014, you wrote to us concerning what you described as “several blatant lies about The Freedom Foundation” on the Working Together for the 17th PAC’s website, a claim you reiterated in your follow-up email sent the very next day. Specifically, you raised three assertions relating to the statement then on the website that Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors providing more wasteful tax loopholes to profitable big corporations and the wealthy.

Subsequent to our receipt of your October 22 e-mail, the content of the website changed. We then received an e-mail from you, on October 23, renewing and reiterating your accusations and concerns.

For the reasons set forth below, your assertion that the content of the website as it appeared on October 23, 2014, and thereafter, is untrue, lacks merit. Specifically, the three claims you make as to the falsity of the content of the website are completely at odds with the facts in our possession. For that reason, “removal” of our website, which you have requested, would be an unnecessary and unwarranted restriction of our free speech rights.

“First, the Freedom Foundation does not support big corporations.”

Although the website currently does not make the opposite assertion, such an assertion would in fact be true. The Freedom Foundation, through its policies and positions, does support big corporations. For example, the Freedom Foundation supports right-to-work legislation. As the Freedom Foundation’s own website proudly boasts, “Last week, pro-union blogger David Goldstein asked the question ‘Is the Freedom Foundation Plotting to Transform Washington into a ‘Right to Work’ State, One City at a Time?’ to which we replied ‘yes.’”¹

According to the Economic Policy Institute and many other research institutions, workers earn less under right-to-work laws. Rigorous studies—using regression analysis to hone in on the effect of right-to-work laws— show that right-to-work laws reduce wages by \$1,500 a year, for both union and nonunion workers, after accounting for different costs of living in the states.² When workers are paid less, corporations pocket more money.

¹ See <http://www.myfreedomfoundation.com/blogs/liberty-live/freedom-update-episode-34>.

² See, e.g., <http://www.epi.org/publication/working-hard-indiana-bad-tortured-uphill>, citing Gould and Shierholz, 2011.

As the Freedom Foundation supports legislation that ensures that profits remain with big corporations at the expense of their workers, the Freedom Foundation inherently supports these big corporations. Our statement is the simple, logical, and reasonable inference based on the documented effect of right-to-work laws on employee wages—otherwise known as our protected opinion.

“Second, The Freedom Foundation is opposed to tax loopholes of any kind.”

Contrary to this assertion, the Freedom Foundation does in fact *oppose* legislation that would attempt to bring uniformity to Washington’s tax system by eliminating “preferential tax rates.” For example, the Freedom Foundation admitted that HB 2038’s proposed changes to Washington State’s tax system would “eliminate preferential tax rates.”³ As you know, “preferential tax rates” are nothing more than tax loopholes for categories of taxpayers, such as big corporations. And yet the Freedom Foundation clearly opposed HB 2038.

Some of the beneficiaries of those “preferential tax rates” that HB 2038 would have eliminated are “big corporations and the wealthy.” The truth is that the Freedom Foundation’s opposition to legislation such as HB 2038 establishes its desire to protect wasteful tax loopholes for such entities. To instead insist that the Freedom Foundation does not support tax loopholes for big corporations and the wealthy does not pass any straight-face test.

“Third, the altered language still sends the message that the Freedom Foundation supports Lynda Wilson.”

The website language currently asserts that Lynda Wilson is supported “by Tom McCabe, CEO of the Freedom Foundation.” According to Washington State’s Public Disclosure Commission, Mr. McCabe donated \$125 to Ms. Wilson’s campaign on or about February 10, 2014. Thus, the website language is completely accurate, and it is not made any less so by the fact that people might assume, no doubt rightly, that Mr. McCabe’s personal support for Ms. Wilson is closely related to the policies and activities of the organization he directs.

Conclusion

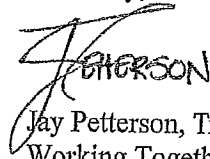
The Freedom Foundation’s demands that our website be removed are without merit. While the Freedom Foundation may be embarrassed by the fact that the support of your organization and/or your organization’s CEO for big corporations, wasteful tax loopholes, and Ms. Wilson is being made public to the community at large, the fact of the matter is that communicating these facts is not lying, not defamatory, and not actionable at law.

If the Freedom Foundation’s position on any of the above-referenced issues has changed, and you now (for example) support measures designed to eliminate or reduce tax loopholes for big corporations, please identify which such measures you support so we can consider updating our website accordingly. Likewise, if the Freedom Foundation now opposes right-to-work efforts,

³ See <http://archive.myfreedomfoundation.com/blog/liberty-live/detail/hb-2038-beer-for-kids.html>.

please let us know. Finally, if Mr. McCabe no longer supports Ms. Wilson's campaign, we will certainly take that into account in our communications with the public going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "PETTERSON". The signature is stylized with a large, sweeping initial letter.

Jay Petterson, Treasurer
Working Together for the 17th PAC

Exhibit 3

RECEIVED

DEC 15 2014

Public Disclosure Commission

VIA USPS MAIL
AND ELECTRONIC TRANSMISSION

December 12, 2014

Andrea McNamara Doyle
Executive Director

Philip E. Stutzman
Director of Compliance

Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: November 7, 2014 Freedom Foundation
Citizen Action Notice – WEA-PAC, a political committee
Response to Allegations

Dear Ms. Doyle and Mr. Stutzman:

We write in response to Mr. Stutzman's letter of December 8, 2014, in which he requested that WEAPAC respond to the Freedom Foundation's ("FF") November 7, 2014 complaint that WEAPAC "violated RCW 42.17A.335(1)(c) by publishing. . . false claims that the Freedom Foundation supported Lynda Wilson, a candidate for State Representative in the 17th Legislative District."

In short, the FF complains that WEAPAC violated RCW 42.17A.335(1)(c) when it published a TV commercial and mailed fliers it claims "make directly and/or indirectly a false claim which states and/or implies the FF supported a candidate for office in the 17th District." FF's claims are both legally and factually unsupported.

As to the law, as we are sure you are aware, two prior versions of RCW 42.17A.335 have been found by the Washington State Supreme Court to be facially unconstitutional under the First Amendment. The current version fares no better. One need look no further than the operative provisions at issue in the statute to conclude that it is unquestionably and impermissibly vague in its proscriptions, in addition to the fact that it contemplates having a governmental Commission, whose members are appointed by an elected office

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holder, make *post hoc* determinations as to the “truth” or “falsity” of political discourse, including that of his or her political opponents.

Specifically, the subsection upon which the FF premises its complaint, RCW 42.17A.335(1)(c), seeks to prohibit:

Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

While it may be possible in this context to constitutionally define the term “endorsement”, it is clearly not so with respect to the term “support.” For example, as used here, does “support” mean make a contribution to the campaign? Make independent expenditures in support of the candidate?¹ Refrain from contributing to the opponent’s campaign? Refrain from making independent expenditures in support of the opponent’s campaign? Publically praise the candidate? Publically deride the opponent? Subjectively agree with the candidate’s position on one or more issues? Disagree with the opponent’s position? The list goes on.

The fact that, before engaging in political discourse, the statute seeks to require one to first contemplate such questions, let alone settle upon a prospective answer, in the hopes that he or she lands on the same answer as the *post hoc* determination of an appointed governmental committee, under pain of legal sanction and for “getting it wrong”, makes clear that it cannot survive constitutional scrutiny. This, of course, without even addressing whether one might be found to have impermissibly “implied” something at odds with the Commission’s conclusion, a conclusion, one must remember, that is necessarily reached by committee.

Or, as complained of in the instant complaint - whether WEAPAC “ma[d]e directly and/or *indirectly* a false claim which state[d] and/or *implie[d]* the Freedom Foundation supported a candidate for office in the 17th District” – i.e. whether any statements WEAPAC made ‘*indirectly implied*’ any of the above possibilities. The folly of such an exercise makes self-evident that the statute cannot withstand First Amendment scrutiny.

As to the facts, attached hereto, with several web-links imbedded herein, are numerous publically available examples which show clearly that the FF supported Lynda Wilson in her candidacy.

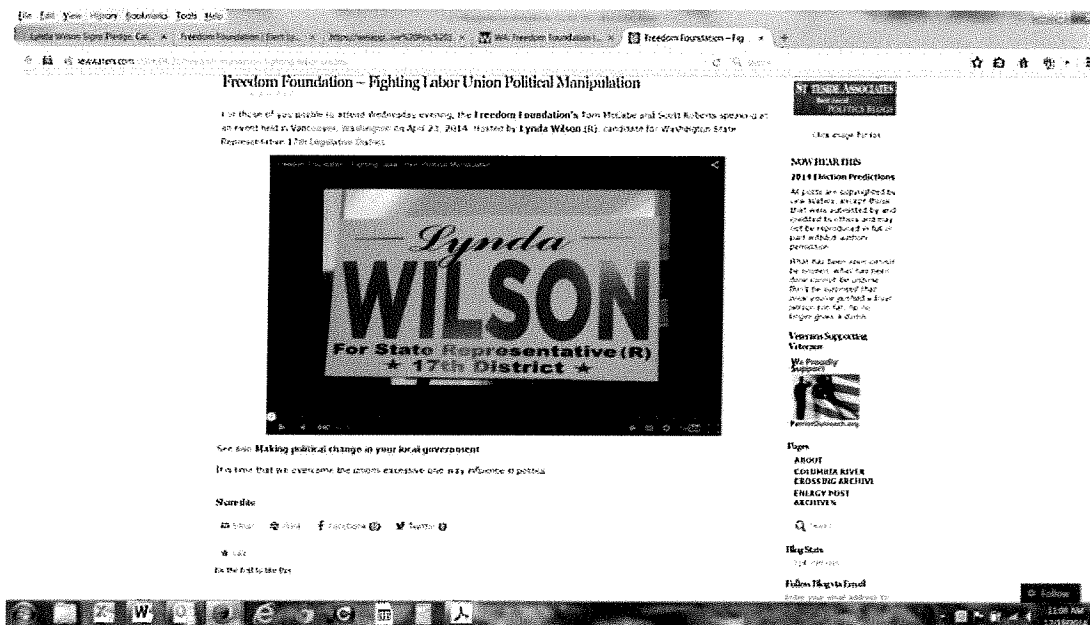
First, and perhaps most telling, immediately below is a screen shot of a YouTube video of an April 23, 2014 FF meeting hosted by Ms. Wilson at her place of business, at which Mr. Tom McCabe, the Chief Executive Officer of the FF, along with another of FF’s

¹ Both of which, of course, are defined by statute, unlike the amorphous term “support”. See RCW 42.17A.005(13) (“contribution”) and RCW 42.17A.005(26) (“independent expenditures”).

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principal employees, Mr. Scott Roberts, Citizen Action Network Director of the FF, are the featured speakers. You will note that the video begins with a screen shot of Ms. Wilson's campaign yard sign.



https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA

From there, the speech is replete with statements of support for Ms. Wilson and her campaign. For example, at the 33:45 minute mark, Mr. Roberts states:

“For every dollar they [unions] spend defending their idea, is a dollar they don’t have to spend against *our* good candidates [gesturing at Ms. Wilson] that are trying to move forward. It’s a very, very good idea.”

https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA#t=2025

Continuing, at the 38:45 minute mark, Mr. McCabe states:

“You have a great candidate in the 17th District, a great candidate.” [followed by his leading applause for Ms. Wilson.]

“And she was telling me earlier that Frank Chopp. . . is coming down to campaign against Lynda, which tells me he’s worried about this seat, and that’s good news.”

“It’d be great if we could continue the momentum and pick up two or three [seats] every year, and eventually, hopefully in the next cycle, the Republicans could take over the House, and Lynda could be the next speaker of the House.”

https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA#t=2325

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Even based on this single example, for the FF to claim that it was not supportive of Ms. Wilson's candidacy in the 17th District House race is laughable.

While this single example belies their claim, it is far from unique. Up until at least December 8, 2014, a picture of Ms. Wilson, signing the FF's "Pledge" was prominently featured on the front/landing page of FF's Web Site. *Attached*. The hyperlink attached to that image lead to a page with an even larger image of Ms. Wilson signing the FF's "Pledge", whose primary thrust was for candidates to pledge to not accept campaign contributions from unions "if they are taken by force as workplace representation dues or fees." *Also attached*.

http://www.myfreedomfoundation.com/sites/default/files/documents/2014candidatePledge_GiveItBackToTheWorker_0.pdf

Moreover, Ms. Wilson's signing of the pledge featured prominently on her campaign website in a June 12, 2014 posting, showing her with a smiling Mr. McCabe, and citing a "recent study" by the FF relating to the issue.²

<http://electlyndawilson.com/lynda-wilson-signs-pledge-calls-on-monica-stonier-to-the-same/>



² Of course, as demonstrated by the instant complaint, the FF knows well how to avail itself of the provisions of RCW 42.17A.340. Had the FF thought that Ms. Wilson's use of the picture of her and the FF CEO on her campaign website falsely stated or implied its support of her candidacy, it undoubtedly would have also filed a complaint against Ms. Wilson for so falsely stating or implying such support, which it did not.

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Similarly, Ms. Wilson was a featured guest on a FF Podcast, broadcast on or about June 11, 2014, which featured the pledge, and in which she was lauded by Mr. Jamie Lund, FF Senior Policy Analyst, for having been the first candidate to sign it. One need only listen to the jovial tenor and tone of the broadcast to reach the logical conclusion that it is supportive of Ms. Wilson, while being equally derisive of her opponent Ms. Monica Stonier.

<http://www.myfreedomfoundation.com/blogs/freedom-daily/freedom-daily-june-12-2014-%E2%80%93-host-jami-lund-guests-lynda-wilson-and-max-nelsen>



Immediately following the election, the FF pointed out Ms. Wilson's victory in her race as "a worthwhile reminder of the limits of unions' political influence, despite their vast financial coffers of coercively collected union dues."

<http://www.myfreedomfoundation.com/blogs/liberty-live/big-government-unions-lose-big-in-national-and-state-elections>

In addition to publically singing her praises on YouTube, Mr. McCabe went further and contributed to Ms. Wilson's 2014 17th District election campaign.

<http://www.pdc.wa.gov/MvcQuerySystem/CandidateData/showReport?repno=10056828>

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All of this support should come as no surprise, as Ms. Wilson is a member of the FF, and proudly states so in her submission to the 2014 Primary Election Voters Guide, under "Community Service".

<https://weiapplets.sos.wa.gov/MyVote/OnlineVotersGuide/GetCandidateStatement?electionId=53&candidateId=32400&raceJurisdictionName=Legislative&Display=Statewide&partyName=%28Prefers%20Republican%20Party%29&raceName=Legislative%20District%2017%20-%20State%20Representative%20Pos.%201>

Not to be outdone, her husband, Mr. Tracy S. Wilson, serves as one of FF's trustees. As a trustee, Mr. Wilson sets the compensation level for Mr. McCabe's services as FF's CEO. See FF's 2013 IRS Form 990 at Part VII (A) (14) (listing Mr. Wilson as Trustee), and see, IRS Form 990 Part VI, Sec. B, Line 15 (listing duties of Trustees in setting compensation level of CEO), both attached. See also Linda Wilson's F-1 Supplement (on file with the PDC) showing her spouse as a Trustee of FF, attached.

Again, for FF to claim that it does not support one of its own members, and the spouse of one of its trustees, is laughable. Instead, this complaint should be seen for exactly what it is: A part of FF's long term plan to engage its political opponents, namely unions, in litigation and related activities in order to force them to spend time and money in defense.

In addition to Mr. Roberts' comments to that effect, above, at that same meeting Mr. McCabe proclaimed that suing unions over alleged campaign finance violations, through exactly the process FF is using here, is part three - "my favorite part" - of its four-part plan to attack unions. "It forces them to spend money, and allows you to get into their books and records."

https://www.youtube.com/watch?v=ex3Bv0-IDVA&feature=player_detailpage#t=976

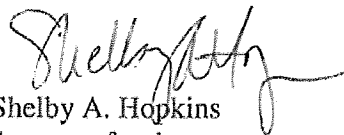
The Commission should see this complaint for what it is, find it to be unfounded and enter an appropriate Order of Dismissal.

Sincerely,



Michael J. Gawley
Attorney for the
Washington Education Association
Political Action Committee

Sincerely,



Shelby A. Hopkins
Attorney for the
Washington Education Association
Political Action Committee

MG/kjw

www.myfreedomfoundation.com

DONATE



“

If [the Freedom Foundation] can
the air hose of money to SEIU by
individual providers to stop payin
[they] are preventing SEIU from
supporting Democratic candida
and \$15-an-hour minimum wag

DMITRI IGLITZIN
SEIU 775 Attorney

WHAT SEIU IS
SEIU OPT OUT
VICTORY FOR
WALL STREET
UNION INJUSTICE

 <p>LIBERTY LIVE</p> <p>RECENT ELECTIONS IN THURSTON COUNTY SHOCK THE POLITICAL</p>	 <p>LIBERTY LIVE</p> <p>THE FREEDOM UPDATE - EPISODE 49</p> <p>Hi, and welcome to The Freedom</p>	 <p>LIBERTY LIVE</p> <p>UNION ORGANIZERS, NOT ACTUAL EMPLOYEES, TURN OUT FOR WALMART</p>	 <p>LIBERTY LIVE</p> <p>UNION EXECUTIVES' HYPOCRISY</p> <p>I've noticed some examples of the</p>
 <p>LIBERTY LIVE</p> <p>WINNING OFFICE WITHOUT EXPLOITING WORKERS</p> <p>Before the election.</p>	 <p>LIBERTY LIVE</p> <p>SEIU JOINS SOCIALISTS DEMANDING HARMFUL POLICIES FOR</p>		

IN THE NEWS ● ○ ○ ○ ○ ○ ○ ○

BIG LABOR CLAIMS "BIGGEST EVER" \$15 MIN. WAGE BLA

<http://www.myfreedomfoundation.com/>[12/8/2014 3:56:05 PM]

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Winning Office Without Exploiting Workers | www.myfreedomfoundation.com



DONATE

BLOGS LIBERTY LIVE Winning Office Without Exploiting Workers



Winning Office Without Exploiting Workers

December 1, 2014



Jami Lund
Senior Policy Analyst

Before the election, the Freedom Foundation prepared a study documenting how union executives divert mandatory workplace representation dues into the campaigns of their favored candidates. Our report showed that 76 percent of all union political funds in Washington state come from general fund transfers, not voluntary contributions from union members.

We urged candidates to sign a pledge to refuse or return union donations if they are taken by force as workplace representation dues or fees.

Seventy-six candidates for state and county office signed the pledge, 18 of whom won their positions. Some were in easy races, others in extremely difficult races, but a number were in close races where union officials spent tens of thousands of dollars to defeat them.

The lesson for lawmakers at both the national and local levels should be clear. Voters are

<http://www.myfreedomfoundation.com/blogs/liberty-live/winning-office-without-exploiting-workers>[12/8/2014 3:55:18 PM]

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Public Disclosure Commission

Form 990 **Return of Organization Exempt From Income Tax** OMB No 1545-0047
 Department of the Treasury Internal Revenue Service Under section 501(c), 527, or 4047(a)(1) of the Internal Revenue Code (except private foundations) **2013**
 Do not enter Social Security numbers on this form as it may be made public. Information about Form 990 and its instructions is at www.irs.gov/form990. Open to Public Inspection

A For the 2013 calendar year, or tax year beginning and ending

B Check if applicable:
 Address change
 Name change
 Initial return
 Termination
 Amended return
 Application pending

C Name of organization: **Evergreen Freedom Foundation**
Doing Business As **Freedom Foundation**

D Employer identification number: **94-3136961**

Number and street (or P O box if mail is not delivered to street address) Room/suite: **PO Box 552**

E Telephone number: **360-956-3482**

City or town, state or province, country, and ZIP or foreign postal code: **Olympia, WA 98507**

G Gross receipts \$: **1,766,236.**

H(a) Is this a group return for subordinates? Yes No
H(b) Are all subordinates included? Yes No
 If "No," attach a list (see instructions)

F Name and address of principal officer: **Tom McCabe**
same as C above

I Tax-exempt status: 501(c)(3) 501(c) () (insert no.) 4947(b)(1) or 527

J Website: **www.myfreedomfoundation.org**

K Form of organization: Corporation Trust Association Other

L Year of formation: **1991** **M** State of legal domicile: **WA**

Part I Summary

1 Briefly describe the organization's mission or most significant activities. **To advance individual liberty, free enterprise, and limited, accountable government.**

2 Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets.

3 Number of voting members of the governing body (Part VI, line 1a) **3** **14**

4 Number of independent voting members of the governing body (Part VI, line 1b) **4** **14**

5 Total number of individuals employed in calendar year 2013 (Part V, line 2a) **5** **34**

6 Total number of volunteers (estimate if necessary) **6** **25**

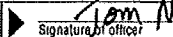
7a Total unrelated business revenue from Part VIII, column (C), line 12 **7a** **0.**


7b Net unrelated business taxable income from Form 990-T, line 34 **7b** **0.**

	Prior Year	Current Year
8 Contributions and grants (Part VIII, line 1b)	2,305,520.	1,357,097.
9 Program service revenue (Part VIII, line 2g)	883,350.	372,150.
10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	12,704.	17,220.
11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11c)	38,569.	19,769.
12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	3,240,143.	1,766,236.
13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	0.	0.
14 Benefits paid to or for members (Part IX, column (A), line 4)	0.	0.
15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	1,286,834.	1,354,464.
16a Professional fundraising fees (Part IX, column (A), line 11e)	0.	0.
b Total fundraising expenses (Part IX, column (D), line 25)	155,131.	
17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24c)	949,739.	909,286.
18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	2,236,573.	2,263,750.
19 Revenue less expenses. Subtract line 18 from line 12	1,003,570.	<497,514.>
20 Total assets (Part X, line 16)	Beginning of Current Year 1,715,857.	End of Year 1,242,870.
21 Total liabilities (Part X, line 26)	196,181.	181,084.
22 Net assets or fund balances. Subtract line 21 from line 20	1,519,676.	1,061,786.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here: 
 Signature of officer: **Tom McCabe, Chief Executive Officer**
 Type or print name and title

Paid Preparer: **David A. Coates, CPA**
 Preparer's signature: 
 Firm's name: **Frost & Company, P.S.**
 Firm's address: **P O Box 7609
 Olympia, WA 98507-7609**

May the IRS discuss this return with the preparer shown above? (see instructions)
 032001 10-29-13 LHA For Paperwork Reduction Act Notice, see the instructions.

Form 990 (2013) **Evergreen Freedom Foundation** 94-3136961 Page 7

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's current officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter 0 in columns (D), (E), and (F) if no compensation was paid.
 - List all of the organization's current key employees, if any. See instructions for definition of "key employee."
 - List the organization's five current highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
 - List all of the organization's former officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
 - List all of the organization's former directors or trustees that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.
- List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below line)	(C) Position <small>(do not check more than one box, unless person is both an officer and a director/trustee)</small>					(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee			
(1) Hans Stokor Chair	2.00	X		X			0.	0.	0.
(2) Steve Neighbors Vice Chair	1.00	X		X			0.	0.	0.
(3) Lou Novak Secretary	1.00	X		X			0.	0.	0.
(4) Tim McMahon Treasurer	1.00	X		X			0.	0.	0.
(5) Roger Bowlin Trustee	1.00	X					0.	0.	0.
(6) Bill Conner Trustee	1.00	X					0.	0.	0.
(7) Robert Jankelson Trustee	1.00	X					0.	0.	0.
(8) Barbara Kenney Trustee	1.00	X					0.	0.	0.
(9) Richard Rokes Trustee	1.00	X					0.	0.	0.
(10) Alvin Starkenburg Trustee	1.00	X					0.	0.	0.
(11) Harry Truitt Trustee	1.00	X					0.	0.	0.
(12) Dr. John Vasko Trustee	1.00	X					0.	0.	0.
(13) Elaine Chandler Trustee	1.00	X					0.	0.	0.
(14) Tracy Wilson Trustee	1.00	X					0.	0.	0.
(15) Jonathan D. Hechtle Past CEO	40.00			X			110,229.	0.	0.
(16) Tom S McCabe CEO	40.00			X			5,099.	0.	0.
(17) Jenny M. Andrews VP of Development	40.00				X		104,618.	0.	0.

332007 10-29-13

Form 990 (2013)

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Schedule O (Form 990 or 990-EZ) (2013)		Page 2
Name of the organization	Evergreen Freedom Foundation	Employer identification number 94-3136961

self-employment, the Foundation can require resolution of the matter within seven days or the employee can be terminated.

All contracts are reviewed by management to ensure no conflicts of interest exist between trustees, employees and third-party vendors. If lawsuits are undertaken for third parties, the Foundation's general counsel checks for any prior involvement with interested parties to the litigation that might involve a conflict of interest. If a conflict exists in a contract or a lawsuit, the Foundation will not enter into the contract or represent the third party.

Form 990, Part VI, Section B, Line 15:

Explanation: The CEO of the Foundation sets the compensation level for all new hires, and determines increases for current employees. The Board of Trustees sets the compensation level for the CEO. The annual compensation budget is reviewed by the Board of Trustees and compared to the financial health of the Foundation.

Form 990, Part VI, Section C, Line 19:

Explanation: Interested persons are given access to governing documents, policies and financial statements via guidestar.org and other similar websites, and upon written request or in person.

Form 990, Part IX, Line 11g, Other Fees:

Other:

Program service expenses	216,820.
Management and general expenses	22,636.
Fundraising expenses	53,171.

332212
09-24-13

Schedule O (Form 990 or 990-EZ) (2013)

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Information Continued

F-1 Supplement

Name Tracy S Wilson	
ENTRY NO. 3	Reporting For: Self <input type="checkbox"/> Spouse <input checked="" type="checkbox"/> Registered Domestic Partner <input type="checkbox"/> Dependent <input type="checkbox"/>
LEGAL NAME: Freedom Foundation	POSITION OR PERCENT OF OWNERSHIP
TRADE OR OPERATING NAME: Freedom Foundation	Trustee
ADDRESS: PO Box 652 Olympia, WA 98507	
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION: Policy Think Tank	

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin

DMITRI IGLITZIN
Iglitzin@workerlaw.com

Original via US First Class Mail
And email to: pdc@pdc.wa.gov

December 15, 2015

RECEIVED

DEC 16 2014

Philip E. Stutzman
Director of Compliance
Washington State Public Disclosure Commission
711 Capitol Way S.
P.O. Box 40908
Olympia, WA 98504-0908

Public Disclosure Commission

RE: November 7, 2014, Freedom Foundation 45-Day Citizen Action Complaint
Response of Working Together for the 17th PAC
Our File No. 2960-019

Dear Mr. Stutzman:

We are writing on behalf of our client, Working Together for the 17th PAC (“Working Together PAC”), in response to your December 8, 2014, letter to Jay Petterson regarding the 45-Day Citizen Action Complaint brought against Working Together PAC by James Abernathy, General Counsel for Freedom Foundation, on or about November 7, 2014 (“Citizen Action Complaint”). For the following reasons, as well as for the reasons set forth by Michael J. Gawley and Shelby A. Hopkins on behalf of their client, Washington Education Association Political Action Committee (“WEA PAC”), in their letter to the PDC dated December 12, 2014, regarding the same Citizen Action Complaint, the PDC should conclude that the Citizen Action Complaint is wholly without merit.

1. The Citizen Action Complaint Is Meritless Because In Order for a Violation of RCW 42.17A.335(1) To Have Occurred, Working Together PAC Must Have Made “A Statement Constituting Libel or Defamation Per Se,” and Working Together PAC’s Statement That “Lynda Wilson is Supported By The Extreme Freedom Foundation” Does Not Constitute Libel Or Defamation Per Se

RCW 42.17A.335(1)(a) through (c) is not a model of clarity. It sets forth one criterion that must necessarily be established in order for a violation to have occurred – “to sponsor with actual malice a statement constituting libel or defamation per se” – and sets forth, in the alternative, three “circumstances” under which this might have occurred, one of which must also necessarily be proven. Thus, in order for this statute to have been violated, the statement(s) that allegedly violated it must *not only* fit within the scope of one of the three “circumstances” set forth in the statute, they must *also* inherently constitute “libel or defamation per se.”

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Philip E. Stutzman
December 15, 2014
Page 2 of 7

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“When statutory language is plain and unambiguous, the statute’s meaning must be derived from the wording of the statute itself.” *Post v. City of Tacoma*, 167 Wn.2d 300, 310, 217 P.3d 1179 (2009). In this case, the wording of the statute itself requires that the alleged violator must have sponsored “a statement constituting libel or defamation per se.”

This is not only the plain and unambiguous meaning of the statute, it is also the constitutionally compelled meaning. Were the statute to be interpreted otherwise, a sponsor of a communication could be found guilty of violating state law for merely making knowingly false statements of fact. Yet we know that it would be constitutionally impermissible for the State of Washington to punish political speech solely for being “false,” even “knowingly false.” *See, e.g., State ex rel. Public Disclosure Com’n v. 119 Vote No! Committee*, 135 Wn.2d 618, 627-628, 957 P.2d 691 (1998) (even assuming that “malicious falsehoods against candidates” are beyond constitutional protection, such statements may not be made the basis for a violation unless they are at least defamatory); *Rickert v. State, Public Disclosure Com’n*, 161 Wn.2d 843, 852-853, 168 P.3d 826 (2007) (even assuming that protection of political candidates could be a compelling interest, prior statute prohibiting maliciously false statements about candidates would still be unconstitutional “because there is no requirement that the prohibited statements tend to be harmful to a candidate’s reputation, i.e., defamatory ... the PDC’s claim that it must prohibit arguably false, but nondefamatory, statements about political candidates to save our elections conflicts with the fundamental principles of the First Amendment.”).

See also the recent decision in *281 Care Comm. v. Arneson*, 766 F.3d 774, 793-96 (8th Cir. 2014), which struck down on constitutional grounds Minnesota’s Fair Campaign Practices Act, which made it a crime to knowingly or with reckless disregard for the truth make a false statement about a proposed ballot initiative. As was noted in that decision, quoting the plurality opinion in *United States v. Alvarez*, — U.S. —, 132 S.Ct. 2537, 2550, 183 L.Ed.2d 574 (2012):

The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the unformed, the enlightened; to the straight-out lie, the simple truth.... The First Amendment itself ensures the right to respond to speech we do not like, and for good reason. Freedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person. And suppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates.

766 F.3d at 779.

For these same reasons, the federal district court in Ohio also recently struck down that state’s law prohibiting knowingly making a false statement concerning the voting record of a candidate or public official, stating compellingly:

Lies have no place in the political arena and serve no purpose other than to undermine the integrity of the democratic process. The problem is that, at times, there is no clear way to determine whether a political statement is a lie or the truth. What is certain, however, is that *we do not want the Government (i.e., the Ohio Elections Commission) deciding what is political truth*—for fear that the Government might persecute those who criticize it. Instead, in a democracy, *the voters should decide*. And thus today the Court must decide *whether Ohio's political false-statements laws are the least restrictive means of ensuring fair elections. The short answer is no.*

List v. Ohio Elections Com'n, 2014 WL 4472634, 1 (S.D. Ohio, 2014) (emphasis in original).

Where a statute is susceptible of several interpretations, some of which might render it unconstitutional, the court, without doing violence to the legislative purpose, must adopt a construction which will sustain its constitutionality if at all possible to do so. *State ex rel. Morgan v. Kinnear*, 80 Wn.2d 400, 402, 494 P.2d 1362 (1972). Because it is clearly possible to read the statute consistently with its plain language, as described above, and thereby require proof of “a statement constituting libel or defamation per se” as one element of a violation of RCW 42.17A.335(1)(c), such proof must therefore be required in this case.

It takes no great effort to demonstrate, however, that the allegedly false statement made by Working Together PAC, even if false, did not constitute “libel or defamation per se.” RCW 42.17A.335(2) defines “libel or defamation per se” as meaning “statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.” Freedom Foundation is not a “living person”; thus, the first prong of this definition clearly does not apply. Nor has Freedom Foundation established, or even alleged, that the statement it objects to is of the type that would “tend” to “injure” it in its “business or occupation” in any constitutionally significant way.

To the extent that Freedom Foundation has any “business or occupation” at all, there is no evidence that the putatively false statement by Working Together PAC that it supported Lynda Wilson was of the sort that might tend to inflict any injury on it in relation to that business or occupation. Freedom Foundation has not shown, or even alleged, that it lost revenue, profits, donations, or any other material thing, including goodwill, as a result of the statement in question, or that the statement was of the type that would tend to cause such a loss. While it may be true that consistent with its current status as a section 501(c)(3) organization, Freedom Foundation is restricted in its ability to directly or indirectly participate in any political campaign on behalf of (or in opposition to) any candidate for elective public office, Freedom Foundation has not shown that the statement made by Working Together PAC in any way *impacted* its Internal Revenue Code 501(c)(3) status, or that it was the type of statement that *could* cause such an impact. Freedom Foundation asserts that Working Together PAC’s statements “threaten the Freedom foundation as a not-for-profit organization,” but no evidence exists that the statement in question was ever communicated to the Internal Revenue Service (“IRS”), much less that

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communication of this statement by any party to the IRS would have any impact at all on Freedom Foundation's 501(c)(3) status.

Finally, Freedom Foundation attempts to conflate the issue of injury with the question of damages, noting that RCW 42.17A.335(4) provides that damages are "presumed" if a violation is proven. In order for the issue of damages to arise at all, however, a violation must be "proven," and violations themselves are not "presumed." In this case, Freedom Foundation has the burden of proving that Working Together PAC's statement that it supported Lynda Wilson was the kind of statement that meets the high threshold of being "defamatory," as explained and addressed in the court decisions cited above, among others, such that it would "tend" to injure it in some legally significant way. Freedom Foundation has presented no evidence to support this assertion, much less evidence that would prove this assertion by clear and convincing evidence, as is required by RCW 42.17A.335(4).

For all of these reasons, even if it were the case that the statement made by Working Together PAC that Lynda Wilson "is supported by" Freedom Foundation was both false and made with actual malice, which it is not, Freedom Foundation has not shown (and cannot show) that this statement constituted "libel or defamation per se," as required by the statute and the First Amendment to the United States Constitution. Freedom Foundation's allegations against Working Together PAC are therefore without merit.

2. Additionally, the Citizen Action Complaint Is Meritless Because In Fact, Freedom Foundation Did And Does Support Lynda Wilson

RCW 42.17A.335(1)(c) makes it a violation to sponsor with actual malice a statement constituting libel or defamation per se that "makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement." The statement allegedly made by Working Together PAC was that "Lynda Wilson is supported by the extreme Freedom Foundation." Thus, the language of the statute could only be violated if this statement of "support" violates the prohibition against falsely stating or implying such support.

Yet the evidence is overwhelming that far from being knowingly false or made with reckless disregard of its truth or falsity (the definition of "actual malice"), Working Together PAC's statement that Lynda Wilson "is supported by" Freedom Foundation is absolutely, 100% true.

The evidence on this point was persuasively and comprehensively set forth by Mr. Gawley and Ms. Hopkins in WEA PAC's December 12, 2014, letter and will not be repeated here in full. We will simply highlight a few key points.

First, on April 23, 2014, Tom McCabe, the Chief Executive Officer of Freedom Foundation, along with another major Freedom Foundation representative, Scott Roberts, gave speeches at Ms. Wilson's place of business. The very presence of these Freedom Foundation representatives, in their capacity as agents of Freedom Foundation, at Ms. Wilson's place of

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business during the campaign season is enough, even without more, to establish Freedom Foundation's support of Ms. Wilson; it is beyond reasonable dispute that organizations do not appear at a candidate's private place of business and give speeches if they do not *to at least some extent* support that candidate. The content of the speeches, however, strongly confirms what was already obvious from the appearance of the speakers at this location, i.e., Freedom Foundation's actual support for Ms. Wilson. See https://www.youtube.com/watch?feature=player_embedded&v=ex3Bv0-IDVA and the discussion in Mr. Gawley and Ms. Hopkins' letter of the statements made at that event.

Second, as was noted by WEA PAC, on or about June 12, 2014, Ms. Wilson posted on her campaign website a picture of herself and Mr. McCabe holding Freedom Foundation's "Pledge." <http://electlyndawilson.com/lynda-wilson-signs-pledge-calls-on-monica-stonier-to-the-same/2/>. It is reasonable to infer that because there is no evidence that Freedom Foundation ever objected to the use by Ms. Wilson of this photograph, which clearly "states or implies" Freedom Foundation's support of her, that Freedom Foundation did not dispute or disagree with this statement being made by Ms. Wilson. Obviously, Freedom Foundation cannot acquiesce in this implicit statement of its support for Ms. Wilson when communicated by Ms. Wilson, then accuse Working Together PAC of acting with actual malice when it makes what is essentially the exact same assertion.

Third, Freedom Foundation *featured* Ms. Wilson on its June 12, 2014, podcast. <http://www.myfreedomfoundation.com/blogs/freedom-daily/freedom-daily-june-12-2014-%E2%80%93-host-jami-lund-guests-lynda-wilson-and-max-nelsen>. Absent evidence that Freedom Foundation's podcast has *ever* featured a guest whose politics and policies it does not support, the inference would be unmistakable from the mere fact of Ms. Wilson's appearance on this podcast that Freedom Foundation supports her. In fact, however, the content of the podcast, as explained by WEA PAC, further confirms that conclusion.

Fourth, Mr. McCabe himself Mr. McCabe contributed to Ms. Wilson's 2014 17th District election campaign. <http://www.pdc.wa.gov/MvcQuerySystem/CandidateData/showReport?repno=100568289>. One may reasonably infer that the politically sophisticated Mr. McCabe would not financially support a candidate for public office whom the organization he runs did not itself support.

It is worth noting, finally, that although Freedom Foundation cites to and quotes the language of RCW 42.17A.336(1)(c), which contains the prohibition against falsely stating or implying "support or endorsement," Freedom Foundation does not appear to explicitly accuse Working Together PAC of falsely stating that Freedom Foundation "supported" Ms. Wilson (perhaps because the truth of that statement is readily evident, as explained above), but instead of falsely stating that Freedom Foundation "endorsed" Ms. Wilson. It is apparent from the language of the Working Together PAC flyer and website in question, however, that no such "endorsement" statement was ever made, and the rules of statutory interpretation, and specifically the rule against surplusage, means that the term "support," as used in the statutory provision, cannot be read as meaning the same thing as the term "endorse." See, e.g., *Veit, ex rel. Nelson v. Burlington N. Santa Fe Corp.*, 171 Wn.2d 88, 113, 249 P.3d 607 (2011).

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This evidence provides a separate and independent basis for finding Freedom Foundation's assertion that Working Together PAC violated RCW 42.17A.335(1)(c) wholly lacking in merit.

3. Working Together PAC Also Did Not Violate RCW 42.17A.335(1)(a)

In the second-to-last paragraph of its Citizen Action Complaint, Freedom Foundation suggests that in addition to violating subsection (1)(c), Working Together PAC's conduct also violated RCW 42.17A.335(1)(a). For the following reasons, this allegation is also plainly without merit.

Subsection (1)(a) makes it an offense to sponsor with actual malice a statement constituting libel or defamation per se that contains "a false statement of material fact about a candidate for public office." Due to the only cursory analysis given to this allegation in the Citizen Action Complaint, it is hard to know precisely what Freedom Foundation is basing it on. However, under no possible legal or factual theory does Freedom Foundation's accusation hold water.

Freedom Foundation presumably contends that the "false" statements it earlier alleged were made by Working Together PAC were false statements of material fact about Ms. Wilson. However, aside from not being false, which is of course a total defense to this allegation, the statement that Freedom Foundation "is supported by the extreme Freedom Foundation" is not a statement "constituting libel or defamation per se," as would be required by RCW 42.17A.335(2) and the First Amendment. Presumably, Freedom Foundation does not mean to suggest that its mere support of a candidate would tend to expose that person "to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation." And such a position, if taken, would of course be inconsistent by the warm embrace given by Freedom Foundation and its representatives to Ms. Wilson, both literally and figuratively, in the months leading up to the election.

The other statements made by Working Together PAC that Freedom Foundation objects to – i.e., that Freedom Foundation supports big corporations and tax loopholes – were similarly not false statements of material fact about a candidate for public office, first because they are not false, as was amply demonstrated by Working Together PAC through Jay Petterson's October 29, 2014, letter to James Abernathy (Exhibit J to the Citizen Action Complaint), but also because they are self-evidently not "about" Ms. Wilson, but instead are about Freedom Foundation, which is *not* a candidate for public office. If Freedom Foundation believes that it was libeled by Working Together PAC, it has the right to bring an action so alleging in superior court (subject, however, to the strictures of Civil Rule 11 and the ethical and legal obligation to not bring a wholly frivolous lawsuit against another party); however, it cannot invoke the assistance of the Public Disclosure Commission because these statements do not damage the integrity of elections or distort the electoral process.

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In light of the foregoing, this portion of the Citizen Action Complaint is also devoid of merit.

Taken as a whole, for all of the reasons set forth above, the Citizen Action Complaint is devoid of merit in its entirety. We ask that it be summarily and swiftly dismissed.

Respectfully submitted this 15th day of December, 2015.



Dmitri Iglitzin
Counsel for Working Together for the 17th Political Action Committee

cc: Jay Petterson