

Subject: Re: PDC - Citizens for Steve Litzow - Alleged violation of RCW 42.17A.335(1)(c)

Description:

To Whom it May Concern,

This message is in response to the complaint filed by John Wyble, the paid consultant for Senator Litzow's general election opponent. Mr. Wyble objects to the fact that Senator Litzow has a long and distinguished record of working with members of the other party to address issues important to his district. In fact, Senator Litzow's voting record shows of the 732 votes taken in the last 2 years, Representative Judy Clibborn voted 99% of the time with Senator Litzow and Representative Tana Senn voted 98% of the time with Senator Litzow. Mr. Wyble does not dispute this record, nor the fact that Senator Litzow has worked extensively with both Representative Judy Clibborn and Representative Tana Senn on behalf of their shared district. Instead, he claims that our campaign has sponsored political advertising violating RCW 42.17A.335(1)(c). This assertion has no support in either law or fact.

The two images in question are taken in public and present an accurate representation of the cordial and productive working relationship between Senator Litzow and his two legislative seatmates. Rep. Judy Clibborn has had photos of Senator Litzow on her campaign web site <http://judyclibborn.com/gallery/campaignphotos/> for months along with photos of her with Republican State Senators King, Fain and Dammeier. A reasonable reader would not view those photos of Rep Clibborn and Senator Litzow to imply that he endorsed her re-election campaign or that any of those other Senators endorsed her. It is a statement that she is proud of the hard work by a bi-partisan group of legislators to pass a transportation improvement package that is important to the 41st District and the State. The fact that representatives of the same legislative district are at the same public events, bill signings and receiving awards for their work together by non-partisan organizations, demonstrates each of them is willing to rise above partisan gridlock and dysfunction to get things done.

Like the images on Rep. Clibborn's website, none of the complained of ads either states or implies that Senator Litzow is endorsed by either Rep Judy Clibborn or Rep Tana Senn, any more than U.S. Senator Patty Murray is implying that she is endorsed by House Speaker Paul Ryan in the following advertisement which ran this year in her current re-election campaign <https://www.youtube.com/watch?v=W478Alr-ZCM>. Senator Murray is stating the fact that she has worked with Paul Ryan on issues even though he is in a different party, my advertisements do the same. It is a sad commentary on our current political environment that this sentiment would even be controversial, much less generate a legal complaint.

As the PDC is well aware (in light of federal litigation just this past summer) any violations of RCW 42.17A.335 must be found to have been made with actual malice. Actual malice is defined in the seminal US Supreme Court decision *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). "Actual malice under the *New York Times* standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will." *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510 (1991). Instead, the plaintiff must demonstrate actual malice by producing evidence that the defendant knew the statement was false or acted with reckless disregard as to its falsity. *New York Times*, 376 U.S. at 280. The plaintiff must prove actual malice with "convincing clarity". *Clardy v. Cowles Publishing Co.*,

81 Wn. App. 53, 58, 912 P.2d 1078 (1996). In the instant case, the advertisements are not false. They accurately display Senator Litzow with his legislative seat mates and describe their work together. While this truth is undoubtedly uncomfortable for the paid political consultant of Senator Litzow's opponent, and something he apparently would like to suppress, it is not a violation of RCW 42.17A.335.

I trust this resolves the matter but please don't hesitate to reach out directly to discuss if you would like more information.

Sincerely,

Geneva West Burleigh

Campaign Manager

Citizens for Steve Litzow