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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 IN RE THE MATTER OF ENFORCEMENT
10 ACTION AGAINST

PDC CASE NO. 11-019

ORDER OF DISMISSAL

11 Americans for Prosperity Washington,
12 Respondent.
13

14 This matter came before the Washington State Public Disclosure Commission on
15 December 8, 2011 and January 26, 2012 at the PDC Office, 711 Capitol Way, Room 206,
16 Olympia, Washington. Those present included Barry Sehlin, Commission Chair; Jennifer
17 Joly, Vice Chair; Jim Clements, Member; David Seabrook, Member (December 8 meeting
18 only); and, Amit Ranade, Member.

19 Participating were Phil Stutzman, PDC Director of Compliance; Tony Perkins, PDC
20 Lead Political Finance Specialist; and Senior Assistant Attorney General Linda Dalton,
21 representing PDC Staff. No representatives of the Respondent, Americans for Prosperity
22 Washington (AFP) and its Washington chapter were present. Also present were: Andrea
23 McNamara Doyle, Executive Director; Nancy Krier, Commission General Counsel; and PDC
24 staff member Jana Greer as recorder/reporter of the proceedings. The proceedings were
25 recorded and open to the public.
26

1 This case concerns allegations in two complaints that AFP and its Washington chapter¹
2 failed to register and report with the PDC as a political committee and failed to list the top five
3 contributors in independent expenditure and electioneering communications in 2010.

4 The Commission was provided with a Report of Investigation dated December 1, 2011
5 (and exhibits), with a cover memo from Mr. Stutzman dated December 1, 2011; an Executive
6 Summary and PDC Staff Analysis; a Supplemental Report of Investigation dated January 23,
7 2012 (and exhibits), with a cover memo from Mr. Stutzman dated January 18, 2012; a Brief of
8 Commission Staff dated January 23, 2012; and, a Brief of Respondent AFP (undated).² Mr.
9 Stutzman and Mr. Perkins made oral presentations to the Commission providing the staff
10 recommendation for dismissal of the allegations in the complaints. Ms. Dalton made an oral
11 presentation to the Commission providing legal background.

12 The Commission hereby enters the following Findings of Fact, Conclusions of Law,
13 and Order.

14 I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15 Jurisdiction

16 1. The Commission has jurisdiction to hear this matter as provided in RCW 42.17
17 and as recodified at RCW 42.17A (effective January 1, 2012).³

18 Findings of Fact

19 2. AFP is a national 501(c)(4) non-profit political advocacy organization with
20 headquarters in Arlington, Virginia. According to the organization's website, AFP has 34 state
21 chapters and affiliates. These include the Washington State chapter, AFP-WA.

22 ¹ The Respondent will be referred to as AFP or AFP-WA.

23 ² At the December 8, 2011 Commission meeting, the complainants were also invited to provide legal
24 briefs for Commission consideration at its January 26, 2012 meeting. While they did not submit such briefs,
Complainant Dwight Pelz had previously submitted a letter dated December 7, 2011, addressing a number of legal
points.

25 ³ The allegations in the complaints arose under RCW 42.17 as the law existed in 2010. Therefore, the
26 allegations were investigated under RCW 42.17, and the statutory references used in this Order are as those laws
existed in 2010. Effective January 1, 2012, RCW 42.17 was recodified to RCW 42.17A.

1 3. The PDC received and consolidated two separate complaints concerning AFP-
2 WA. The first was filed on October 7, 2010 by Carrie Dolwick, then the legislative and
3 political coordinator for the Sierra Club Cascade Chapter. The second was filed on November
4 10, 2010 by Dwight Pelz, Chair of the Washington State Democratic Central Committee.

5 4. Ms. Dolwick's complaint alleged that on October 2, 2010, AFP-WA distributed
6 literature "hitting" Eric Oemig, then the State Senator for Washington's 45th legislative district,
7 thereby benefitting Andy Hill, his opponent in the 2010 general election. Ms. Dolwick alleged
8 that AFP-WA was a political committee and for six months had failed to register as such, an
9 alleged violation of RCW 42.17.040. She further alleged that AFP-WA failed to file the
10 contribution and expenditure reports required of political committees, alleged violations of
11 RCW 42.17.080 and 42.17.090. Finally, she alleged that AFP-WA's literature identifying
12 Senator Oemig constituted independent expenditure political advertising, and that it failed to
13 include a listing of the top five contributors to AFP-WA in the twelve months preceding the
14 date of the communication, an alleged violation of RCW 42.17.510(2).

15 5. Mr. Pelz's complaint alleged that AFP-WA sponsored political advertising,
16 independent expenditures and electioneering communications opposing or identifying
17 incumbent Democratic candidates for the State Senate in four Washington State legislative
18 districts: the 30th, 41st, 45th, and 48th. He speculated that AFP-WA might have sponsored
19 reportable communications in still other legislative districts. Mr. Pelz stated that AFP-WA's
20 expenditures took the form of mailings, hand-distributed leaflets, and newsprint
21 advertisements. He repeated Ms. Dolwick's allegations concerning AFP-WA's alleged failure
22 to register and report as a political committee, and to list its top five contributors in
23 independent expenditure political advertising.

24 6. PDC Staff investigated the allegations. The Report of Investigation and
25 Supplemental Report of Investigation showed the following regarding AFP and the
26 communications sponsored by AFP that are at issue in this case:

- 1
- 2 a. No evidence showed that AFP sponsored any communication between
- 3 October 2008 and September 2010 that identified a candidate for state, local
- 4 or judicial office in Washington State.
- 5
- 6 b. During October 2010, AFP sponsored public communications that identified
- 7 thirteen incumbent Washington State legislators who were candidates for
- 8 election or re-election. The communications occurred within 60 days of a
- 9 general election. The communications identified the legislators in the 45th
- 10 legislative district referenced in Ms. Dolwick's complaint (Senator Eric
- 11 Oemig). They also identified legislators in the 30th, 41st and 48th legislative
- 12 districts, which are the additional districts listed in Mr. Pelz's complaint
- 13 (Senator Tracy Eide, Representative Marci Maxwell, Senator Randy Gordon,
- 14 Representative Deb Eddy, Representative Ross Hunter and Senator Rodney
- 15 Tom). They also identified another legislator in the 45th district
- 16 (Representative Roger Goodman). Finally, they identified legislators in the
- 17 28th, 35th, 44th and 47th legislative districts (Representative Tami Green,
- 18 Representative Kathy Haigh, Representative Kelli Linville and Representative
- 19 Hans Dunshee).
- 20
- 21 c. AFP's communications took the form of mailed postcards, newspaper
- 22 advertisements and cards hand-distributed by volunteers.
- 23
- 24 d. AFP's communications listed AFP-WA as the sponsor.
- 25
- 26 e. AFP's communications did not attack the character of the identified legislative
- candidates, or solicit votes, financial support or other support or opposition to
- the candidates in their election campaigns. Rather, the communications
- criticized the officials for their votes on taxation, state spending, and other
- issues, and urged recipients to contact the officials with a message along
- similar lines.
- f. Some of the mailed communications were targeted to independent voter
- households who had voted in the general elections in 2006 and 2008 in certain
- legislative districts. Some of the mailed communications were targeted to
- households that had not yet returned mail-in ballots in 2010 in certain
- legislative districts. The newspaper advertisements ran in two legislative
- districts but did not target any particular recipients. The hand-distributed
- communications were not targeted to particular recipients other than being
- distributed by volunteers to households in the relevant legislative districts and
- where hand-distribution would be more efficient (such as where the streets are
- flat).

- 1 g. Neither the mailed nor newspaper communications were valued at \$5,000 or
2 more in the aggregate for each official identified. Specifically, each of the
3 mailed communications identifying an official was valued at less than \$4,000
4 per official identified. Each of the newspaper advertising communications
5 was valued at less than \$2,000 per official identified.
- 6 h. The value of the hand-distributed cards was less than \$5,000 for each official
7 identified. Specifically, for each official, the value was less than \$1,032.
- 8 i. AFP's expenses in sponsoring the communications at issue in this case were
9 disclosed by AFP in a general manner on the L-6 (lobbying) filing it
10 submitted on November 10, 2010, listing the sources of funds.
- 11 j. No evidence showed that AFP received contributions to support or oppose
12 candidates or ballot propositions in Washington during the periods alleged in
13 the complaints.
- 14 k. No evidence showed that AFP made expenditures in support of or opposition
15 to a candidate or ballot proposition in Washington in the 2010 election during
16 the periods alleged in the complaints.

17 7. PDC Staff recommended the Commission dismiss the allegations in the complaints.

18 This recommendation was based upon the Report of Investigation and Supplemental Report of
19 Investigation, and review of the relevant laws, Attorney General Opinion, court decisions and
20 Commission rules. AFP also requested the Commission dismiss the allegations.

21 **Conclusions of Law**

22 8. RCW 42.17.020 provided definitions for "political committee," "political
23 advertising," "independent expenditure," and "electioneering communication."

- 24 a. RCW 42.17.020(38) defined "political advertising" to include "any advertising
25 displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers,
26 letters, radio or television presentations, or other means of mass communication,
used for the purpose of appealing, directly or indirectly, for votes or for financial
or other support or opposition in any election campaign."
- b. RCW 42.17.020(28) defined "independent expenditure" as an expenditure that
meets several specified criteria, including that it pays in whole or in part for
political advertising that either specifically names the candidate supported or

1 opposed, or clearly and beyond any doubt identifies the candidate without using
2 the candidate's name.

3 c. RCW 42.17.020(20) defined an "electioneering communication" as any
4 broadcast, cable, or satellite television or radio transmission, United States postal
5 service mailing, billboard, newspaper, or periodical that (a) clearly identifies a
6 candidate for a state, local, or judicial office either by specifically naming the
7 candidate, or identifying the candidate without using the candidate's name; (b) is
8 broadcast, transmitted, mailed, erected, distributed, or otherwise published within
9 sixty days before any election for that office in the jurisdiction in which the
10 candidate is seeking election; and (c) either alone, or in combination with one or
11 more communications identifying the candidate by the same sponsor during the
12 sixty days before an election, has a fair market value of five thousand dollars or
13 more.

14 d. RCW 42.17.020(39) defined a "political committee" as "any person (except a
15 candidate or an individual dealing with his or her own funds or property) having
16 the expectation of receiving contributions or making expenditures in support of,
17 or opposition to, any candidate or any ballot proposition."

18 9. RCW 42.17.040 required every political committee to timely register with the
19 Commission.

20 10. RCW 42.17.080 and 42.17.090 required political committees to file timely,
21 accurate reports of contributions and expenditures.

22 11. RCW 42.17.565 required sponsors of electioneering communications to
23 electronically file special reports with the Commission within 24 hours of, or on the first
24 working day after, presenting a qualifying communication to the public.

25 12. RCW 42.17.510(2) required independent expenditures and electioneering
26 communications sponsored by any person other than a bona fide political party to include the
27 statement, "No candidate authorized this ad. It is paid for by (name, address, city, state)." In
28 addition, if the advertisement or communication is sponsored by a political committee, it must
29 include the statement "Top Five Contributors," followed by a listing of the names of the five
30 persons or entities making the largest contributions in excess of seven hundred dollars

1 reportable under RCW 42.17 during the twelve-month period before the date of the
2 advertisement or communication.

3 13. WAC 390-05-505 excludes from the definition of electioneering
4 communication “in-person leaflet/pamphlet drops at street addresses,” as well as
5 “Communications conveyed in a manner not specified in RCW 42.17.020(20).”

6 14. PDC Interpretation 07-02, *Primary Purpose Test Guidelines*, distills relevant
7 case law and other legal guidance concerning the definition of “political committee” in RCW
8 42.17.020. That guidance includes AGO 1973 No. 14; *State v. Dan Evans Committee*, 86
9 Wn.2d 503, 546 P.2d 75 (1976); and, *Evergreen Freedom Foundation v. Washington*
10 *Education Association*, 111 Wn. App. 586 (2002), *rev. denied* 148 Wn.2d 120 (2003). As
11 discussed in the interpretation, under those authorities, a person is a political committee if that
12 person becomes a “receiver of contributions” to support or oppose candidates or ballot
13 propositions, or if expenditures to support or oppose candidates or ballot propositions become
14 one of the person’s primary purposes.

15 *Political Committee*

16 15. AFP was not a political committee as defined at RCW 42.17.020(39) during the
17 periods at issue in this case. AFP did not have the expectation of receiving contributions or
18 making expenditures in support of, or opposition to, any candidate or any ballot proposition in
19 Washington during these time periods reviewed.

20 16. First, under the “contributions” test (of what qualifies as a political committee),
21 no evidence showed that AFP received campaign contributions to support or oppose candidates
22 or ballot measures in Washington’s 2010 election. Therefore, AFP did not become a political
23 committee under this test.

24 17. Second, under the “expenditures” test (of what qualifies as a political
25 committee), no evidence showed that AFP made expenditures that supported or opposed a
26 candidate or ballot proposition in Washington’s 2010 election. Accordingly, conducting the

1 next step of that test, the “primary purpose” analysis, is not necessary. Therefore, AFP did not
2 become a political committee under this test.

3 18. Because AFP was not a political committee, it was also not required to report
4 under RCW 42.17.040, RCW 42.17.080 or RCW 42.17.090.

5 *Political Advertising/Independent Expenditures*

6 19. AFP’s communications were not “political advertising” as defined at RCW
7 42.17.020(38). The communications at issue in this case did not support or oppose a candidate
8 in an election campaign; that is, they were not used for the purpose of appealing, directly or
9 indirectly, for votes or for financial or other support or opposition in any election campaign.

10 20. AFP’s communications at issue in this case were not “independent
11 expenditures” as defined at RCW 42.17.020(28). Among other criteria, that definition
12 requires that an expenditure pay for political advertising.

13 21. AFP was not required to provide disclosure of the top five contributors as
14 required at RCW 42.17.510(2) because AFP’s communications were not independent
15 expenditures.

16 *Electioneering Communications*

17 22. The communications at issue in this case were not “electioneering
18 communications” as defined at RCW 42.17.020(20). The communications at issue in this case
19 were not valued at \$5,000 or more in the aggregate for each official. In addition, hand-
20 distributed cards are not electioneering communications under RCW 42.17.020(20), and are
21 explicitly excluded from consideration as electioneering communications by WAC 390-05-
22 505.

23 23. AFP was not required to provide disclosure of the top five contributors as
24 required at RCW 42.17.510(2) because AFP’s communications were not electioneering
25 communications.

1 34.05.470(5), the Respondent is not required to ask the Public Disclosure Commission to
2 reconsider the final order before seeking judicial review by a superior court.

3 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

4 Pursuant to RCW 42.17.395(5) (recodified at RCW 42.17A.755), a **final order** issued
5 by the Public Disclosure Commission is subject to judicial review under the Administrative
6 Procedure Act, chapter 34.05 RCW. The procedures are provided in RCW 34.05.510 - .598.
7 Pursuant to RCW 34.05.542(2), a petition for judicial review must be filed with the superior
8 court in Thurston County or the petitioner's county of residence or principal place of business.
9 The petition for judicial review must be served on the Public Disclosure Commission and any
10 other parties within **30 days** of the date that the Public Disclosure Commission serves this final
11 order on the parties. RCW 34.05.542 (4) provides: "Service of the petition on the agency shall
12 be by delivery of a copy of the petition to the office of the director, or other chief
13 administrative officer or chairperson of the agency, at the principal office of the agency.
14 Service of a copy by mail upon the other parties of record and the office of the attorney general
15 shall be deemed complete upon deposit in the United States mail, as evidenced by the
16 postmark."
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19
20 If reconsideration is properly sought, the petition for judicial review must be served on
21 the Public Disclosure Commission and any other parties within thirty (30) days after the
22 Commission acts on the petition for reconsideration.

23 **IV. ENFORCEMENT OF FINAL ORDERS**

24 The Commission may seek to enforce a final order in superior court under RCW
25 42.17.395-.397 (recodified at RCW 42.17A.755 - .760), and recover legal costs and attorney's
26

1 fees, if a penalty remains unpaid and no petition for judicial review has been filed under
2 chapter 34.05 RCW. This action will be taken without further order by the Commission.

3 The Executive Director is authorized to enter this order on behalf of the Commission.

4 So ORDERED this 8th day of February, 2012.

6 WASHINGTON STATE PUBLIC
7 DISCLOSURE COMMISSION

8 FOR THE COMMISSION:

9 *Andrea M. Doyle*
10 Andrea McNamara Doyle
11 Executive Director

12 *Copy of this Order of Dismissal to:*

13 Americans for Prosperity
14 c/o John Flynn
15 General Counsel
16 2111 Wilson Blvd Ste 350
17 Arlington, VA 22201

18 Jason Torchinsky
19 Holtzman Vogel PLLC
20 45 N Hill Drive STE 100
21 Warrenton, VA 20186

22 John White
23 121 Third Avenue
24 P.O. Box 908
25 Kirkland, WA 98083-0908

26 *Attorneys for Respondent*

Linda A. Dalton
Sr. Assistant Attorney General
Washington State Attorney General's Office
Government Compliance and Enforcement Division
1125 Washington St. SE
PO Box 40100
Olympia, WA 98504-0100

Attorney for PDC Staff

I, *Jana Greer*, certify that I mailed a copy of this order to the
Respondent and to its counsel at their respective addresses above, postage prepaid, on the
date stated herein.

Jana Greer
Signature

2/8/12
Date



State of Washington
PUBLIC DISCLOSURE COMMISSION

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

February 8, 2012

Americans for Prosperity
c/o John Flynn
General Counsel
2111 Wilson Blvd Ste 350
Arlington, VA 22201

John White
Livengood, Fitzgerald & Alskog
121 Third Avenue
P.O. Box 908
Kirkland, WA 98083-0908

Jason Torchinsky
Michael Bayes
Holtzman Vogel PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186

**RE: Complaints Filed Concerning Americans for Prosperity
PDC Case No. 11-019 - Dismissal**

Dear Mr. Flynn, Mr. White and Mr. Torchinsky:

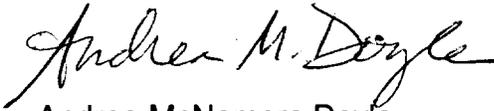
The Public Disclosure Commission (PDC) staff has completed its investigation in PDC Case No. 11-019 involving two complaints received October 7, 2010 (from Carrie Dolwick on behalf of the Sierra Club) and November 10, 2010 (from Dwight Pelz on behalf of the Washington State Democrats). The complaints alleged that Americans for Prosperity (AFP) and its Washington chapter (AFP-WA), failed to register and report with the PDC as a political committee in 2010 and failed to list the top 5 contributors in independent expenditure advertising and electioneering communications in 2010. At its January 26, 2012 meeting,

John Flynn, John White, Jason Torchinsky
Complaints Filed Concerning Americans for Prosperity
PDC Case No. 11-019
Page 2

the Commission unanimously voted to dismiss the allegations in the complaints.
A copy of the order is enclosed.

If you have questions, please contact Phil Stutzman, Director of Compliance, at
(360) 664-8853, toll free at 1-877-601-2828 or by email at
phil.stutzman@pdc.wa.gov.

Sincerely,



Andrea McNamara Doyle
Executive Director

Enclosure

Cc: Linda Dalton, Sr. Assistant Attorney General



State of Washington
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
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February 8, 2012

Sierra Club c/o
Seth Ballhorn
180 Nickerson Street
Seattle, WA 98118

Dwight Pelz, Chair
Washington State Democrats
615 Second Avenue, Room 580
Seattle, WA 98104

**RE: Complaints Filed Concerning Americans for Prosperity
PDC Case No. 11-019 - Dismissal**

Dear Mr. Ballhorn and Mr. Pelz:

The Public Disclosure Commission (PDC) staff has completed its investigation of the complaints received October 7, 2010 (from Ms. Dolwick on behalf of the Sierra Club)¹ and November 10, 2010 (from Mr. Pelz on behalf of the Washington State Democrats). The complaints alleged that Americans for Prosperity (AFP) and its Washington chapter (AFP-WA) failed to register and report with the PDC as a political committee in 2010 and failed to list the top 5 contributors in independent expenditure advertising and electioneering communications in 2010. The two complaints were investigated under PDC Case No. 11-019. The Commission unanimously voted to dismiss the allegations in the complaints at its January 26, 2012 Commission meeting. A copy of the order is enclosed.

The background of this investigation into the complaints and the relevant facts and law are summarized in the December 1, 2011 cover memo to the Commission from PDC Director of Compliance Phil Stutzman, the Executive Summary and Staff Analysis provided to the Commission at its December 8, 2011 meeting, and Mr. Stutzman's January 18, 2012 cover memo to the Supplemental Report of Investigation. Those documents, as well as the documents referenced therein [the Report of Investigation dated December 1, 2011 (and

¹ We understand Ms. Dolwick is no longer with the Sierra Club and therefore are providing this letter to Mr. Ballhorn.

exhibits), the Supplemental Report of Investigation dated January 23, 2012 (and exhibits), the Brief of Commission Staff dated January 23, 2012, and Brief of Respondent AFP-WA (undated)] are available on the Commission's website at www.pdc.wa.gov.

After considering the staff recommendations and supporting materials provided at its December 8, 2011 and January 26, 2012 meetings, including briefing on the legal issues, the Commission voted unanimously to dismiss the complaints.

AFP is being notified by separate letter of the dismissal of these complaints. If you are not satisfied with the dismissal of these complaints, you may seek an appropriate remedy under RCW 42.17.400(4) (now codified at RCW 42.17A.765(4)), a copy of which is enclosed. See WAC 390-37-030(3).

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better awareness of the campaign finance and disclosure laws.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853, toll free at 1-877-601-2828 or by email at phil.stutzman@pdc.wa.gov.

Sincerely,



Andrea McNamara Doyle
Executive Director

Enclosures

Cc: Linda Dalton, Sr. Assistant Attorney General

RCW 42.17A.765
Enforcement. (*Effective January 1, 2012.*)

(1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17A.750.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or produce the accounts, bills, receipts, books, papers, and documents that may be relevant or material to any investigation authorized under this chapter, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. The order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general or the prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and the action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after the notice;

(ii) The person has thereafter further notified the attorney general and prosecuting attorney that the person will commence a citizen's action within ten days upon their failure to do so;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

(b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred. In the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he or she shall be awarded all costs of trial, and may be awarded reasonable attorneys' fees to be fixed by the court to be paid by the state of Washington.

[2010 c 204 § 1004; 2007 c 455 § 1; 1975 1st ex.s. c 294 § 27; 1973 c 1 § 40 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.400.]