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Public Disclosure Commission



WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION  
COMPLAINT FORM

(See instructions on the last page.)

Description of Complaint

1. RESPONDENT:

Identify who you are filing a complaint against and provide all contact information you have for them. Give names and titles, if any, for individuals, and the full name of any organization. Please note that the PDC does not enforce federal campaign finance laws or local ordinances.

Example #1: Joe Public, Mayor of My Town,

123 Main Street, Your Town, State, Phone: 555-123-4567, Email: unknown

Example #2: The Political Action Group (instead of P.A.G.), 123 Main Street, Your Town, State, Phone: 555-123-4567, Email: pag@pag.org

Phil Barberg, 4917 Evergreen Way #283, Everett, WA 98203-2828 Tel 425-259-3974

2. ALLEGED VIOLATIONS:

Explain how and when you believe the people/entities you are filing a complaint against violated RCW 42.17 or Title 390 WAC. Be as detailed as possible about dates, times, places and acts. If you can, cite which specific laws or rules you believe were violated. Attach additional pages if needed.

Regarding the recent TV ads against the Liquor Initiative by public officials/employees I have observed Sheriff/Police ads where they are wearing their public uniforms and using public police vehicle/s (with blue lights) in the background.

These are items paid for with public funds and should not be used in promoting an opinion on an initiative. They make their opinion appear to be that of their departments and not a personal opinion.

The TV ads are being run on the local Seattle TV stations.

PDC Exhibit # 1  
Page 1 of 3

BARBERG PAGE 1 OF 3

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<b>Evidence and Witnesses</b>	Public Disclosure Comm.
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**3. EVIDENCE:**

List the documents or other evidence you have that support your complaint, if any, and attach copies to this form. If you do not have copies, provide any information you have about where you believe the documents or evidence can be found and how to obtain it. Attach additional pages if needed.

*Example: Emails between Joe public and Candidate X, attached OR*

*Joe Public has emails from Candidate X which describe an illegal campaign donation, and Joe Public's phone number is 555-123-4567.*

The ads are being run on local Seattle TV stations on a regular basis.

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**4. WITNESSES:**

List the names and contact information, if known, of any witnesses or other persons who have knowledge of facts that support your complaint. Attach additional pages if needed.

*Example: Jane Public was present when Candidate X spoke to me about the illegal contribution. Jane Public's address is 123 Main Street, Your Town, USA 12345, and her phone number is 555-123-4567.*

Witnessed by many thousands of the voters of the state who watch local TV stations.

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PDC Exhibit # 1  
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**Certification**

Public Disclosure Commission

**In signing this complaint:**

- I have provided all information, documents and other evidence of which I am aware;
- If I become aware of additional information, documents or evidence related to my complaint, I will promptly provide it to the PDC; and,
- I am providing the PDC current information on how to contact me, and will promptly update that information if it changes.

Your name (print or type) Phil Barberg

Street address 4917 Evergreen Way #283

City, state and zip code Everett, WA 98203-2828

Telephone number (including area code) 425-259-3974

E-mail address (optional) philbarberg@yahoo.com

**Oath**

**Required for complaints against elected officials or candidates for elective office:**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this complaint is complete, true and correct to the best of my knowledge and belief.\*

Your signature *Phil Barberg*

Date signed 9/21/2011

Place signed (city and county)

Everett Snohomish County

City County

**Attachments**

Check here if you are attaching copies of documentary evidence or extra pages explaining your complaint.

\*RCW 9A.72.040 says that "(1) A person is guilty of false swearing if he makes a false statement which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

*BARBERG PAGE 3 OF 3*

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Public Disclosure Commission

**FAX**

**WASHINGTON STATE PUBLIC DISCLOSURE  
COMMISSION**

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**ATT: RANDY**

**FROM: PHIL BARBERG**

**RE: CORRECTED COMPALINT FORM**

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# WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION COMPLAINT FORM

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Example #2: The Political Action Group (instead of P.A.G.), 123 Main Street, Your Town, State,

Phone: 555-123-4567, Email: pag@pag.org

Mark Nelson, Sheriff, Cowlitz County, Washington

Robert (Bob) Heuer, Chief of Police, Castle Rock, Washington

### 2. ALLEGED VIOLATIONS:

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PDC Entry # 2  
Page 1 of 1

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Date signed 9/21/2011

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Everett Snohomish County

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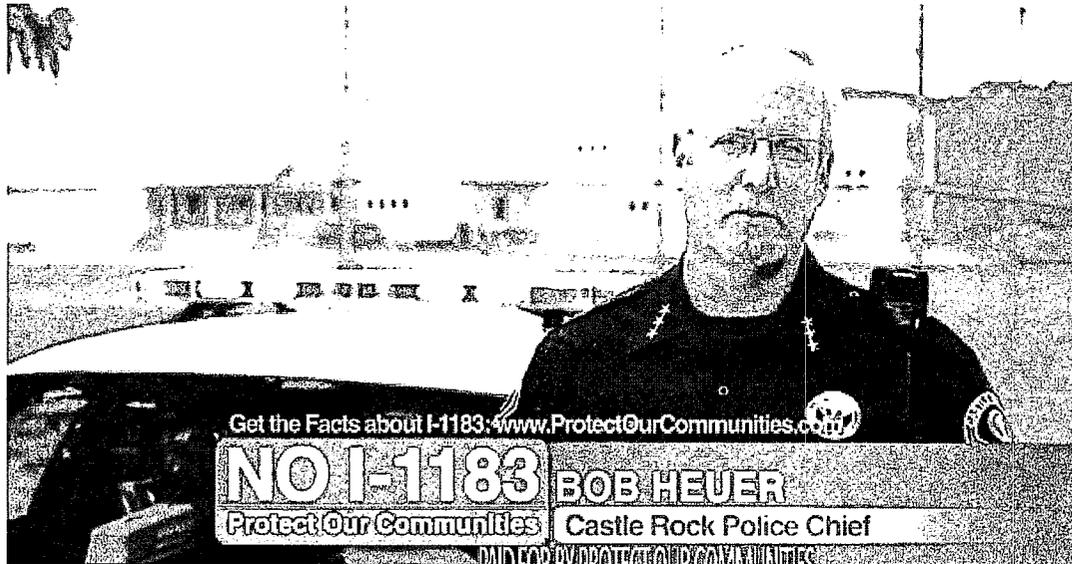
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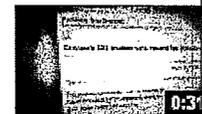
**Make the responsible choice: Vote No on I-1183**  
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**Firefighter Kris Holien**  
by Yeson1183  
4,267 views



**Public Health Experts Agree**  
by VoteNoInitiative1183  
1,247 views



**Our Democracy is not for sale**  
by VoteNoInitiative1183  
34,032 views



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Public Disclosure Commission

WALSTEAD MERTSCHING  
ATTORNEYS AT LAW

October 25, 2011

Philip E. Stutzman  
Director of Compliance  
Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

**SENT VIA FACSIMILE AND  
FIRST CLASS MAIL**

Re: *Complaint filed by Phil Barberg, PDC Case No. 12-125*

Dear Mr. Stutzman:

This is in response to your letter dated October 12, 2011 in the above matter. I am the City Attorney for the City of Castle Rock and have previously investigated a similar complaint made to our mayor by another individual.

Chief Heuer reports that he was wearing a uniform the City purchased in 2001 and a badge provided by the City in 2003. The commercial was filmed on the Chief's day off, and he drove his personal car to the location, not his patrol car. The Castle Rock vehicle in the film was parked in the area and was not requested for the commercial. The film crew then moved to where the vehicle was located. It does not appear that City facilities were used, or, if they were, the value was de minimis. It is my conclusion that Chief Heuer did not violate RCW 42.17.130.

WAC 390-05-271(1) provides that "RCW 42.17.130 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency." This regulation seems to recognize that RCW 42.17.130 seeks to strike a balance between free speech and the avoidance of the misuse of public resources.

Matthew J. Andersen\*

Chelsea C. Baldwin

John A. Barlow

Mark S. Brumbaugh

Michael A. Claxton\*

Barry J. Dahl

\*Also licensed in Oregon

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Email: info@walstead.com • Website: www.walstead.com

FOUNDING PARTNERS: Howard J. Atwell (1880-1962), Ronald Moore (1897-1968), Jerome Walstead (1897-1968)

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OCT 27 2011

Public Disclosure Commission

Philip E. Stutzman  
October 25, 2011  
Page 2

RCW 42.17.130 does not really define "facilities." All the statute states is that they "include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency." Most of these items include some cost to the office or agency, which a Chief's uniform, badge and the parked police car do not. Nor did the advertisement involve any unique agency generated assets such as publications or client lists.

The Public Disclosure Commission formerly defined "uses of facilities" in the state regulations as: that "which constitute or result in measurable expenditure of public funds; or (2) such uses which have a measurable dollar value." WAC 390-05-270, repealed by 79-02-056 (Order 79-01), filed January 31, 1979. I could not find why the definition was repealed, and I appreciate that it is no longer valid. However, like the definition in the statute, it seems to be concerned about cost to the agency as the trigger for prohibiting the conduct and balancing free speech with public resources.

In the context of RCW 42.52 (Ethics in Public Service), RCW 42.52.180 still limits an elected official--not applicable to Chief Heuer--to comments "without actual measurable expenditure of funds." Again, in this context, the concern seems to be cost to the agency--which Chief seemed to have sought to avoid. The ethics board still defines "measurable expenditure" as "an expenditure or consumption of public resources having more than de minimis cost and value." (WAC 292-11-020.) It would seem that Chief Heuer's use of public property--a ten year old uniform and an eight year old badge, neither consumed by the use--falls within such a de minimis category.

Courts have upheld statutes that prohibit the use of public resources "to provide advantages to a particular candidate or ballot measure." *Herbert v. Washington State Pub. Disclosure Comm'n*, 136 Wash. App. 249, 264, 148 P.3d 1102, 1110 (2006). Certainly, Chief's badge, uniform, and even job title are "public resources." But, the regulations affirm the right of a public employee to make a political statement provided that a "facility" is not used. [WAC 390-05-271(1).] If the use of a facility as a background--in this case the parked police car--is included in the prohibition of "use of facilities" that is very broad and probably should be so stated in the regulations, if that is intended.

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Public Disclosure Commission

Philip E. Stutzman  
October 25, 2011  
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If you have any questions or if you wish to discuss this further, please call me at (360) 423-5220. I appreciate the difficulty of balancing: (1) the need to inform the public; (2) the right to free speech; and (3) the need to protect public resources.

Respectfully,



Frank F. Randolph  
Castle Rock City Attorney  
E-Mail: [randolph@walstead.com](mailto:randolph@walstead.com)

FFR/jad

cc: City of Castle Rock  
Castle Rock Police Department