The Honorable JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Human Life of Washington, Inc., Plaintiff, v. Chair Bill Brumsickle, Vice Chair Ken Schellberg, Secretary Dave Seabrook, Jane Noland, and Jim Clements, in Their Official Capacities as Officers and Members of the Washington State Public Disclosure Commission, Rob McKenna, in His Official Capacity as Washington Attorney General, and Dan Satterberg, in His Official Capacity as King County Prosecuting Attorney, Defendants.	NO. 08-CV-00590-JCC STATE DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

"It has been said time and again in our history by political and other observers that an informed and active electorate is an essential ingredient, if not the s*ine qua non* in regard to a socially effective and desirable continuation of our democratic form of representative government." *Fritz v. Gorton*, 83 Wn.2d 275, 283-84, 517 P.2d 911 (1974)[1]; *see also Voters*

[1] Commentators on the enactment and early implementation of Initiative 276, some contemporaneous, reinforce its public information purpose. *See, e.g.*, Hugh A. Bone & Cindy M. Fey, *The People's Right to Know: An Analysis of the Washington State Public Disclosure Law* 44 (1978) ("The law has helped meet an important requisite for effective political participation -- a significant increase in the public's level of information.").

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Educ. Comm. v. Public Disclosure Comm'n, 161 Wn.2d 470, 483, 166 P.3d 1174 (2007), *pet. for cert. filed* (March 10, 2008). "[T]he right to free speech 'includes the "fundamental counterpart" of the right to receive information'. . . 'The constitutional safeguards which shield and protect the communicator, perhaps more importantly also assure the public the right to *receive* information in an open society." *Voters Educ. Comm.*, 161 Wn.2d at 483.

Plaintiff Human Life of Washington (HLW) seeks to overturn this fundamental principle of Washington's electoral process by apparently soliciting financial contributions from the public and making expenditures regarding Initiative 1000 (I-1000) without disclosing information about those activities as required by Washington's Initiative 276. Chapter 1, Laws of 1973 (codified as amended in RCW 42.17). HLW contends that Washington's disclosure laws violate its First Amendment rights only because HLW's proposed ads, fundraising letter, and telephone solicitation do not specifically admonish voters to "vote against I-1000." Notably, HLW seeks preliminary and expedited relief precisely because of the election timetable. In essence, HLW wants to receive and spend funds on a ballot measure before the voters in Washington and yet hide its sources of that funding from the voters prior to an administrative determination as to whether it is a political committee or its ads are political advertising.

The Court should deny HLW's request. HLW's action is a disfavored facial challenge and not ripe for adjudication. HLW has not sought an administrative determination of its status and, instead, has rushed to federal court. Its intentions are not yet formulated sufficiently to permit a judicial determination of the merits.

Even if this action is appropriate for judicial resolution, the Court should deny HLW's request for preliminary injunctive relief. It is unlikely that HLW will prevail on the merits. The balance of harm tips sharply in favor of the well-established public right to receive information about funding in support of and opposition to I-1000. Compliance with

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Washington's disclosure laws would require straightforward filing activities by HLW – efforts that HLW or its political committee have managed successfully in the past. HLW's only alleged injury – self-censorship – is insufficient to satisfy the extraordinary outcome of a preliminary injunction during an election. Nothing in Washington law prohibits HLW from running its ads or engaging in its other suggested activities. As held by United States Supreme Court: disclosure requirements do not prevent anyone from speaking. *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 201 (2003). Finally, if the facts, which are entirely uncertain at this time, demonstrate HLW is a political committee, or if it expends funds on political advertising to oppose a measure that has yet to qualify for the ballot, the public interest requires that the information HLW seeks to withhold from public view be considered. Voters are entitled to "follow the money" when they consider whether to sign petitions to put I-1000 on the ballot by July, and, if it should qualify for the ballot, whether it merits their vote in November.

II. STATEMENT OF THE CASE[2]

Enacted in 1972, Initiative 276 set in motion a culture of transparency in politics and government in Washington. Like most other states, Washington has registration and disclosure requirements that require entities simply to say who is giving it money and how that money is being spent. The disclosed information now available in an online searchable database is heavily used by the public and media.[3] The vast majority of the reports filed with the PDC are now done electronically, and ninety-nine percent of filers meet the statutory filing deadlines.

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[2] Because HLW submitted so few background facts in its verified complaint, evidence for the Court's consideration is submitted by way of declarations. However, a brief recitation of facts on HLW and related organizations, the PDC, and the history and purpose of Washington's disclosure laws is provided. For purposes of this response, HLW's Complaint shall be referred to as "Comp."

[3] Rippie ¶¶9, 10; Smith ¶¶6, 9. This website is so successful that it has received national recognition. Smith ¶3; Rippie ¶11. Since its inception in 2000, the website has been visited over 870,000 times, with 14,000 visits per month, and 700 visits per day. During this time, a total of 4,494,289 pages have been viewed. Smith ¶6. Even as of the week of this filing, the media is reporting contribution information to the public about I-1000. http://seattlepi.nwsource.com/connelly/364840_joel28.html.

Smith ¶10; Rippie ¶9. With this technology, the public can see and analyze where and when millions of dollars are received and spent, including those related to ballot measures.[4]

In January 2008, former Governor Booth Gardner filed Initiative 1000 with the Secretary of State's office, proposing a "death with dignity" law.[5] It is similar in import to an earlier initiative, I-119. Proponents and opponents of I-1000 have registered and begun filing with the PDC. Parker ¶13. According to reports already filed with the PDC, and from various news reports, the I-1000 campaign promises to be expensive and contentious.[6]

HLW admits to a long history of opposing ballot measures such as I-1000. Comp. ¶17; Mot. at 2. Incorporated in 1971 under the name of "Human Life," it changed its name to Human Life of Washington in 1998. Goltz Exs. A, B. HLW's Articles of Incorporation state that its purpose is "[t]o aid, assist, instruct, educate counsel, direct and participate in the desimination [*sic*] of any and all information and material concerned with or involved in the respect and preservation of the value of human life," and "[t]o accomplish the purposes herein set forth . . . *may . . . engage in any lawful activity either in its own name or in association with other persons, clubs, associations, corporations or other entity.*" Goltz Ex. A (emphasis added). HLW has created two such "other entities," the Human Life of Washington Educational Foundation and the Human Life PAC (HL PAC).[7] HLW has engaged in both candidate and ballot measure advocacy, and HL PAC has filed reports with both the PDC and the FEC.[8] Parker ¶7, ¶11-12, Exs. F-1 through G-13.[9] In 1991, HLW actively participated in

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[4] Rippie ¶20; Smith ¶12.

[5] In 1991, proponents of "death with dignity" legislation gathered signatures sufficient to send Initiative 119 to the Legislature for consideration. Because the Legislature failed to enact the measure, it was placed on the November 1992 ballot. HLW was among the opponents of I-119. Parker ¶¶8, 9, 11. After a hard-fought and expensive political and media campaign, the voters rejected I-119. Rippie ¶18, Ex. D-1 ($1,734,100 was spent in support of the initiative, $516,562 against and another $1 million opposing I-119 and another initiative).

[6] Parker ¶13.

[7] Goltz Ex. C; Parker ¶11.

[8] Though frequently the funding for campaign advocacy was done by HL PAC, it appears that on occasion HLW itself undertook the funding of that advocacy. Parker ¶¶8-9; Exs. D-1 through D-10.

[9] There is a substantial overlap in operations of HLW, HLW Educational Foundation, and HL PAC. The purpose of HLW Educational Foundation as stated on its most recent annual report filed with the Secretary of

efforts to oppose Initiative 119. It did so in a variety of ways[10], acting through HL PAC and making contributions and expenditures, filing reports, and making contributions to other committees.[11] Accordingly, HLW is very familiar with the registration and reporting requirements in Washington. Parker ¶¶6-7, 11-12.[12] It now opposes I-1000 and sees 2008 as a "special opportunity" for such opposition. Comp. ¶26.

III. ARGUMENT

A. A Preliminary Injunction Is An Extraordinary Remedy That Requires HLW To Meet A Heavy Burden.

The purpose of a preliminary injunction "is merely to preserve the relative positions of the parties until a trial on the merits can be held." *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Chalk v. U.S. Dist. Court Cent. Dist. of California*, 840 F.2d 701, 704 (9th Cir. 1988). Where the movant seeks to alter rather than maintain the status quo, or where the issuance of the injunction will provide the movant with substantially all of the relief that would be available after a trial on the merits, courts generally exercise a higher degree of scrutiny. *Tom Doherty Associates, Inc. v. Saban Entm't, Inc.*, 60 F.3d 27, 33-34 (2d Cir. 1995).

A party seeking an injunction must fulfill one of two standards: the "traditional" or the "alternative." *Cassim v. Bowen*, 824 F.2d 791, 795 (9th Cir. 1987); *Zango, Inc. v. PC Tools Pty Ltd.*, 494 F. Supp. 2d 1189, 1194 (W.D. Wash. 2007). Under the traditional test, "the Court

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State is: "Through educational, legislative, and judicial efforts, we seek reform in our culture's understanding of personhood, view of life and freedom." Goltz Ex. E. This is identical to the stated purpose of HLW. Furthermore, the two organizations share a CEO and, with one exception, the members of its Board. *Compare* Goltz Ex. D *with* Goltz Ex. E. HLW and HL PAC have the same mailing address and same fax number, and the attorney for the Vote No 119 Committee is the incorporator for HLW and is on the HLW board of directors. Parker ¶5, ¶7, ¶8, ¶11, ¶12 and their referenced exhibits. Accordingly and contrary to its claim in its Complaint, at least historically, it is not true that HLW "is fully independent of any candidate, political party, or political committee in its planned First Amendment activities." Comp. ¶13.

[10] Comp. ¶18; Parker ¶¶8, 9, 11.

[11] Parker ¶¶6-7, 11-12.

[12] Additionally, HLW staff have contacted PDC staff over the years for technical assistance. These contacts included help with filings and rule interpretation. Perkins ¶3 (question about notification to HL PAC members regarding HL PAC endorsements); Parker ¶5 (HL PAC electronic filings). What HLW has not done is bring the current questions in its Complaint to the PDC staff or the Commission for consideration or review. Rippie ¶23.

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must find that: (1) the moving party will suffer irreparable injury if the relief is denied, (2) the moving party will probably prevail on the merits, (3) the balance of potential harm favors the moving party, and (4) the public interest favors granting relief." 494 F. Supp. 2d at 1194. Under the alternative test, the Court must find "(1) a combination of probable success and the possibility of irreparable injury; or (2) that serious questions are raised and the balance of hardships tips sharply in its favor." *Id.* These are not separate inquiries, but are "extremes of a single continuum." *Clear Channel Outdoor, Inc. v. City of Los Angeles,* 340 F.3d 810, 813 (9th Cir. 2003). At a bare minimum, a plaintiff must demonstrate a fair likelihood of success on the merits to obtain a preliminary injunction, (*Johnson v. Cal. State Bd. of Accountancy,* 72 F.3d 1427, 1430 (9th Cir.1995)), and where, as here, the public interest is involved, it must be considered. *Westlands Water Dist. v. Natural Resources Defense Council*, 43 F.3d 457, 459 (9th Cir. 1994). Here, HLW is seeking injunctive relief equivalent to the relief it could obtain through a trial. Furthermore, it cannot meet either test articulated for injunctive relief.

B. HLW Has Not Demonstrated That This Action Is Justiciable.

Article III of the Constitution requires that federal courts "adjudicate only actual, ongoing cases or controversies." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). Application of justiciability doctrines, like ripeness and standing[13], govern the federal courts' power to review disputes, and the wisdom of doing so. *Renne v. Geary*, 501 U.S. 312, 316 (1991). HLW has failed to set forth sufficient facts clearly establishing that its constitutional challenges are justiciable.[14] When reviewing justiciability issues, "'[i]t is the responsibility of

[13] The Ninth Circuit has discussed the overlap of the standing and ripeness doctrines. *See Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138-39 (9th Cir. 2000) (en banc). Accordingly, because of the overlap of the doctrines, lack of standing is not separately argued here. To establish standing, HLW must show (1) an actual injury that is concrete and particularized and not conjectural or hypothetical; (2) a causal connection between the injury and the defendant's conduct; and (3) a likelihood, and not a mere speculative possibility, that a plaintiff's injury will be remedied by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *American Civil Liberties Union v. Heller*, 378 F.3d 979, 983 (9th Cir. 2004). For the purpose of responding here, these points are made adequately in the ripeness argument.

[14] HLW CEO, Dan Kennedy, states only that he has personal knowledge "of HLW and its activities," and he verifies that "the factual statements in this Complaint concerning HLW and its intended activities are true and

the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.'" *Id.* (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546, n.8 (1986)). In this pre-enforcement challenge, HLW fails to assert justiciable claims.

The ripeness doctrine is "designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Abbott Laboratories. v. Gardner*, 387 U.S. 136, 148-49 (1967). When determining whether a case is ripe for review, courts consider (1) the hardship to the plaintiff caused by delayed review; (2) the extent to which judicial intervention would interfere with administrative action; and (3) whether the court would benefit from further factual development. *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 58-81(1985)). "While 'pure legal questions that require little factual development are more likely to be ripe,' a party bringing a pre-enforcement challenge must . . . present a 'concrete factual situation . . . to delineate the boundaries of what conduct the government may or may not regulate without running afoul' of the Constitution." *Alaska Right to Life Political Action Committee v.*

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correct." However, not all the allegations in the Complaint "concern" HLW. For example, the Complaint makes allegations about the degree to which physician-assisted suicide "has been a long-time public issue in Washington" (Comp. ¶¶18-19), statements about the intensity of the issue among voters and the receptiveness of voters to the messages of HLW (*id.* ¶¶18, 19, 21), and statements about PDC laws, rules, and practices. *Id.* ¶¶8, 9, 10, 34, 35, 36, 37, 39, 44. Mr. Kennedy's verification, by its terms, does not convert these allegations, and other allegations not directly related to HLW, into evidence. Nor does the verification impact those sections of the Complaint containing legal argument. As the Ninth Circuit has recognized, a verified complaint that is "impermissibly heavy on legal conclusions and light on 'facts relevant to the summary judgment motion' fails to present sufficient permissible evidence to raise issues of material fact." *California Pro-Life Council, Inc. v. Randolph,* 507 F.3d at 1172, 1176 (9th Cir. 2007) (*CLPC II).* The same conclusion can be drawn here.

Feldman, 504 F.3d 840, 849 (9th Cir. 2007) (quoting *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1132 (9th Cir. 1996)). There are two reasons why this action is not ripe for adjudication.

1. No Actual Controversy Exists.

A plaintiff must demonstrate an actual controversy for the action to be ripe for judicial review. The only "evidence" HLW presents is a set of draft radio ads (printed on pleading paper) that it states it "intends to broadcast as soon as possible." Comp. ¶21. However, HLW also contends that it intends to run other ads, because the "need to convey information and educate" "varies as public debate on an issue varies." Comp. ¶25. In other words, given that the only debate on the topic involves the I-1000 campaign, it appears HLW's future messages will be a function of how the campaign evolves over time. HLW's speculative and uncertain activities do not provide a basis for federal court jurisdiction to rule on the constitutionality of significant state disclosure laws. HLW's concerns alone, without any state action, are insufficient to raise a justiciable controversy. *See Alaska Right to Life*, 504 F.3d at 851 (controversy not ripe for judicial review absent credible threat of enforcement action).

HLW seeks to overcome the absence of state action by alleging that state law will govern its actions. Comp. ¶¶34-37. In fact, HLW has never even approached the PDC regarding its proposed actions. Rippie ¶23. An unsupported recital of "fear" is insufficient to meet the case or controversy requirement and therefore, HLW fails to meet its burden and its request should be rejected.[15]

[15] In *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1095 (9th Cir. 2003) (*CPLC I*), the court stated "We do not mean to suggest that any plaintiff may challenge the constitutionality of a statute on First Amendment grounds by nakedly asserting that his or her speech was chilled by the statute. The self-censorship door to standing does not open for every plaintiff. The potential plaintiff must have 'an actual and well-founded fear that the law will be enforced against [him or her].'"

2. HLW Failed to Exhaust Administrative Remedies.

This case is also premature because HLW has administrative options that could have resolved or narrowed any potential controversy. Requiring exhaustion of remedies refines the issues by allowing the agency to (1) apply its expertise to the issues, (2) moot judicial controversies, and (3) develop a factual record. *Parisi v. Davidson*, 405 U.S. 34, 37-38 (1972). HLW has several options, both formal and informal.[16] Administrative declaratory relief is available (RCW 34.05.240).

Requiring HLW to exhaust its administrative remedies could develop a factual record that would provide the basis for a meaningful judicial review of the parties' positions in state or federal court.[17] The instant case is similar to *National Right to Life Political Action Committee v. Connor*, 323 F.3d 684 (8th Cir. 2003). In a challenge to state campaign finance laws, the Eighth Circuit court decided that the case was not ripe based on the plaintiffs' failure to pursue administrative remedies with the Missouri Ethics Commission (MEC). The MEC was authorized to provide advisory opinions regarding the application of Missouri's campaign finance disclosure laws. The court found plaintiffs' failure to raise their issues with the state through available administrative procedures particularly compelling.[18] With the exception of

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[16] Contrary to HLW's assertion (Comp. ¶39), the PDC can issue opinions, declaratory orders, and engage in rulemaking. Rippie ¶22. Indeed, Washington law requires agencies, such as the PDC, to provide technical assistance to entities like HLW who may be uncertain about the applicability of certain regulatory requirements. RCW 34.05.230(1); RCW 43.05.005.

[17] Pursuant to Washington cases interpreting RCW 42.17, the determination of whether an entity is a "political committee" can be fact dependent. *See State v. Evans Campaign Comm.*, 86 Wn.2d 503, 507-08, 546 P.2d 73 (1976) (finding that organization not subject to reporting requirements); *State ex. rel. Evergreen Freedom Found. v. Washington Educ. Ass'n,* 111 Wn. App. 586, 599, 49 P.3d 894 (2002) (finding the organization not subject to reporting requirements). While there is doubt whether HLW's campaign activities will be as low-key and low-cost as HLW alleges, in any event, this factual determination is appropriate for administrative determination in the first instance.

[18] "[W]e find that NRLC has not sufficiently focused its claim. It did not make independent expenditures, was never told it would be treated as a 'continuing committee' and, thus, was never threatened with enforcement of the PAC-like regulations. It never sought a temporary restraining order. Nor has it sought guidance from the MEC. We think a district court could more appropriately address these claims if it had some indication as to how Missouri interprets and enforces its own statutes. The district court aptly observed: 'If the case or controversy doctrine is to have any vitality in the context of campaign finance, it is better to wait for a concrete dispute to arise before tackling these challenging and diverse statutory construction questions.'" *Connor*, 323 F.3d at 694.

HLW's filing for preliminary injunction, the deficiencies here bear strong resemblance to *Connor*.[19]

C. Facial Challenges Are Disfavored.

Also, the Court should not rule on HLW's motion at the outset because it presents a disfavored facial challenge to Washington's disclosure statutes. "[A] plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid,' *i.e.*, that the law is unconstitutional in all of it applications." *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008), *quoting United States v. Salerno*, 481 U.S. 739, 745 (1987); *see Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (April 28, 2008) (upholding Indiana's requirement for voter identification where it "imposes only a limited burden on voters' rights"). A court "must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." 128 S. Ct. at 1190. "[F]acial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.* at 1191.

To enjoin operation of Washington's disclosure laws would fundamentally undermine Washington's election process by eliminating a vital flow of information to voters, a result that courts should avoid in the context of a preliminary injunction. *See Grudzinski v. Bradbury*, 2007 WL 2733826 (D. Or. 2007) (denying a preliminary injunction because "plaintiffs seek the extraordinary remedy of interfering with a state's election process.").

[19] Additionally, the *McConnell* Court noted that "should plaintiffs feel that they need further guidance, they are able to seek advisory opinions for clarification . . . and thereby 'remove any doubt there may be as to the meaning of the law.'" 540 U.S. 93, 170, n. 64, *quoting U.S. Civil Service Comm'n v. Nat'l Assoc. of Letter Carriers, AFL-CIO*, 413 U.S. 548, 580 (1973).

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D. HLW Is Not Likely to Prevail on the Merits

1. Washington's Disclosure Requirements Are Constitutional on Their Face.

If the Court examines the facial challenge, the questions are (1) whether Washington's laws requiring disclosure of those who "support or oppose" ballot measures and who expect to receive contributions or make expenditures are unconstitutionally vague, (2) what standard of review applies to such a facial challenge, and (3) whether Washington's laws are justified.

a. The Statutory Definitions Challenged Are Not Vague.

HLW attacks the language "support or oppose" contained in three specific provisions of Washington's disclosure statutes.[20] "Support or oppose" is not vague. HLW argues that such terms are unconstitutionally vague, relying on, in substantial part, its erroneous interpretations of three Supreme Court cases: *Buckley v. Valeo*, 424 U.S. 1 (1976); *McConnell*, 540 U.S. 93 (2003); and *Federal Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007) (*WRTL II*).

Under state case law, the argument that the "political committee" definition is unconstitutionally vague under the federal First Amendment has specifically been rejected by the Washington Supreme Court. *Voters Educ. Comm.,* 161 Wn.2d at 488-89, 491. Contrary to HLW's assertion, the Washington Supreme Court has noted that the United States Supreme Court opinion in *Buckley* did not hold "that the phrase '*advocating the election or defeat of a candidate*,' . . . , was vague and overbroad." *Id.; see also McConnell,* 540 U.S. at 170, n. 64. The *Buckley* Court focused on two other, considerably less precise, terms: "*relative to*" about a clearly defined candidate, (424 U.S. at 41 (emphasis added))[21], and "for the purpose of . . .

[20] HLW also challenges WAC 390-16-206(1), relating to reporting requirements of persons making expenditures "to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition." The purpose of this regulation is to "enable persons and organizations who wish to rate, evaluate, endorse or recommend candidates or ballot measures . . . to have no reporting requirements." Rippie ¶50. However, nothing in HLW's Complaint states it will engage in any activity addressed by this rule.

[21] The Court explained that the "use of so indefinite a phrase as 'relative to' a candidate fails to clearly mark the boundary between permissible and impermissible speech, unless other portions of §608(e)(1) make sufficiently explicit the range of expenditures covered by the limitation." *Id.* at 41-42.

influencing" (424 U.S. at 77).[22] Therefore, *Buckley* does not stand for the proposition that the challenged language in Washington's laws are vague.[23]

Nor can HLW find support in *McConnell.* In *Voters Education Committee*, the court, citing *McConnell*, held the terms "support or oppose" not to be unconstitutionally vague. 161 Wn.2d at 488-89, 491. HLW argues that because the decision was in the context of "party speakers," it should not be precedent for an evaluation of the terms "support" and "oppose" in Washington's statutes. This argument, too, was rejected in *Voters Education Committee,* 161 Wn.2d at 488, n. 9.[24]

A recent Fourth Circuit decision confirms the clarity of Washington's "support or oppose" language. In *North Carolina Right to Life Comm. v. Leake,* 2008 WL 1903462 (4th Cir. May 1, 2008), the court held that North Carolina's disclosure language was unconstitutionally vague, but distinguished Washington's statutes by citing the *Voters Educ. Comm.* as addressing "statutes containing none of the infirmities" of the North Carolina statute. *Id.* at *23.

Nor is the state court's statutory construction of "support or oppose" in conflict with *WRTL II.* That case arose in the context of a prohibition on speech, not disclosure provisions as here. *See California Pro-Life Council, Inc. v. Randolph (CPLC II)*, 507 F.3d 1172, 1177, n. 4 (9th Cir. 2007) ("The Supreme Court's recent decision in [*WRTL II*] does not affect our

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[22] The Court explained that "'[c]ontributions' and 'expenditures' are defined in parallel provisions in terms of the use of money or other valuable assets 'for the purpose of . . . influencing' the nomination or election of candidates for federal office. It is the ambiguity of this phrase that poses constitutional problems." 424 U.S. at 77.

[23] Indeed, *Buckley* imposed a narrowing construction on the vague language so it only applied to communications that contained express words of advocacy including "support." 424 U.S. at 44, n. 52. It is puzzling how HLW can argue the term "support" is vague when it is among the so-called "magic" words that it says are clearly "express advocacy."

[24] Additionally, this Court may turn to another Washington Supreme Court decision that analyzes the terms. An advertisement that "supports or opposes" a candidate is one where it is clear that the advertisement is calling for a vote for or against the candidate. *Washington State Republican Party v. Washington State Public Disclosure Comm'n*, 141 Wn.2d 245, 267, 4 P.3d 808 (2000) (*WSRP*). In *WSRP*, the court ruled that an ad was "express advocacy when it is susceptible of no other reasonable interpretation than as an exhortation to vote for or against a candidate." 141 Wn.2d at 267.

treatment of this case. *WRL* concerned a corporation's 'ability to engage in political speech. . . . *WRL* did not undertake an analysis of statutory disclosure requirements."). *WRTL II* also did not undertake any analysis of ballot measure campaigns, and the interests of the people in such disclosure. Accordingly, Washington's statutes which use the terms "support or oppose" are clear and understandable and survive any vagueness challenge.[25]

b. "Exacting" or "Intermediate" Scrutiny Applies.

First Amendment challenges to disclosure statutes are analyzed under an "exacting scrutiny" standard. This requires that the disclosure bear a "substantial relation" to an important government interest. *Buckley*, 424 U.S. at 64, 65, 75.[26] As concluded by the Ninth Circuit, *McConnell* "did not apply 'strict scrutiny' or require a 'compelling state interest.' Rather, the Court upheld the disclosure requirements as supported merely by 'important state interests.'" *Alaska Right to Life Committee v. Miles*, 441 F.3d 773, 788 (9th Cir. 2006). This "exacting scrutiny" standard is the same as the "intermediate scrutiny" standard in other contexts. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 220 (1995) (describing intermediate scrutiny standard as requiring statute to be "substantially related to the achievement of an important governmental objective").[27]

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[25] To the extent that any federal court review of this language is warranted at this time, the U.S. Supreme Court has a pending petition challenging this very statute for the same reasons. *See* p. 2, *supra.*

[26] *See also McConnell*, 540 U.S. at 196; *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 202 (1999) ("In [*Buckley*], we stated that 'exacting scrutiny' is necessary when compelled disclosure of campaign-related payments is at issue [and] upheld, as substantially related to important government, the recordkeeping, reporting, and disclosure provisions of [FECA] . . . ."); *Alaska Right to Life Committee v. Miles*, 441 F.3d 773, 788 (9th Cir. 2006); *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 663 (5th Cir. 2006).

[27] In *CPLC I,* the court applied a "strict scrutiny" standard for review of California's reporting and disclosure provisions. However, *CPLC I* was decided prior to *McConnell.* In *McConnell*, the majority upheld standards of review less than strict scrutiny. *McConnell*, 540 U.S. at 94 ("the Court applies the less rigorous standard of review applicable to campaign contribution limits under *Buckley* and its progeny. Such limits are subject only to 'closely drawn' scrutiny . . . rather than to strict scrutiny, because, unlike restrictions on campaign expenditures, contribution limits 'entai[l] only a marginal restriction upon the contributor's ability to engage in free communication.'") Though the Ninth Circuit in *CPLC II* felt compelled to adhere to the law of the case set in *CPLC I*, this Court, like the *McConnell* Court did, should apply exacting scrutiny.

c. State Disclosure Laws Further Important Government Interests.

Washington's disclosure requirements provide important campaign information to the voters. RCW 42.17.010(1), (10); Unsoeld ¶10; *see Fritz*, 83 Wn.2d at 283-84; *see also Buckley*, 424 U.S. at 66-67, 81-82 ("[T]he disclosure requirement . . . [is] a minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view."); *McConnell*, 540 U.S. at 196, 200-01, 237-43 (upholding broadcast station record-keeping requirements in part to "help both the regulatory agencies and the public . . . determine the amount of money that individuals or groups, supporters or opponents, intend to spend to help elect a particular candidate"); *CPLC I*, 328 F.3d at 1107. In the analogous area of lobbyist regulation, the Supreme Court in *United States v. Harriss*, 347 U.S. 612, 625 (1954), stated that "full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures."[28]

HLW also challenges what it calls Washington's "PAC-style" requirements (Comp. ¶¶8-9), noting that the Ninth Circuit, in applying strict scrutiny, held that California did not demonstrate that some of its "PAC-like" registration requirements were narrowly tailored and therefore struck down a few selected provisions of California's requirements. Though *CPLC II* is unclear about its evidentiary considerations regarding California's requirements, ample justification exists to uphold Washington's requirements. Rippie ¶¶27, 29; Unsoeld ¶10. These requirements are tailored to disclose only those events about which voters care: who is contributing and how the money is being spent as it relates to electoral activities. These

[28] Even if it is determined that this case should be reviewed under "strict scrutiny," Washington's disclosure statutes are constitutional. In *CPLC II*, the Ninth Circuit, applying the law of the case that was established in the district court (see footnote 28, *supra*) held that a state has a compelling state interest in requiring disclosure of campaign contributions and expenditures in the context of ballot measure advocacy in California. *CPLC II*, 507 F.3d at 1178-79. Given the history of I-276, that certainly is true in Washington. Washington has a long history and culture of valuing a well-informed electorate, and its courts have consistently upheld such an interest.

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requirements have proven valuable to the media as well as provide confidence that contributors' money is spent lawfully.[29]

2. HLW Is Not Entitled To An Injunction Based On Its "As Applied" Challenge.

a. This Challenge Is Not Sufficiently Concrete.

As described above, this Court should decline to render an advisory opinion on whether HLW's draft solicitation and possible advertising campaign is covered by Washington's disclosure laws and whether those laws may be constitutionally applied to the hypotheticals. HLW essentially seeks a court injunction determining that HLW is not a "political committee" and it does not need to disclose the financing of its ballot measure advocacy.

Under state case law, the question of political committee status is a mixed question of law and fact. *State ex. rel. Evergreen Freedom Found. v. Washington Education Ass'n*, 111 Wn. App. 586, 596, 49 P.3d 894 (2002). Regarding its hypothetical advertising campaign (including the draft ads, fundraising letter, and phone script), the constitutional issue is not ripe for a federal court action as these are no more than a basis for an advisory opinion. Given the abstract nature of a few selected statements, neither the PDC nor the Court should be required to reach a final determination of HLW's political committee status. HLW appears to hope that by placing a few, selected hypothetical statements before this Court, it will trigger a response from the State Defendants without the necessity of HLW having to go to the PDC. In this context, that is simply unwarranted.

[29] These reports are also important to serve the overall purpose of the disclosure requirement in at least three ways. First, it is essential to the smooth operation of the disclosure process. The registration information, for example, permits the PDC and the public to contact the person responsible for any discrepancies in the filings. Second, by giving some information about the committee, it permits the public and the press to compare the organization and officers of one committee with the organizations of other political committees to determine if there are overlaps. Third, it gives information about the organization to the contributors. Contributors then too have contact information should they have questions about how the money they provided has been spent. Rippie ¶¶27, 29; Unsoeld ¶10; *see also* RCW 42.17.120 (Contributions and expenditures shall not be made in a manner "so as to effect concealment.")

No barrier exists that would prohibit HLW from engaging in whatever speech it deems appropriate. HLW improperly relies on *WRTL II* to support its claims. This case is very different from *WRTL II*, in which the plaintiff had actually run the ads and the court there considered whether a federal law that purported to prohibit their airing could be applied to those ads under the strictures of the First Amendment. 127 S. Ct. at 2660, 2663. In other words, unlike *WRTL II*, the question is not whether the PDC, or state law, would "allow" the ads to run. HLW points to nothing in PDC law that would "stop" the ads from running. Thus, federal court intervention is unnecessary.

However, should the Court determine it necessary to address the merits of HLW's "as applied" claim, perhaps the most the Court could do is engage in a disfavored hypothetical analysis.[30] Given the legal framework, "if" certain facts are eventually determined to exist, "then" it may be possible to make certain conclusions. However, this hypothetical analysis would be done without the benefit of the PDC viewpoint because HLW never consulted the PDC. Under these highly uncertain circumstances, "if" the facts indicate that HLW expected to solicit contributions, or received contributions, or expected to or actually expended funds, to support or oppose a ballot measure, "then" it also is unlikely that HLW could prevail on the merits. "If" the facts turn out as posed, "then" HLW may be a "political committee" and the ads it indicates it might run and the solicitation efforts it indicates it might engage in could be viewed as "opposing" I-1000. Disclosure of HLW's campaign contributions and expenditures would be required. Finally, even "if" HLW were not considered a "political committee," again, depending on the campaign ads it may actually run or other campaign expenditures it may incur, "then" it could be concluded it would have to disclose its "independent expenditures" under RCW 42.17.100.

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[30] "When faced with a claim that application of a statute renders it unconstitutional, a court must analyze the statute as applied to the particular case, *i.e.,* how it operates in practice against the particular litigant and under the facts of the instant case, not hypothetical facts in other situations. 16 C.J.S. *Constitutional Law* § 187." *Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 987 (E.D. Cal. 2006).

b. Political Committee Is Established In Two Separate Ways.

A person may be a "political committee" either because it has the expectation of receiving contributions or making expenditures to support or oppose a candidate or ballot measure.

1. The Contributions Prong

Whether a person expects to receive contributions can depend on a number of facts, including, for example, whether the organization is soliciting money to support or oppose a campaign, whether the organization's bylaws show such an intent, whether other documents of the organization show an expectation to receive contributions, whether the entity has segregated funds for campaign purposes, and, of course, whether it actually received contributions. *See* RCW 42.17.020(39); 1973 AGLO No. 114; *Evergreen Freedom Found.*, 111 Wn. App. at 596; Rippie ¶¶ 25, 35.

HLW concedes that it "intends to solicit funds" (Comp. ¶ 21). However, HLW argues that it is "impossible for HLW to know" if it would be a political committee and it does not know what the statutory terms such as "expectation" mean. Comp. ¶48; Mot. at 16-17. But this argument belies its actions:

- HLW acknowledges it has many tools such as the statutory language, Washington State case law, Attorney General's Office analysis, the PDC Interpretation concerning political committees, PDC rules, and the PDC website. Comp. ¶¶14, 42-50; *see also* Mot. at 16.
- In addition, Human Life PAC (HL PAC) successfully sought assistance from PDC staff when it had questions. Parker ¶5, Perkins ¶3.
- Critically, HLW apparently has fully understood the definition of political committee in the past, when its obviously connected or affiliated organization, HL PAC, was formed, and when HL PAC filed political committee reports. Parker ¶11.
- HLW also acknowledges it can use sources such as *Black's Law Dictionary* to understand common terms such as "expectation" if it is still uncertain about the plain meaning. Mot. at 15.
- Lastly, HLW has a resource with attorney Ken VanderHoef, a long-standing HLW officer who also would have reviewed PDC laws governing political committee activities through his representation of the Vote No 119! Committee in 1991-92. Parker ¶7, Ex. C-1. The political committee statutory definition is the same as in 1991-92.

HLW fails to articulate why it clearly understood the statutory definition of political committee for the last several years but cannot decide what it means today in order to apply it to its anticipated activities.

2. Expenditures Prong

The second way to become a political committee is to have the expectation of or make expenditures to support or oppose any candidate or ballot proposition. RCW 42.17.020(39). HLW argues that its advocacy relating to I-1000 is not "*the* primary purpose" of HLW because only a relatively small percentage of its expenditures in 2008 would relate to its anticipated advocacy. Thus, HLW argues, it should not be subject to the State's reporting obligations. Comp. ¶31; Mot. at 4. This sort of factual determination is precisely the sort of issue that should be sorted out in the first instance by the PDC prior to judicial review. However, if the Court deems it necessary to evaluate HLW's argument in this regard, it could consider two points.

First, the Washington test is not whether "the" primary purpose of HLW is its spending money on advocacy, but whether it is "the or one of the" primary purposes. *See, e.g.*, *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976); *Evergreen Freedom Found.*, 111 Wn. App. at 599; Rippie Ex. E.[31] Washington courts have rejected a formulaic approach to analyzing the expenditures prong, and specifically affirmed analysis that excludes using a mathematical test such as using a percentage of the budget. *Evergreen*

[31] *See also United States v. Harriss*, 347 U.S. 612 (1954). There, the Court construed the language in the Federal Regulation of Lobbying Act that required persons to register and report as lobbyists if they received money "to be used *principally* to aid . . . in the . . . passage or defeat of any legislation . . . ." 347 U.S. at 619. The Court interpreted "principal purpose" "merely to exclude from the scope of §307 those contributions and persons having only an 'incidental' purpose of influencing legislation." *Id.* at 622. "Conversely, the "principal purpose" requirement does not exclude a contribution which in substantial part is to be used to influence legislation through direct communication with Congress or a person whose activities in substantial part are directed to influencing legislation through direct communication with Congress. If it were otherwise – if an organization, for example, were exempted because lobbying was only one of its main activities – the Act would in large measure be reduced to a mere exhortation against abuse of the legislative process." *Id.* at 622-23.

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Freedom Found., 111 Wn. App. at 601-02 (upholding the trial court's nonreliance on percentage of expenditures, and instead requiring a review of the totality of the circumstances).

Second, though HLW tries to make a budget percentage argument contrary to Washington law, even if this Court were to accept that argument, this Court could find that HLW failed to provide any evidence about its budget. Given the more than $1,000,000 in contributions and $800,000 in expenditures to support or oppose I-1000 so far in 2008 (Rippie ¶54), as well as HLW's activities in 1991 (Parker ¶9), it is simply not credible now to conclude that HLW's proposed actions will only be minimal.

c. HLW Misstates the Constitutional Standard.

The Court should reject HLW's contention that *WRTL II* governs the constitutional issue regarding disclosure, because *WRTL II* does not address disclosure. The *WRTL II* court rejected the proposed requirements that ads contain so-called "magic words," such as "vote against" or "defeat," before they qualified as express advocacy. Chief Justice Roberts articulated a broader test for what speech may be permissibly regulated in the context of that federal statutory ban on candidate ads, defining a broader category of speech termed the "functional equivalent of express advocacy."[32] "[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 127 S. Ct. at 2667.[33] However, *WRTL II*'s discussion of "functional equivalent of express advocacy" is not

[32] The Court first used the term "functional equivalent of express advocacy" in *McConnell*, 540 U.S. at 206. Also, significantly, *WRTL II* also did not involve a ballot measure campaign or disclosures related to a state ballot measure campaign. There are no ballot measures at the federal level.

[33] Applying this test to the candidate ads at issue, Justice Roberts held that ads were not "the functional equivalent of express advocacy," stating: "First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office."

relevant to the issues raised by HLW because the discussion was in the context of a prohibition of speech regarding candidates, not a disclosure statute. *See CPLC II*, 507 F.3d at 1177, n. 4.

Recently, another district court made this precise point in *Citizens United v. Federal Election Comm'n.* There, the court upheld a statutory disclosure requirement as applied to an ad by Citizens United. 530 F. Supp. 2d 274 (D.D.C. 2008), *appeal dismissed*, 128 S. Ct. 1732 (2008). The ads at issue did not contain any "magic words" of express advocacy. The court characterized the plaintiff's theory: "Under counsel's reading of *WRTL*, anything that is not express advocacy or not 'susceptible of [a] reasonable interpretation other than as an appeal to vote for or against a specific candidate' cannot be constitutionally regulated by Congress under BCRA." 530 F. Supp. 2d at 280. The court disagreed, denying the Citizens United motion for a preliminary injunction and stated:

> We do not believe that *WRTL* went so far. The only issue in the case was whether speech that did not constitute the functional equivalent of express advocacy could be banned during the relevant pre-election period. Although *McConnell* upheld the §203 prohibition on its face, the Court left open the issue that was presented in *WRTL*, reserving it for decision on an as-applied basis. In contrast, when the *McConnell* Court *sustained the disclosure provision* of . . .§311, it did so for the "entire range of electioneering communications" set forth in the statute.

530 F. Supp. 2d at 281 (emphasis added).

Just as there was no prohibition on running the ads at issue in *Citizens United*, Washington law does not limit the ads proposed to be run by HLW, including with respect to a ballot measure. The test articulated by Chief Justice Roberts is not applicable here. Even if the Court were to evaluate the ads based on *WRTL II*'s formulation of "the functional equivalent of express advocacy," this Court could easily hold that HLW has not demonstrated that it is entitled to a preliminary injunction based on the limited and incomplete statements it set forth. Elaborating on his test, Chief Justice Roberts added:

> Given the standard we have adopted for determining whether an ad is the 'functional equivalent' of express advocacy, contextual factors of the sort invoked by appellants should seldom play a significant role in the inquiry. Courts need not ignore basic background information that may be necessary to put an ad in

> context – such as whether an ad 'describes a legislative issue that is either currently the subject of legislative scrutiny or likely to be the subject of such scrutiny in the near future,' 466 F. Supp. 2d, at 207–but the need to consider such background should not become an excuse for discovery or a broader inquiry of the sort we have just noted raised First Amendment concerns.

127 S. Ct. at 2669.

If this Court were to proceed on HLW's limited hypotheticals, under the test above, it could look first at the plain language of the ads, including any references to a current or prior election or any pending legislative matter references to I-1000. In considering context, the Court might also examine the timing of HLW anticipated activities related to the filing of I-1000 in 2008. Comp. ¶26 ("2008 would be a special opportunity"). Indeed, HLW seeks preliminary and expedited relief precisely because of the election timetable.

State Defendants reiterate that they are not suggesting the Court engage in *any* "as applied" analysis, because nothing has been applied to HLW. The above are only some of the factors the Court could consider if it proceeds with the "if – then" hypothetical analysis HLW argues it is entitled to in its complaint.

d. HLW May Be Obliged to Report Its Independent Expenditures.

An entity that does not have to report as a political committee may have to report its "independent expenditures." Independent expenditures are those made by a person or entity independent of (not in consultation or coordination with) a candidate or political committee and that support or oppose a candidate or ballot measure. *See, e.g.,* RCW 42.17.100; *see* Rippie ¶48. HLW challenges this "support or oppose" language as well. Such expenditures are an increasingly common method by which businesses, unions, organizations and political committees support (or oppose) legislative or other state office candidates, and can spend beyond the limits of what they may give directly to a candidate's campaign. Independent expenditures (those made independently of candidates and committees) have skyrocketed in Washington State the last several years. Rippie ¶48, Ex. M. Reporting of independent expenditures, enables the public to more completely "follow the money" in their elections.

Under relevant case law and the facts that have been established, HLW has failed to present this Court sufficient justification to enjoin the important state disclosure provisions.

E. Balancing of the Harm Tips Sharply in Favor of the State's Voters and Important Government Interests In Disclosure Far Outweigh Any Speculative Burden on HLW.

Washington voters are entitled to relevant disclosures during a campaign. Depriving them of this critical information especially during a campaign is entirely unjustified based on HLW's unsupported complaint. Those voters will be harmed. RCW 42.17.010; Unsoeld ¶10. Providing more speech during campaign debates, which is what disclosure facilitates, is a vital and constitutionally protected principle.

HLW fails to establish how it bears any unconstitutional burden through campaign disclosures. HLW is not injured in any constitutionally prohibitive manner by being required to file and report as a political committee if it engages in activity that supports or opposes a ballot measure. HLW argues that this Court should issue a preliminary injunction in part because HLW will be injured without one. In so doing, it alleges only one type of injury: that its self-censorship will render it unable "to effectively advocate on the physician-assisted suicide issue." Mot. at 23. That simply is not true.

Washington law does not prohibit or limit in any way HLW from soliciting funds or running ads as it describes in its complaint. As the *McConnell* Court stated, "[FECA's] disclosure requirements are constitutional because they 'd[o] not prevent anyone from speaking.'" 540 U.S. at 201 (quoting *McConnell v. FEC*, 251 F. Supp. 2d 176, 241 (D.D.C. 2003)); *see also American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 1001 (9th Cir. 2004). HLW argues that any loss of First Amendment freedoms, even for minimal periods

of time, constitute[s] irreparable injury.[34] Here, there is no limit on any speech by HLW action that "directly limits speech." In fact, there is no such limit on any speech by HLW.[35]

Preparing and filing reports should hardly qualify as an "injury" of sufficient magnitude to support a federal court action, or federal court intervention. Both HLW and HL PAC have filed reports with the PDC (as well as the FEC) in the past, in relation to lobbying and election activities (Parker ¶¶7, 11). Additionally, complying with the PDC reporting and disclosure requirements is straightforward, and help from the PDC is available if questions arise. Rippie ¶¶21, 22; Parker ¶¶4-5. HLW cannot reasonably claim to be a newcomer to campaign or lobbying disclosure laws.

Next, even if the application of Washington's disclosure laws could result in cognizable harm to HLW, such harm would not be "irreparable." HLW could easily avoid harm by simply using its existing political committee. Such was the conclusion of a district court in *Christian Civic League of Maine, Inc. v. Federal Election Comm'n*, 433 F. Supp. 2d 81 (D.D.C. 2006). In denying CCLM's motion for a preliminary injunction, the court held that because it could broadcast the ad by funding it through its PAC, CCLM failed to demonstrate irreparable injury. 433 F. Supp. 2d at 89-90. As in *CCLM*, HLW has the option of running its ad through its political committee, HL PAC. It will not be harmed in any constitutionally impermissible way.[36]

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[34] HLW's reliance on freedom of religion and other such cases is misplaced. None of those cases involved campaign finance disclosures.

[35] HLW alludes to another possible harm in its Complaint, arguing that if it does not comply, there could be enforcement against it. Comp. ¶¶10, 35-38. However, in the context of a preliminary injunction, that misses the point. Any possible harm relevant for the purposes of this motion would relate only to complying with Washington's disclosure requirements.

[36] The Ninth Circuit in *CPLC II* did not resolve this issue. Referring to the *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986), the Ninth Circuit simply said that the Supreme Court "discounted that fact [of possibly using a PAC] in analyzing the disclosure requirements." 507 F.3d at 1188. The Ninth Circuit's discussion of California's argument in *CPLC II* is not controlling here for two further reasons. First, the issue there did not arise in the context of an analysis of harm in deciding to issue a preliminary injunction; it arose regarding the issue of whether California's disclosure requirements were appropriately tailored. In the context of a preliminary injunction, the court's analysis in *CCLM* is more apt. Second, Washington's interest in disclosure and registration are well documented.

In contrast to any alleged impact to HLW if no preliminary injunction is issued, the State and the public would suffer great and irreparable harm if the statutes are enjoined. If a preliminary injunction is issued, Washington voters would be unable to receive information that will allow them to legitimately understand who seeks to affect their voting, who seeks their contributions in this effort, and how much they are spending, particularly if it is a special interest group. The ultimate countervailing force to the impact of disguised electoral funding by secret special interest groups in American democracy is an informed electorate. That is what disclosure is all about.

IV. CONCLUSION

In sum, HLW fails to meet its burden of showing a strong likelihood of success on the merits in this premature action based upon its speculative statements. HLW will not be irreparably injured by Washington's campaign disclosure requirements. The only group that will truly be harmed if an injunction is issued is the voting public. The public's interest should be protected and would irreparably be harmed by eliminating their ability to "follow the money" in their elections.

DATED this 28th day of May, 2008.

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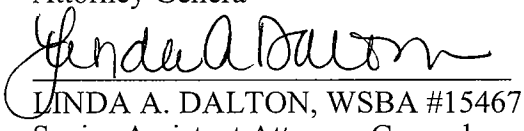

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