NO. 77724-1

**SUPREME COURT OF THE STATE OF WASHINGTON**

VOTER EDUCATION COMMITTEE, a Washington non-profit corporation; BRUCE BORAM, an individual; and VALERIE HUNTSBERRY, an individual,

Plaintiffs/Appellants,

v.

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION; MICHAEL CONNELLY, JEANETTE WOOD, FRANCIS MARTIN, EARL TILLY, and JANE NOLAND, Commissioners of the Washington State Public Disclosure Commission in their individual capacities; VICKI RIPPIE, Executive Director of the Washington State Public Disclosure Commission, in her individual capacity; and CHRISTINE GREGOIRE, Attorney General of the State of Washington in her individual capacity,

Defendants/Respondents,

and

DEBORAH SENN,

Intervenor.

# RESPONSE OF PUBLIC DISCLOSURE COMMISSION TO BRIEF *AMICUS CURIAE* OF CHAMBER OF COMMERCE OF THE UNITED STATES

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## I. INTRODUCTION

In response to the Brief of *Amicus Curiae* of Chamber of Commerce of the United States in Support of Plaintiffs/Appellants (Chamber Br.), it is necessary to clarify what this case is, and is not, about.

This case concerns, and this Court should consider:

1. *The "Vagueness" Issue*: Whether the definition of "political committee" in RCW 42.17.020, which requires such committee disclose its contributions and expenditures "in support of or in opposition to a candidate," is unconstitutionally vague. If the Court decides that the definition is not vague, then respondents, including the Public Disclosure Commission (PDC), must prevail. If the Court decides that the definition is vague, then it turns to the next issue.

2. *The "Express Advocacy" Issue:* Whether it is appropriate to construe that definition to apply only to communications that "expressly advocate" the election or defeat of a candidate. If it is appropriate to apply such a limiting construction, was the ad a "clear exhortation" to support or oppose a candidate? If it was, then the PDC must prevail.

3. *The "Independent State Grounds" Issue*: Whether Article I, § 5 of the Washington Constitution alters the constitutional calculus in a way to provide greater protection to speakers who wish to avoid disclosing their expenditures and contributions, thereby limiting the information that

voters would otherwise have regarding the communications. If it does not, then the outcome of this case is a function of the Court's decision on the first two issues. However, if Article I, § 5, does provide greater protection than the United States Constitution, then this Court must (1) determine whether that added protection requires a different result than would otherwise be reached under the provisions of the United States Constitution, (2) if so, articulate the appropriate test, and (3) define an appropriate remedy.

In proceeding through the above analytical steps, this Court need not consider several matters raised by the Chamber. For example, the Chamber suggests that reporting requirements like the one at issue "would adversely impact the Chamber's political speech and the broader public discussion of important policy matters during election season." Chamber Br. at 2. That is not relevant for two reasons. First, the statute at issue in no way regulates content or quantity of speech. The Voters Education Committee (VEC) and the Chamber may spend as much as they want saying anything they want when they want. The only requirement is that they disclose the source of funding for that speech. Neither the Chamber nor the VEC contest the validity of laws requiring such disclosure, nor could they. *See McConnell v. Federal Election Comm'n*, 540 U.S. 93,

201, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003); *Buckley v. Valeo*, 424 U.S. 1, 74-81, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).[1] Second, in future "election seasons" advertisements such as the one at issue will be governed by new legislation enacted in 2005. Laws of 2005, ch. 455.[2] That law was modeled on the federal legislation upheld in *McConnell v.*

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[1] *See also Boston v. Bellotti*, 435 U.S. 765, 792, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978) ("Identification of the source of [corporate] advertising may be required as a means of disclosure so that the people will be able to evaluate the arguments to which they are being subjected."); *United States v. Harriss*, 347 U.S. 612, 74 S. Ct. 808, 98 L. Ed. 989 (1954) (upholding limited disclosure requirements for lobbyists).

[2] That 2005 statute applied the preexisting disclosure requirements to any "electioneering communication" defined similarly to the definition in federal law upheld in *McConnell v. Federal Election Comm'n.* RCW 42.17.020(20) defines "electioneering communication" to mean:

> any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:
> (a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;
> (b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and
> (c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

There can be no doubt that the ad in question in this case would constitute such an "electioneering" communication as it (1) clearly identified a candidate for election, (2) was broadcast within 60 days of the election, and (3) had a fair market value of more than $5,000.

*Federal Election Comm'n.*; *see also Alaska Right to Life Comm. v. Miles*, 441 F.3d 773 (9th Cir. 2006).[3]

The Chamber further suggests that the trial court's decision (and implicitly a decision in favor of the PDC by this Court) would adversely impact valuable discussions of ethical practices of public officials. The Chamber cites to numerous recent state laws requiring disclosures of public officials and lobbyists. Chamber Br. at 18. Again, the statute at issue does nothing to stop that discussion. We simply fail to see how withholding information about the sources of the electioneering messages could lead to a more vibrant and informed debate. *See McConnell*, 540 U.S. at 196-97.[4]

Accordingly, as we did in our opening brief, we focus on the issues of vagueness and express advocacy. Because neither the Chamber nor the

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[3] On May 1, 2006, the Ninth Circuit Court of Appeals denied Alaska Right to Life's Petition for Rehearing *En Banc.*

[4] The Chamber also refers to a potential citizen's action under RCW 42.17.400(4) by Public Citizen and others. Chamber Br. at 2. While that may concern the Chamber and give it reason to be an advocate in this case, it should not be relevant to any decision. The Chamber states that Public Citizen "petitioned" for an enforcement action and that the "petition was denied by the Attorney General" on April 3, 2006. *Id.* The Chamber misdescribes the process. The letter from Public Citizen was a notice letter which is prerequisite to a citizen suit under RCW 42.17.400(4). There is no formal action by the Attorney General required under the statutory process. It is true that the Attorney General's Office sent a letter to the attorney for Public Citizen stating that no formal action would be taken, but that is not technically a "denial" of a "petition." In fact, the door remains open for Public Citizen to pursue its claims against the Chamber.

Brief *Amicus Curiae* of the Campaign Legal Center (Campaign Legal Center Br.) addressed the independent state grounds, we do not address that issue further.

## II. ARGUMENT IN RESPONSE TO *AMICUS CURIAE* CHAMBER OF COMMERCE

### A. The Requirement for a "Political Committee" to Disclose Its Contributors in RCW 42.17 Is Not Unconstitutionally Vague.

#### 1. The Threshold Question Is Whether the State's Definition of "Political Committee" Is Unconstitutionally Vague.

In *Buckley*, the United States Supreme Court interpreted provisions of the Federal Election Campaign Act that imposed limitations on contributions or expenditures "relative to" a candidate in a federal election narrowly to avoid questions of vagueness. Though the Chamber acknowledges, correctly, that such a limiting construction only applies when the campaign finance statute would "otherwise be vague or overbroad," (Chamber Br. at 5), it seems to assume from the outset unconstitutional vagueness in Washington's statute. The Chamber thereby misdirects the appropriate threshold focus in this case when it asserts in a subheading in its brief: "The Express Advocacy Test Is a Crucial Limitation on The Regulation of Political Speech." Chamber Br. at 5. In reality, consideration of the "express advocacy" test is only appropriate if

this Court first determines that the statute is vague. It is not a stand alone test limiting all political speech.

Therefore, the appropriate threshold question is whether the disclosure requirements contained in RCW 42.17.040-.090 are unconstitutionally vague when applied to a "political committee" defined in RCW 42.17.020(38) as follows:

> any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures *in support of, or opposition* to, any candidate or any ballot proposition.

(Emphasis added.)

**2. On Its Face, the Statutory Language at Issue in This Case Is Not Vague.**

The terms "support" or "oppose" are perfectly clear. PDC Br. at 18-21. Indeed, the *McConnell* Court agreed. 540 U.S. at 170, n. 64.[5]

[5] The Court made this statement in *McConnell* in the context of discussing and upholding as constitutional the federal law prohibition on political party committees raising and spending unlimited, undisclosed "soft money" contributions. The Court did not indicate that the terms at issue were clear only to "party speakers." Instead, the Court stated only that the clarity of these terms' application "is particularly the case here, since actions taken by political parties are presumed to be in conjunction with election campaigns." *McConnell*, 540 U.S. at 170, n. 64. As the Campaign Legal Center points out, the VEC, being a § 527 political organization," is *solely* in the business of influencing candidate political campaigns. Campaign Legal Center Br. at 5-6, 15-17. That purpose seems inherent in the name "Voters Education Committee." *See also* Jeffrey P. Geiger, *Preparing for 2006: A Constitutional Argument for Closing the 527 Soft Money Loophole*, 47 Wm. & Mary L. Rev. 309, 342-44 (2005). In contrast, in *Center for Individual Freedom v. Carmouche*, __F.3d __, 2006 WL 1280815, at 1 (5th Cir., May 11, 2006), the plaintiff, who successfully obtained a narrowing construction of Louisiana's Campaign Finance Disclosure Act, was a "nonpartisan, nonprofit § 501(c)(4) corporation."

Certainly, those words provide "fair warning" of what is required. *City of Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990).[6]

The clarity of the "support" or "oppose" language for constitutional purposes is more obvious when those terms are compared with the statutory language in other vagueness challenges involving the First Amendment, both those that invalidated proscriptions (generally criminal ones) and those that upheld them. For example, the United States Supreme Court upheld against a vagueness challenge an ordinance that forbade a person adjacent to a school building from "mak[ing] . . . any noise or *diversion which disturbs or tends to disturb the peace or good order* . . . ". *Grayned v. City of Rockford*, 408 U.S. 104, 107-08, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (emphasis added). The Court also upheld a challenge to the National Endowment for the Arts application of the statutory requirement that it take into consideration standards of "decency and respect." *National Endowment for the Arts v. Finley*, 524 U.S. 569, 588-89, 118 S. Ct. 2168, 141 L. Ed. 2d 500 (1998). In the context of a

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[6] This Court in *State ex rel. Public Disclosure Comm'n v. Rains*, 87 Wn.2d 626, 627, n.1, 555 P.2d 1368 (1976), referred to amendments in 1976 requiring reporting of "independent campaign expenditure[s]," defined as "any expenditure which is made *in support of or in opposition to any candidate*" as "very precise" citing Laws of 1975-76, 2d Ex. Sess., ch. 112, §4. Although the issue of the vagueness of those "precise" terms was not before the Court, this *dictum* reflects a common sense understanding of the clarity of the language.

state election law, the Ninth Circuit recently upheld a provision that defined "electioneering communication" to include one that "directly or indirectly" identifies a candidate. *Alaska Right to Life Comm.*, 441 F.3d at 783.[7]

The "support" or "oppose" language at issue here also is substantially more precise than the language at issue in cases in which the Supreme Court has held the language to be vague. *See, e.g.*, *Buckley*, 424 U.S. at 39, 77 ("relative to a clearly identified candidate"; "for the purpose of . . . influencing"); *Federal Election Comm'n v. Massachusetts Citizens for Life Inc.*, 479 U.S. 238, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986) (requirements on corporations making expenditures "in connection with" a federal election).

### 3. The Policies Underlying the Void-for-Vagueness Doctrine Support the Conclusion that Washington's Disclosure Requirement Is Not Unconstitutionally Vague.

The Chamber argues that "Subjective Tests of Express Advocacy Impermissibly Chill Political Speech." Chamber Br. at 15. The Chamber is correct that chilling of speech is one of the policy reasons under the

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7 See also *Chaplinsky v. New Hampshire*, 315 U.S. 568, 569, 62 S. Ct. 766, 86 L. Ed. 1031 (1942) (upholding statute punishing "offensive, derisive or annoying word[s]," construed to apply only to such words "as have a direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed").

void-for-vagueness doctrine. In *Grayned*, the Court articulated three "important values" the void-for-vagueness doctrine protects. 408 U.S. at 108-09. First, the law must give a person of "ordinary intelligence a reasonable opportunity" to know what is prohibited. Second, a law must provide explicit standards to enforcers so arbitrary and discriminatory enforcement is avoided. Third, the operation of a law must not inhibit First Amendment freedoms (*i.e.*, "chill speech"). 408 U.S. at 108-09.[8]

Taking these principles in order, first, as discussed above, the words "oppose" or "support" certainly are understandable to a person of "ordinary intelligence." They at least give such a person a "reasonable opportunity" to know what is and what is not prohibited. Second, the standards are certainly clear to enforcers. Finally, there is no inhibition of any speech. This is a disclosure regulation, not a limitation (such as a contribution or expenditure limitation) that directly impacts the quantity or quality of speech. The Supreme Court has recognized the lesser impact on speech of the former. *See McConnell*, 540 U.S. at 201 (Federal Election Campaign Act § 304's disclosure requirements are constitutional because they "d[o] not prevent anyone from speaking" (quoting district court

[8] Mr. Grayned was convicted of demonstrating near a school under both antipicketing and antinoise ordinances. The antinoise ordinance stated: "(N)o person [adjacent to school] shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof." Id. at 107-08. The Supreme Court held that this was not vague.

opinion)). Indeed, if the VEC did not have to file reports with the PDC, as a § 527 organization, it would have to report similar information (though at a later date) to the Internal Revenue Service to preserve its tax status. 26 U.S.C. § 527(j)(2). Therefore, one way or the other, the information would be disclosed.

There are two other policy reasons why the void-for-vagueness doctrine should not be applicable here. First, RCW 42.17 contains no criminal sanctions for violations. *Grayned*, like the vast majority of void-for-vagueness cases, was a criminal case. Indeed, the void-for-vagueness doctrine is seldom applied in the civil context. As stated in *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982), "[T]he Court has also expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." The civil-criminal distinction is relevant here because, in contrast to the federal statute at issue in *Buckley*, RCW 42.17 has no criminal sanctions. *See Buckley*, 424 U.S. at 40-41 ("Close examination of the specificity of the statutory limitation is required where, as here, the legislation imposes

criminal penalties in an area permeated by First Amendment interests.").[9] Indeed, in *McConnell*, the Chamber argued that the potential of criminal prosecution was "problematic."[10]

Second, here, unlike in *Buckley*, persons with questions about the application of laws can seek and obtain advisory opinions or other guidance about the application of the law to particular fact situations. The

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[9] The Fifth Circuit Court of Appeals recently focused on the availability of criminal sanctions in Louisiana's Campaign Finance Law in holding that a narrowing construction of the statute was required to avoid vagueness problems. *Center for Individual Freedom v. Carmouche*, ___F.3d ___, 2006 WL 1280815, at *5 (5th Cir., May 11, 2006) ("Without knowing whether the reporting requirements of §434(e) were triggered by political advocacy, issue discussion, or both, an individual (or organization) wishing to speak out could not know whether his contemplated conduct would subject him to criminal sanction if he did not disclose the information required by FECA.")

The Oregon Court of Appeals noted the civil/criminal distinction in applying Oregon's disclosure laws involving only civil sanctions, stating "[i]n light of the Court's statements in *Buckley*, that difference in sanctions affects the extent to which a narrowing construction of the Oregon law is necessary." *State ex rel. Crumpton v. Keisling*, 160 Or. App. 406, 417, 982 P.2d 3 (1999). *See also National Endowment for the Arts v. Finley*, 524 U.S. 569, 118 S. Ct. 2168, 141 L. Ed. 2d 500 (1998) (noting difference of treatment between civil and criminal cases involving vagueness challenges.).

[10] In responding to the argument of the FEC that criminal sanctions in the federal law served "more as a scarecrow than as a living threat," the Chamber stated:

> But it is the scarecrow function of such criminal provisions that is problematic. A prudent corporate executive will be particularly reluctant to authorize corporate speech that may be described, however hypothetically, as exposing the corporation to criminal liability. Thus, the chilling effects will occur. We must presume that Congress will include the criminal provisions for a purpose and that this or some future administration may well enforce them. Defendants offer no assurance that they will not do so.

Reply Br. of the "Business Plaintiffs" Chamber of Commerce of the United States, Nat'l Assoc. of Manufacturers, and Associated Buildings and Contractors, Inc., at 8, n. 7, 2003 WL 22002561, *McConnell v. Federal Elections Comm'n, supra.*

*Buckley* Court acknowledged that such an administrative process, at least in the civil context, can cure vagueness problems. The Court stated:

> While a comprehensive series of advisory opinions or a rule delineating what expenditures are 'relative to a clearly identified candidate' might alleviate the provision's vagueness problems, reliance on the Commission is unacceptable because the vast majority of individuals and groups subject to criminal sanctions for violating §608(e)(1) do not have a right to obtain an advisory opinion from the Commission.

424 U.S. at 40, n. 47.[11]

What was not available to cure vagueness in *Buckley* is available in Washington. The PDC may, and does, issue declaratory orders. RCW 34.05.240. In addition to formal declaratory orders, the PDC offers informal assistance. WAC 390-12-050(4) ("The staff also provides personal instruction and technical assistance to persons with specific problems and questions."); *see* RCW 43.05.020 (requirement to provide technical assistance).[12] All the VEC needed to do was contact the

[11] Although, at the time of *Buckley*, the advisory opinion process was available only to committees, it is now available to any "person." 2 U.S.C. § 437(f)(a).

[12] The PDC has made a number of guidance documents available on line at http://www.pdc.wa.gov/filerassistance.

PDC – or respond when the PDC contacted it. *See* CP 632-33.[13]

## B. If the Court Determines that Washington's Definition of "Political Committee" Is Vague, the Court Should Apply a Narrowing Construction that Would Require a "Clear Exhortation" to Support or Defeat a Candidate.

The Chamber spends considerable effort arguing that the *Buckley* "express advocacy test" survived *McConnell*. Chamber Br. at 4-11. If by this the Chamber means that *in some cases* the *Buckley* analysis, by which a vague statute can be saved by narrowly applying its reach to "express advocacy," still is relevant, then we agree. However, the Chamber seems to suggest more. It seems to be attempting to reargue what it unsuccessfully argued in *McConnell* – that the "express advocacy" test is constitutionally required. *Compare* Chamber Br. at 4-11, *with* Opening Br. of "Business Plaintiffs" Chamber of Commerce of the United States, National Ass'n of Manufacturers, and Assoc. Builders and Contractors,

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[13] Justice Dolliver in his dissent (joined by Justices Utter and Horowitz) in *State ex rel. Public Disclosure Comm'n v. Rains*, 87 Wn.2d 626, 635, 555 P.2d 1368 (1976), articulated the relevance of the availability of assistance from the PDC.

> The respondents made no attempt to comply with that statute at any time. Rather than acting in a reasonable manner and inquiring of the Commission or checking the regulations to determine the specific time at which to file, they chose to ignore the law entirely. The record shows that even after the statute, the regulations and the requirements for filing were brought to the attention of the respondents, they still refused to report. Now, they attempt to exploit the omission of a time limitation in the statute, claiming that they could not determine what conduct was prohibited. This is hardly a convincing argument.

Inc., 2003 WL 22002515, at *5, *27, *36, *McConnell v. Federal Elections Comm'n, supra.*

To the contrary, the United States Supreme Court in *McConnell* stated that the "express advocacy" test is not constitutionally required, but was applied by the Court in *Buckley* to narrowly construe a vague statute in order to convey to the public a better sense of what is not covered by the statute. As the FEC stated (in one of the opinions cited by the Chamber),

> Prior to the Supreme Court's Decision in McConnell v. FEC, 540 U.S. __, 124 S. Ct. 619, 687 (2003), many believed that Buckley [v. Valeo, 424 U.S. 1 (1976)] drew a constitutionally mandated line between express advocacy and so-called issue advocacy" such that for present purposes only communications that contained express advocacy were considered "expenditures" that had to be paid for with funds subject to the limitations and source prohibitions of the Act. In McConnell, the Supreme Court clarified that the express advocacy test is not a constitutional barrier establishing whether communications are "for the purpose of influencing any Federal election," which is the operative term used in the definition of "expenditure" in 2 U.S.C. 431(9).

FEC Adv. Op. 2003-37 (Feb. 19, 2004), 2004 WL 1468254.

So, the Court should reach the "express advocacy" issue only if it determines that Washington's disclosure statute is vague and therefore requires a narrowing construction.

The express advocacy test for narrowing the reach of an otherwise vague statute is whether there is a "clear exhortation" to support or defeat a candidate. The "express advocacy" test is not a "magic words" test. This Court so recognized in *Washington State Republican Party v. Washington State Public Disclosure Commission*, 141 Wn.2d 245, 267, 4 P.3d 808 (2000), as did the United States Supreme Court in *McConnell,* 540 U.S. at 193. Rather, the test is whether there is "an exhortation to vote for or against a candidate." *WSRP* at 267, *citing Federal Election Comm'n v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987). Certainly, if the communication uses very precise words such as "vote against John Doe," that constitutes a "clear exhortation." In other words, "magic words" may indicate that the communication is a "clear exhortation," but the absence of magic words does not mean it is not.

This Court also affirmed an application of "clear exhortation" test articulated in *Furgatch* that an ad cannot be "issue-oriented" if it "directly attacked" the character of the candidate. *WSRP*, 141 Wn.2d at 270. In other words, character attacks, by their very nature, are "clear exhortations" to vote against a candidate. But, like "magic words," the absence of a character attack does not mean that a given communication is not a "clear exhortation."

The Chamber seeks to do away with this court's parameters of the "clear exhortation test" by arguing that it is too vague. Chamber Br. at 12-14. The Chamber fears that such an application has "chilling potential" of discussing issues in relation to candidates in elections. *Id.* at 15. But in the context of election-related speech, the inclusion of an "issue" in the communication does not automatically remove the communication from express advocacy. As stated in *McConnell*, "[t]he justifications for the regulation of express advocacy apply equally to ads aired during [pre-election] periods if the ads are intended to influence the voters' decisions and have that effect". 524 U.S. at 206.

More directly, the Chamber seeks to effectively overturn this Court's holding in *WSRP* that a character attack is by its nature a clear exhortation to vote against a candidate by arguing that it is too difficult to determine what is a character attack and what is not. Chamber Br. at 15-16. This Court need not enter the morass of what is or what is not a character attack within the scope of the *WSRP* holding, or even to define more precisely the parameters of what is and what is not an attack on character. Here, it is sufficient to view the tape of the ad in question,

review the text of the ad, and determine whether the ad clearly exhorts one to vote against a candidate.[14] *See* CP 551.

However, if Court deems it necessary to parse further the meaning of "character attack," it could focus on the guidance provided by *McConnell.* In its discussion of the vagaries of the distinction between express and issue advocacy, the *McConnell* Court cited a "striking example" from a 1996 Montana congressional race in which Bill Yellowtail was a candidate. The ad stated in part: "Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But 'her nose was not broken.'" The Court concluded that "[t]he notion that this advertisement was designed purely to discuss the issue of family values strains credulity." 540 U.S. at 194, n. 78.

The VEC's ad at issue here was clearly a "character attack" of the type contemplated by this Court in *WSRP.* It is unlike a classic issue discussion, such as "Senator Doe wants to end highway funding." In that hypothetical, there can be a reasonable difference of opinion about the issue of highway funding. Some voters could support highway funding;

[14] The cases cited by the Chamber as authority for rejection of consideration of whether an ad attacks a candidate's character are inapposite, as they predate *McConnell.* Chamber Br. at 13.

others may oppose it. However, contrast that with the *McConnell* Court's discussion of Mr. Yellowtail. The political committee's message was that Mr. Yellowtail beat his wife and lied about it. No voter can take the "pro-lying" side of that argument. As recognized by the *McConnell* court, it is a clear exhortation to vote against Mr. Yellowtail. In this analysis, it does not matter whether the attack is true. An ad that says that "Candidate Doe is a liar" is an attack on character regardless of whether Doe occasionally strayed from the truth. There is no other side of the issue to debate; it is a "clear exhortation" to vote against a candidate.[15]

Regarding the alleged chilling of speech, nothing in the state law at issue limits the VEC or the Chamber from making any character attack it wishes or spending as much money making those attacks as it wishes. No speech is limited in any way. The only requirement is that the speaker disclose its expenditures and contributions. This Court should resist the invitation to dilute the "clear exhortation" test it elaborated upon in *WSRP*, and thereby preserve the ability of the voting public to obtain relevant campaign information.

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[15] Therefore, the Chamber's discussion of actions of the former Insurance Commissioner while in office are not relevant. Chamber Br. at 16-19. Accordingly, we will not enter that fray.

## III. CONCLUSION

We urge this Court to hold that the definition of "political committee" in RCW 42.17.020 is not unconstitutionally vague and, therefore, there is no need to apply a limiting construction to the statute. However, should this Court determine that a limiting construction confining the disclosure requirement in RCW 42.17 to "express advocacy" is necessary to cure vagueness, it should determine that the ad in question is such express advocacy. We urge this Court to affirm judgment of the Superior Court.

RESPECTFULLY SUBMITTED this 12th day of May, 2006.

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