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

IN RE THE MATTER OF ENFORCEMENT
ACTION AGAINST

PDC CASE NO. 11-019
ORDER OF DISMISSAL

Americans for Prosperity Washington,
Respondent.

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

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

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:

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- a. No evidence showed that AFP sponsored any communication between October 2008 and September 2010 that identified a candidate for state, local or judicial office in Washington State.

- b. During October 2010, AFP sponsored public communications that identified thirteen incumbent Washington State legislators who were candidates for election or re-election. The communications occurred within 60 days of a general election. The communications identified the legislators in the 45th legislative district referenced in Ms. Dolwick's complaint (Senator Eric Oemig). They also identified legislators in the 30th, 41st and 48th legislative districts, which are the additional districts listed in Mr. Pelz's complaint (Senator Tracy Eide, Representative Marci Maxwell, Senator Randy Gordon, Representative Deb Eddy, Representative Ross Hunter and Senator Rodney Tom). They also identified another legislator in the 45th district (Representative Roger Goodman). Finally, they identified legislators in the 28th, 35th, 44th and 47th legislative districts (Representative Tami Green, Representative Kathy Haigh, Representative Kelli Linville and Representative Hans Dunshee).

- c. AFP's communications took the form of mailed postcards, newspaper advertisements and cards hand-distributed by volunteers.

- d. AFP's communications listed AFP-WA as the sponsor.

- 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
statement, "No candidate authorized this ad. It is paid for by (name, address, city, state)." In
addition, if the advertisement or communication is sponsored by a political committee, it must
include the statement "Top Five Contributors," followed by a listing of the names of the five
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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18

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
DISCLOSURE COMMISSION

7 FOR THE COMMISSION:

8 *Andrea M. Doyle*
9 Andrea McNamara Doyle
Executive Director

10 *Copy of this Order of Dismissal to:*

10 Americans for Prosperity
11 c/o John Flynn
11 General Counsel
12 2111 Wilson Blvd Ste 350
12 Arlington, VA 22201

13 Jason Torchinsky
14 Holtzman Vogel PLLC
14 45 N Hill Drive STE 100
15 Warrenton, VA 20186

16 John White
16 121 Third Avenue
17 P.O. Box 908
17 Kirkland, WA 98083-0908

18 *Attorneys for Respondent*

19 Linda A. Dalton
20 Sr. Assistant Attorney General
20 Washington State Attorney General's Office
21 Government Compliance and Enforcement Division
21 1125 Washington St. SE
22 PO Box 40100
22 Olympia, WA 98504-0100

23 *Attorney for PDC Staff*

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

26 Signature *Lana Greer*

Date *2/8/12*

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Public Disclosure Commission

SMITH & LOWNEY, P.L.L.C.

2317 E. JOHN ST.

SEATTLE, WASHINGTON 98122

(206) 860-3976. FAX (206) 860-4187

January 24, 2012

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Re: First Notice of Intent to Sue for Violations of RCW 42.17

Dear elected officials:

We represent Charles Kimbrough ("Notifier") in submitting this statutory notice of intent to sue.

Notifier has reason to believe that Americans for Prosperity,¹ along with the following listed individual donors and leaders, (collectively "AFP") have violated certain sections of RCW

¹ This Notice Letter covers both Americans for Prosperity ("AFP") and its affiliate Americans for Prosperity Foundation ("AFPF") (collectively "AFP"). Each is responsible for the violations stated herein.

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Chapter 42.17. The following persons are believed to have acted in concert with AFP in orchestrating and/or executing these violations:

- David Koch, Charles Koch, Tim Phillips and John Flynn, of national AFP.
- Kirby Wilbur, Richard Alvord, WF Monkman, Ron Cohn, and Sarah Rindlaub of the Washington chapter of AFP.

Notifier intends to bring a citizens' action against these persons and entities under RCW 42.17.400(4) if you do not commence an action against each of them within the following notice periods specified by statute. At the expiration of 45 days from the date of this letter, a second notice of intent to sue will be sent to you if you have not yet filed suit against each of these persons and entities. If after 10 days following receipt of the second notice you still have not filed suit against each, Notifier will bring an action against them in Superior Court.

The bases of Notifier's belief that these entities and persons have violated certain sections of RCW Chapter 42.17 are as follows:

1. Introduction.

AFP acknowledges that it spent over \$40 million during the 2010 election cycle, including funding electioneering communications throughout the nation. AFP reported its spending on federal races, including funding electioneering communication in at least 45 U.S. House and Senate races. In contrast, it concealed its well orchestrated national campaign to elect republicans to state houses throughout the nation. In Washington State, AFP targeted 13 democrats in tight state house and senate races. Most of AFP's funds nationally came from anonymous sources, with over \$22 million in anonymous contributions in 2010, according to federal filings.

2. During the period leading into the 2010 general election, AFP qualified as a political committee and failed to file mandatory reports.

For the period leading up to the 2010 general election, AFP met the definition of a "political committee" under either prong of the applicable legal test. *See Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn.App. 586 (2002), *rev. denied*, 148 Wn.2d 1020 (2003) ("EFF"); Public Disclosure Commission ("PDC") Interpretation No. 07-02. An organization may become a political committee by either (1) expecting to receive or receiving contributions to further electoral goals, or by (2) expecting to make or making expenditures to further electoral political goals. *Id.* To the second prong only, the courts have added an additional requirement that the organization must also have as its "primary or one of the primary purposes ... to affect, directly or indirectly, government decision making by supporting or opposing candidates or ballot propositions". *Id.*; *State v. Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 509 (1976).

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A. AFP meets the "receiving" prong of the political committee test because it solicited and received contributions to influence the 2010 legislative races.

In the months preceding the 2010 general election, AFP solicited contributions from individual donors and other organizations to fund electoral work across the nation, including within Washington State.

It also solicited donations from Washington State citizens to fund an independent expenditure campaign designed to influence several close races for the Washington State Legislature. AFP solicited and received over \$32,250 in contributions from these Washington residents.

B. AFP also qualifies as a political committee under the "making expenditures" prong of the test.

During the period leading up to the 2010 election, AFP made campaign expenditures in tight races across the nation, including in Washington State. During this period, AFP had as a "primary or one of the primary purposes ... to affect, directly or indirectly, government decision making by supporting or opposing candidates or ballot propositions." *EFF*. This is true both across the nation and in Washington State in particular. For example, AFP acknowledges that it spent over \$40 million in the 2010 election cycle, including funded electioneering communications in at least 100 races across the country, including 45 federal elections.

C. AFP failed to file necessary reporting as a political committee.

As a political committee, AFP was required to file mandatory reporting of various kinds, and failed to do so. Each such failure constitutes a separate violation of RCW 42.17. In addition to timely registering as a political committee, AFP was required to submit monthly reports if the political committee "has received a contribution or made an expenditure in the preceding calendar month and either the total contribution received or total expenditure made since the last such report exceeds two thousand dollars." WAC 42.17.080(2)(c). Further, a political committee must file periodic reports on certain dates relative to the election at issue: (1) on the twenty-first day before an election, (2) the seventh day before an election, and (3) the tenth day of the first month after an election." *Id.* § 42.17.080(2)(a)-(b). Each periodic report must include an accounting of the political committee's "funds on hand" at the beginning of the reporting period, including "[t]he surplus or deficit of contributions over expenditure; the source and amount of any loans to be used for the political committee's benefit, among other information. RCW 42.17.090(1).² AFP submitted none of this required reporting.

² Political committees are required to file campaign finance reports pursuant to RCW 42.17.080(1) and (2). These reports must disclose contributions, including pledges. RCW 42.17.090, RCW 42.17.020 15(a)(i) (defining contribution to include pledges). 42.17.565 "A payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor on forms the commission shall develop by rule to include, at a minimum, the following information." (emphasis added). AFP failed to properly report such contributions.

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3. Alternatively, AFP failed to properly register as an out-of-state political committee.

The out-of-state political registration requirements would apply to AFP only if it was not otherwise required to report under RCW 42.17.040 through 42.17.090. If AFP was not otherwise required to report, Notifier alleges that AFP was required to register and report as an out-of-state political committee because it is an "out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state" and made an expenditure supporting or opposing a Washington state candidate. RCW 42.17.093. As an out-of-state political committee, AFP was required to report all in-state contributions of over \$25 and all out-of-state contributions above \$2,500. See RCW 42.17.080 and RCW 42.17.093. AFP failed to comply with these requirements.

4. AFP failed to timely report its receipt of contributions received and/or earmarked for political activities, and failed to properly report the expenditure of such funds.

AFP raised funds and conducted an independent expenditure campaign, consisting of reportable electioneering communications, without filing a single report with the Washington State Public Disclosure Commission ("PDC"). The entities and people identified in this notice letter concealed the source and use of these campaign funds until after the election was over, defeating the purpose of the Fair Campaign Practices Act, RCW 42.17.

The purposes of RCW 42.17 state that it is public policy of the State of Washington "(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided; ... (10) That the public's right to know of the financing of political campaigns ... far outweighs any right that these matters remain secret and private. ... The provisions of this chapter shall be liberally construed to promote complete disclosure of all information regarding the financing of political campaigns and lobbying..." RCW 42.17.010

A. Independent Expenditures.

Alternatively, if AFP was not considered a political committee, its contributions and expenditures were reportable as independent expenditures, electioneering communications, and/or political advertising "An entity not subject to disclosure requirements governing political committees may be required nonetheless to disclose certain information about its 'independent expenditures' and 'political advertising.'" *Human Life of Washington v. Brumsickie*, 624 F.3d 990, 998 (9th Cir. 2010), *cert. denied*, 131 S.Ct. 1477, 179 L.Ed.2d 302 (2011).

An "independent expenditure" is "any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported." Wash. Rev. Code § 42.17.100(1). Disclosure requirements are triggered if, in a given election, such an expenditure equals more than \$100 or if its value cannot reasonably be estimated. *Id.* § 42.17.100(2). If an expenditure crosses this valuation threshold, an entity must submit "an initial report of all independent expenditures made

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during the campaign" up until that point in time. *Id.* The required two-page report must include the name and address of the person filing the report; the name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars; the amount, date, and purpose of each such expenditure; and the total sum of all independent expenditures made during the campaign. *Id.* § 42.17.100(5). After submitting the initial report, the regulated entity must submit monthly update reports, but this requirement applies only if "the reporting person has made an independent expenditure since the date of the last previous report filed." *Id.* § 42.17.100(3)(c). Finally, three updates to the initial report are required on certain dates pegged to the election at issue: (1) the twenty-first day before the election, (2) the seventh day before the election, and (3) the tenth day of the month after the election. *Id.* § 42.17.100(3). The entity's reporting obligations cease after the post-election report is filed. *Id.*

Human Life of Washington, 624 F.3d. at 998-999. AFP made none of these disclosures.

B. Electioneering Communications.

AFP's campaign constituted both an independent expenditure campaign and political advertising. It violated the laws by failing to report electioneering communications pursuant to RCW 42.17.565. "A payment for or promise to pay for any electioneering communication shall be reported by the sponsor," and include the detailed information specified under RCW 42.17.565. The information must be reported electronically within twenty four hours of the electioneering communication.

C. Political Advertising.

AFP also failed to comply with political advertising laws. As the Ninth Circuit described:

In addition to disclosures for independent expenditures, the Disclosure Law sets forth requirements for "political advertising," defined as "any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, 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." *Id.* § 42.17.020(38). An advertisement must identify its sponsor: written political advertising must include the sponsor's name and address; radio and television ads must state the sponsor's name; and advertising undertaken as an independent expenditure must state that the advertisement was not approved by any candidate. See *id.* § 42.17.510(1)-(4). The Disclosure Law requires special reports for political advertising made twenty-one days before an election and that has a fair market value of \$ 1,000 or more. *Id.* § 42.17.103(1). Such special reports must include the name and address of the person making the expenditure; the name and address of the person to whom the expenditure was made; a detailed description of the expenditure; the date that the expenditure was made and that the advertising was presented to the public; the

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amount of the expenditure; and the name of the candidate or ballot proposition supported or opposed by the expenditure. *Id.* § 42.17.103(3).

Human Life of Washington, 624 F.3d. at 998-999.

AFP's political advertisements did not state the sponsor's name and address, as required. Its only statement as to the source of the funding for the electioneering communication was "Paid for by Americans for Prosperity Washington," a non-existent organization, listing a Washington state address. The failure to state the correct sponsor name and address, and the false representation as to this information, constitutes a violation of RCW 42.17.510 ("The use of an assumed name for the sponsor of electioneering communication, independent expenditures, or political advertising shall be unlawful."); 42.17.510(a) (requiring statement of sponsor name and address).

If AFP meets the definition of a political committee, then the advertisements also failed to provide information on the top five donors to the campaign, as required by RCW 42.17.510(2)(b).

Instead of complying with these laws, AFP waited until after the election and then falsely reported this electoral campaign as a "lobbying campaign."

Notifier intends to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue. Notifier believes that this Notice sufficiently states grounds for filing suit against the entities and persons listed herein. We intend, at the close of the notice periods, or shortly thereafter, to file a citizen action against the above-named persons and entities under RCW 42.17.400(4) for violations of the Public Disclosure Act, RCW Chapter 42.17. If you have any questions or concerns regarding this Notice, please contact the undersigned attorney.

Very Truly Yours,

SMITH & LOWNEY, P.L.L.C.

By 

Knoll D. Lowney
2317 E. John St.
Seattle, WA 98122
(206) 860-8288

American For Prosperity et al, 45-Day Notice Letter
January 24, 2012, Page 6

Exhibit 2, Page 6 of 6

AMERICANS FOR PROSPERITY®

2111 Wilson Boulevard, Suite 350 • Arlington, VA 22201 • 703.224.3200 • Fax: 703.224.3201

January 31, 2011

Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504-0908

RE: AMENDED Form L-6

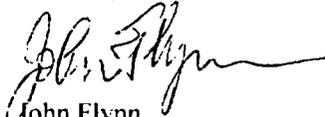
Dear Commission Staff:

Enclosed please find an Amended Form L-6 for Americans for Prosperity. Section 5, Line 2G and the aggregate number have been updated.

If you have any questions, I can be reached at (703) 224-3200.

Thank you for your attention to this matter.

Sincerely,



John Flynn
Secretary and Treasurer

RECEIVED

FEB 01 2011

Public Disclosure Commission

DATE FILED PDC

JAN 31 2011



PUBLIC DISCLOSURE COMMISSION
 711 CAPITOL WAY RM 206
 PO BOX 40908
 OLYMPIA WA 98504-0908
 (360) 753-1111
 TOLL FREE 1-877-601-2828

**GRASS ROOTS
 LOBBYING**

POC FORM
L-6
 (1/02)

THIS SPACE FOR OFFICE USE

DATE FILED POC

JAN 31 2011

Sponsor's name
 Americans for Prosperity
 Address
 2111 Wilson Blvd, Suite 350
 City State Zip Telephone
 Arlington VA 22201 (703) 224-3200

1. Describe the topic(s) or legislation about which the campaign is conducted. Include bill, rule, rate, standard number, if any.

Taxes and Government Spending

2. This report covers:

- Registration (Initial report)
- Monthly report
From To
- Final report (Campaign is ended)

3. List the principal officers of the group or organization if the sponsor is a business, union, association, political organization or other entity.

NAME	TITLE	ADDRESS
Tim Phillips	President	2111 Wilson Blvd, Suite 350
John Flynn	Secretary/Treasurer	Arlington, VA 22201

4. Who is organizing or managing the campaign? List persons or firms hired to assist in the campaign, including public relations and advertising agents.

NAME AND ADDRESS	OCCUPATION OR BUSINESS	TERMS OF COMPENSATION
Kirby Wilbur P.O. Box 249 Duvall, WA 98019	State Director	Full-time Employee

5. Expenditures Made Or Incurred In The Campaign:

1. Previous expenditures (from line 4, last L-6 report)		\$ 0.00
2. Expenses this reporting period:	\$	31,903.30
A. Radio		0.00
B. Television		0.00
C. Newspapers, magazines		2,615.00
D. Brochures, signs		0.00
E. Printing and mailing		27,876.50
F. Consultants, public relations		0.00
G. Office expense, travel, salaries		1,411.80
H. Contributions		0.00
I. Entertainment		0.00
J. Other expenses		0.00
3. Total expenditures this period (lines 2a-2j)		\$ 31,903.30
4. Total expenditures in the campaign (lines 1 + 3)		\$ 31,903.30

Continue On Reverse

Sponsor's name
Americans for Prosperity

JAN 31 2011

This report covers:
Initial and Final

6. Contributions:

List each person or organization who has contributed \$25 or more during this report period

NAME	ADDRESS, CITY, ZIP	AMOUNT
Alvord, Richard	4939 NE Laurel Crest Lane Seattle, WA 98105	\$ 10,000.00
Blackman, John	1301 Spring Street #27J Seattle, WA 98104	1,000.00
Cohn, Ron	814 2 nd Avenue, Suite 400 Seattle, WA 98101	5,000.00
Ellingson, Paul	31012 39 th Place SW Federal Way, WA 98023	1,000.00
Holland, George	5727 63 rd Avenue NE Seattle, WA 98105	1,000.00
Irvine, Douglas	1858 Broadmoor Drive E Seattle, WA 98112	1,000.00
Keasal, Robert	8930 180 Street SE Snohomish, WA 98296	250.00
Lewis, Alfred	8305 134 Avenue NE Redmond, WA 98052	500.00
Monkman, WR	c/o 100 Carillon Point Kirkland, WA 98033	10,000.00
Rindlaub, Sarah	8441 SE 68 th Street #217 Mercer Island, WA 98040	2,500.00

List Total Amount From Any Attached Pages	\$ 0.00
Total Amount Received In Contributions Less Than \$25 Where Contributor's Name Is Not Listed	0.00
Total Contributions This Period	32,250.00
Total Contributions During The Campaign	32,250.00

CERTIFICATION: I hereby certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Name and title

John Flynn, Secretary/Treasurer

Signature

John Flynn

Date

1/31/2011

INSTRUCTIONS

WHO SHOULD FILE THIS FORM: Any person making grass roots lobbying expenditures not reported by a registered lobbyist, a candidate, or a political committee exceeding \$1,000 in the aggregate in any three month period or exceeding \$500 in the aggregate in any one month in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence state legislation.

FILING DEADLINE: Within 30 days after becoming a sponsor of a grass roots lobbying campaign. Thereafter, sponsors file monthly reports on the 10th of the month covering the preceding calendar month. Termination notice is to accompany the final monthly report.

SEND REPORT TO:

Public Disclosure Commission
711 Capitol Way, Rm 206
PO Box 40908
Olympia, WA 98504-0908

QUESTIONS:

CALL (360) 753-1111, OR TOLL FREE 1-877-601-2828



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 1-877-801-2828 • E-mail: odc@odc.wa.gov • Website: www.odc.wa.gov

February 1, 2012

KNOLL LOWNEY
SMITH & LOWNEY PLLC
2317 E JOHN ST
SEATTLE WA 98122

BY ELECTRONIC AND U.S. MAIL

Subject: 45-day citizen action letter concerning Americans for Prosperity and its affiliate, Americans for Prosperity Foundation, along with certain listed individual donors and leaders, received January 24, 2012, PDC Case No. 12-149

Dear Mr. Lowney:

The Attorney General's Office has asked the Public Disclosure Commission (PDC) to review and possibly take action concerning the 45-day citizen action letter received by the Attorney General's Office on January 24, 2012 from you on behalf of your client, Charles Kimbrough.

At its January 26, 2012 regular meeting, the Commission took action to dismiss allegations made against Americans for Prosperity in PDC Case 11-019. Because the allegations in your 45-day citizen action letter appear to be related to the allegations in Case No. 11-019, PDC staff would like to interview Mr. Kimbrough to better understand his allegations, to identify any evidence in his possession, and to determine whether the complaint presents any issues not included in Case No. 11-019.

Because of the compressed time-frame with a 45-day citizen action letter, PDC staff member Tony Perkins will be contacting you to schedule an interview with Mr. Kimbrough as soon as possible.

If you have questions, you may contact Mr. Perkins at (360) 586-1042, toll-free at 1-877-601-2828, or by e-mail at tony.perkins@pdc.wa.gov.

Sincerely,

Philip E. Stutzman
Director of Compliance

Tony Perkins

From: seattleknoll@gmail.com on behalf of knoll lowney [knoll@igc.org]
Sent: Wednesday, February 01, 2012 5:36 PM
To: Tony Perkins
Subject: Re: PDC Letter of February 1, 2012 - Case 12-149

Tony, thank you for the invitation to allow my client to provide additional information to supplement the 45-day notice letter. My client declines that offer and instead will rely upon the 45-day notice letter that I have submitted on his behalf.

Sincerely,

Knoll Lowney
Smith & Lowney PLLC
2317 E. John St.
Seattle WA 98112
(206) 860-2976
fax (206) 860-4187
knoll@igc.org

****Note: the content of this message may be confidential and/or subject to attorney client privilege.****

On Wed, Feb 1, 2012 at 2:57 PM, Tony Perkins <tperkins@pdc.wa.gov> wrote:

Dear Knoll,

Please see the attached letter mailed today, February 1, 2012, regarding the Citizen Action Letter you filed on January 24, 2012 on behalf of Charles Kimbrough. As discussed in the attached letter, I will contact you soon by telephone to arrange for an interview with Mr. Kimbrough. As always, you are welcome to contact me at the number below.

Sincerely,

Tony Perkins

Lead Political Finance Specialist

Washington State Public Disclosure Commission

 [\(360\) 586-1042](tel:(360)586-1042)

 [\(360\) 753-1112](tel:(360)753-1112)

 tony.perkins@pdc.wa.gov

Phone Report

Form Format

Date: 2/08/2012 9:26AM

Duration: 0.20

Subject: RC, re: 12-149 AFP

From: Knoll Lowney

To: TPERKINS

Returned: N

Status:

Contact:

He said, "Your investigation went much farther than anything we're aware of." "I've looked at only a fraction of the documents you gathered in the course of your investigation, and I can say that we don't have anything that you don't have."

He said his client won't take part in an interview because he believes that PDC staff seeks to narrow the allegations in his citizen action letter. Instead, he offered to have his client answer questions in writing about the evidence that he possesses. I said that that was exactly what we were after. I said I would send an email as soon as possible.

Tony Perkins

From: Tony Perkins
Sent: Thursday, February 16, 2012 5:20 PM
To: 'knoll@igc.org'
Cc: 'seattleknoll@gmail.com'
Subject: Questions in PDC Case #12-149 - Americans for Prosperity

Dear Knoll,

Thank you for presenting PDC staff's questions to your client, Charles Kimbrough, in the matter of his 45-day letter regarding Americans for Prosperity. Our questions are as follows:

1. Do you possess copies of communications sponsored by Americans for Prosperity, its Washington State chapter, or the Americans for Prosperity Foundation, that clearly identify a candidate for a state, local, or judicial office in Washington State? If so, please name the candidates and provide a copy of each communication you possess.
2. Do you possess documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, sponsored electioneering communications during 2010 that meet the definition in RCW 42.17.020(20)? If so, please provide copies of all such documents in your possession, or other such information. Note that in order to meet the definition of "electioneering communication" in RCW 42.17.020(20), a communication must be a "broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that: (a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name; (b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and (c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more." (Emphasis added.)
3. Do you possess documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, was a "receiver of contributions" to support or oppose candidates or ballot propositions, rather than to pay for issue advocacy or the like? If so, please provide copies of all such documents in your possession, or other such information.
4. Do you possess documents or other information showing the purpose(s) for which Americans for Prosperity, its chapters or affiliates solicited funds from Washington State residents? If so, please provide copies of all such documents in your possession, or other such information.
5. Do you possess documents or other information showing that spending money to support or oppose candidates or ballot propositions are one of the primary purposes of Americans for Prosperity, its chapters or affiliates, either collectively or separately? If so, please provide copies of all such documents in your possession, or other such information.
6. Do you possess any other documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, constitute a "political committee" under RCW 42.17? If so, please provide copies of all such documents in your possession, or other such information.

7. Do you possess any documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, failed to report contributions pledged but not received? If so, please provide copies of all such documents in your possession, or other such information.
8. Do you possess any documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, failed to report orders placed, debts, obligations, payments, or promises to pay for activity reportable under RCW 42.17? If so, please provide copies of all such documents in your possession, or other such information.
9. Do you possess documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, is an "out-of-state political committee organized for the purpose of supporting or opposing candidates of ballot propositions in another state"? If so, please provide copies of all such documents in your possession, or other such information.
10. Do you possess documents or other information showing the purpose(s) for which Americans for Prosperity, its chapters or affiliates solicited funds from residents of states besides Washington? If so, please provide copies of all such documents in your possession, or other such information.
11. Do you possess documents or other information showing that any expenditure by Americans for Prosperity, its chapters or affiliates constituted a monetary or in-kind contribution to any state, local, or judicial candidate in the 2010 Washington State elections? If so, please provide copies of all such documents in your possession, or other such information.
12. Do you possess documents or other information showing how any of the following individuals acted in concert with Americans for Prosperity to orchestrate or execute any alleged violation of RCW 42.17?

- David Koch
- Charles Koch
- Tim Phillips
- John Flynn
- Kirby Wilbur
- Richard Alvord
- William R. Monkman
- Ron Cohn
- Sarah Rindlaub

If so, please identify the individual in question, and provide copies of all relevant documents, or other such information.

If it is possible to provide a response to our questions by Friday, February 24, 2012, that would be appreciated. I will be out of the office tomorrow, Friday, February 17, 2012, and for the President's Day holiday on Monday. If Mr. Kimbrough has questions about the information and documents PDC staff is seeking, please contact me beginning Tuesday, February 21, 2012. Thanks again.

Sincerely,

Tony Perkins

Lead Political Finance Specialist
Washington State Public Disclosure Commission

☎ (360) 586-1042

☎ (360) 753-1112

✉ tony.perkins@pdc.wa.gov

Tony Perkins

From: seattleknoll@gmail.com on behalf of knoll lowney [knoll@igc.org]
Sent: Thursday, February 23, 2012 5:07 PM
To: Tony Perkins
Subject: Re: Questions in PDC Case #12-149 - Americans for Prosperity

I am sorry I was not clear. My client does not possess documentary evidence or other specific information not possessed by PDC staff. However, we believe that a violation occurred, and the information possessed by the PDC confirms that belief. I am sorry that we cannot be of more help, but we have complied with the statutory notice requirement and we wish you luck in your investigation of this matter.

Knoll Lowney
Smith & Lowney PLLC
2317 E. John St.
Seattle WA 98112
(206) 860-2976
fax (206) 860-4187
knoll@igc.org

****Note: the content of this message may be confidential and/or subject to attorney client privilege.****

On Thu, Feb 23, 2012 at 4:54 PM, Tony Perkins <tony.perkins@pdc.wa.gov> wrote:

Dear Knoll,

To be clear, PDC staff does not need additional copies of documents reviewed in our investigation of the complaints in PDC case 11-019 (Americans for Prosperity Washington). We do need copies of documents, or specific information, that was not reviewed in our prior investigation, and that constitutes evidence of the violations alleged in your January 24, 2012 notice letter.

Although the January 24, 2012 notice letter asserted a basis for your client's belief that Americans for Prosperity committed certain violations, it cited no documentary evidence or specific information that could form such a basis. Does your client have documentary evidence or other specific information not possessed by PDC staff concerning all topics referenced in the 45-day notice letter? If so, please identify and provide all new evidence that your client possesses, or of which he is aware, so that such evidence can be considered in the PDC's investigation of the citizen action complaint. Please use the questions in my February 16, 2012 email as a guide (see below).

A response by close of business on Monday, February 27, 2012 would be appreciated. If my request needs any further clarification, please contact me before responding. Thank you for your attention to this.

Sincerely,

Tony Perkins

Lead Political Finance Specialist

Washington State Public Disclosure Commission

 [\(360\) 586-1042](tel:(360)586-1042)

 [\(360\) 753-1112](tel:(360)753-1112)

 tony.perkins@pdc.wa.gov

From: seattleknoll@gmail.com [mailto:seattleknoll@gmail.com] **On Behalf Of** knoll lowney
Sent: Thursday, February 23, 2012 1:54 PM
To: Tony Perkins

Subject: Re: Questions in PDC Case #12-149 - Americans for Prosperity

Tony, thanks for your work on this matter. I have consulted with my client and have confirmed that he does not possess any documents or information on these topics beyond that which the PDC already possesses and/or was referenced in the 45-day notice letter.

Sincerely,

Knoll Lowney
Smith & Lowney PLLC
2317 E. John St.
Seattle WA 98112
[\(206\) 860-2976](tel:(206)860-2976)
fax [\(206\) 860-4187](tel:(206)860-4187)
knoll@igc.org

****Note: the content of this message may be confidential and/or subject to attorney client privilege.****

On Thu, Feb 16, 2012 at 5:20 PM, Tony Perkins <tony.perkins@pdc.wa.gov> wrote:

Dear Knoll,

Thank you for presenting PDC staff's questions to your client, Charles Kimbrough, in the matter of his 45-day letter regarding Americans for Prosperity. Our questions are as follows:

1. Do you possess copies of communications sponsored by Americans for Prosperity, its Washington State chapter, or the Americans for Prosperity Foundation, that clearly identify a candidate for a state, local, or judicial office in Washington State? If so, please name the candidates and provide a copy of each communication you possess.

2. Do you possess documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, sponsored electioneering communications during 2010 that meet the definition in RCW 42.17.020(20)? If so, please provide copies of all such documents in your possession, or other such information. Note that in order to meet the definition of "electioneering communication" in RCW 42.17.020(20), a communication must be a *"broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that: (a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name; (b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and (c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more."* (Emphasis added.)

3. Do you possess documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, was a "receiver of contributions" to support or oppose candidates or ballot propositions, rather than to pay for issue advocacy or the like? If so, please provide copies of all such documents in your possession, or other such information.

4. Do you possess documents or other information showing the purpose(s) for which Americans for Prosperity, its chapters or affiliates solicited funds from Washington State residents? If so, please provide copies of all such documents in your possession, or other such information.

5. Do you possess documents or other information showing that spending money to support or oppose candidates or ballot propositions are one of the primary purposes of Americans for Prosperity, its chapters or affiliates, either collectively or separately? If so, please provide copies of all such documents in your possession, or other such information.

6. Do you possess any other documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, constitute a "political committee" under RCW 42.17? If so, please provide copies of all such documents in your possession, or other such information.

7. Do you possess any documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, failed to report contributions pledged but not

received? If so, please provide copies of all such documents in your possession, or other such information.

8. Do you possess any documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, failed to report orders placed, debts, obligations, payments, or promises to pay for activity reportable under RCW 42.17? If so, please provide copies of all such documents in your possession, or other such information.

9. Do you possess documents or other information showing that Americans for Prosperity, its chapters or affiliates, collectively or separately, is an "out-of-state political committee organized for the purpose of supporting or opposing candidates of ballot propositions in another state"? If so, please provide copies of all such documents in your possession, or other such information.

10. Do you possess documents or other information showing the purpose(s) for which Americans for Prosperity, its chapters or affiliates solicited funds from residents of states besides Washington? If so, please provide copies of all such documents in your possession, or other such information.

11. Do you possess documents or other information showing that any expenditure by Americans for Prosperity, its chapters or affiliates constituted a monetary or in-kind contribution to any state, local, or judicial candidate in the 2010 Washington State elections? If so, please provide copies of all such documents in your possession, or other such information.

12. Do you possess documents or other information showing how any of the following individuals acted in concert with Americans for Prosperity to orchestrate or execute any alleged violation of RCW 42.17?

- David Koch
- Charles Koch
- Tim Phillips
- John Flynn
- Kirby Wilbur
- Richard Alvord
- William R. Monkman
- Ron Cohn

- Sarah Rindlaub

If so, please identify the individual in question, and provide copies of all relevant documents, or other such information.

If it is possible to provide a response to our questions by Friday, February 24, 2012, that would be appreciated. I will be out of the office tomorrow, Friday, February 17, 2012, and for the President's Day holiday on Monday. If Mr. Kimbrough has questions about the information and documents PDC staff is seeking, please contact me beginning Tuesday, February 21, 2012. Thanks again.

Sincerely,

Tony Perkins

Lead Political Finance Specialist

Washington State Public Disclosure Commission

 [\(360\) 586-1042](tel:(360)586-1042)

 [\(360\) 753-1112](tel:(360)753-1112)

 tony.perkins@pdc.wa.gov

Phone Report

Form Format

Date: 3/08/2012 9:05AM

Duration: 0.03

Subject: LDVM re 12-149

From: Ron Cohn
To: TPERKINS

Returned: N Status: VM 9:00

Contact: 206-423-6210

"I really don't know anything other than I was donating to AFP in this state. I donate to campaigns on a regular basis, so I'm not sure if I can add anything that responds to questions that you have or someone might have."

Phone Report

Form Format

Date: 3/12/2012 9:12AM

Duration: 0.18

Subject: PDC Case 12-149, AFP et al.

From: Richard Alvord

To: TPERKINS

Returned: N

Status:

Contact:

He said that he knew nothing about the activity that was alleged to violate the statutes. He said that he has no involvement in Americans for Prosperity, other than having donated to them, and that he does not know who the group's officers or other decision makers are. He compared his donation to AFP to a donation to fund research into Multiple Sclerosis; he said that he had no more of a connection to AFP than to the MS Society. He declined to offer a written response to the citizen action letter.

HOLTZMAN VOGEL JOSEFIAK PLLC
Attorneys at Law

45 North Hill Drive
Suite 100
Warrenton, WA 20186
p/540-341-8808
o/540-341-8809

March 7, 2012

State of Washington
Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504

Re: AFP, *et. al.*, response to March 1, 2012 letter inviting a written response to Charles Kimbrough's citizen action letter, PDC Case No. 12-149.

Dear Mr. Stutzman,

Thank you for providing AFP and the other respondents (collectively "AFP") with the opportunity to submit a written response to Mr. Kimbrough's complaint in PDC Case 12-149. Mr. Kimbrough has acknowledged that the facts underlying the allegations in the present case are the same as the facts underlying the allegations levied against AFP in PDC Case 11-019, which was dismissed by a unanimous vote of the Commission following a lengthy investigation. In Case 11-019, the Commission reached the unanimous conclusion that AFP did not violate Ch. 42.17 RCW. Despite Mr. Kimbrough's admission that the facts underlying his allegations are the same as those in PDC Case 11-019, he has indicated that he believes these same facts constitute violations of Ch. 42.17 RCW. As the Commission has already found, they do not. AFP respectfully requests that the Commission again dismiss such meritless allegations.

The Commission's unanimous vote to dismiss Case 11-019 was based upon its Report of Investigation, Executive Summary and Staff Analysis, Supplemental Report of Investigation, and Brief of Commission Staff, in addition to AFP's response to the allegations presented. Based on this comprehensive review of the facts underlying the allegations before it, the Commission unanimously reached the following conclusions:

- “AFP was not a political committee as defined at RCW 42.17.020(39) during the periods at issue in this case. . . . Because AFP was not a political committee, it was also not required to report under RCW 42.17.020, RCW 42.17.080 or RCW 42.17.090.”
- “AFP’s communications were not ‘political advertising’ as defined at RCW 42.17.020(38). . . . AFP’s communications at issue in this case were not ‘independent expenditures’ as defined at RCW 42.17.020(28). . . . AFP was not required to provide disclosure of the top five contributors as required at RCW 42.17.510(2) because AFP’s communications were not independent expenditures.”
- “The communications at issue in this case were not ‘electioneering communications’ as defined at RCW 42.17.020. . . . AFP was not required to provide disclosure of the top five contributors as required at RCW 42.17.510(2) because AFP’s communications were not electioneering communications. . . . AFP was not required to file special reports under RCW 42.17.565 because AFP’s communications were not electioneering communications.”

There is nothing in the duplicative allegations made in Mr. Kimbrough’s complaint that would in any way disturb the conclusions already reached by the Commission in its unanimous dismissal of Case 11-019. Further, Mr. Kimbrough has himself acknowledged that the underlying facts in the present case are the same as those considered by the Commission in Case 11-019. As consistently maintained in its submissions to the Commission, AFP has conducted all activities in full compliance with Ch. 42.17 RCW. Thus, AFP respectfully requests that the Commission dismiss these meritless allegations.

Sincerely,



Jason Torchinsky
Counsel to Americans for Prosperity