



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17 and RCW 42.17A

WEA-PAC & Working Together for
the 17th PAC

Respondent.

PDC Case No. 15-043

Report of Investigation

I.

Background

- 1.1 The Washington Education Association has had a political committee registered with the Public Disclosure Commission (PDC) under several names dating back to the 1970's, and has been filing committee reports under the name Washington Education Association PAC since 1996. Washington Education Association PAC (WEA-PAC) filed an amended Committee Registration (C-1pc) on October 6, 2014, disclosing the name of the new committee treasurer.
- 1.2 On July 15, 2014, Working Together for the 17th PAC (WT 17 PAC) filed a C-1pc registering with the PDC as a "new" political committee, and listing Jay Petterson as the committee treasurer. Working Together for the 17th PAC filed an amended C-1pc report on September 10, 2014, disclosing that New Direction PAC was its "Parent Committee" and listing Adam Glickman, from the Service Employees International Union, as a director. The amended C-1pc indicated WT 17 PAC would be a single year election committee supporting Monica Stonier, an incumbent State Representative in the 17th Legislative District and a candidate seeking re-election to that office in 2014. Representative Stonier's opponent was Lynda Wilson.
- 1.3 On November 10, 2014, James Abernathy of the Freedom Foundation (FF) filed a 45-day citizen action complaint letter with the Washington State Attorney General's Office and the office of the Clark County Prosecuting Attorney by, pursuant to RCW 42.17A.765(4). The complaint alleged that the WEA-PAC and WT 17 PAC violated RCW 42.17A by sponsoring political advertising containing false claims that FF supported the candidacy of Lynda Wilson. **Exhibit #1.**

- 1.4 On November 25, 2014, the Attorney General's Office (AGO) referred the 45-day citizen action complaint (complaint) to the Public Disclosure Commission (PDC) for review and possible investigation. On December 2, 2014, the AGO asked that the PDC review allegations against both WEA-PAC and WT 17 PAC.

II.

Allegations & Summary of Investigative Findings

- 2.1 The complaint alleged that WEA-PAC and WT 17 PAC both violated RCW 42.17A.335(1)(c) by sponsoring electioneering communications and independent expenditures containing false claims that FF supported Lynda Wilson, a candidate for State Representative in the 17th Legislative District, including by publishing a television commercial, mailing flyers, and placing content on a Web site.
- 2.2 The complaint objected to certain other statements concerning FF in the WEA-PAC and WT 17 PAC communications, including statements that purported to describe FF's public policy positions. Staff did not investigate these statements, however, because Washington's false political advertising law does not address statements made *about* non-candidates, except to the extent the statements may relate to a non-candidate's endorsement of a candidate.
- 2.3 The complaint alleged that WEA-PAC and WT 17 PAC's made "false statements of material fact about a candidate" in violation of RCW 42.17A.335(1)(a). However, the only statements alleged to be false in the complaint concerned FF, the organization's purported "support" for Lynda Wilson, or Ms. Wilson's "connection" to FF. In his complaint and in attached exhibits, Mr. Abernathy consistently described the alleged false statements as statements "about the Freedom Foundation."
- 2.4 WEA-PAC and WT 17 PAC's responses to the citizen action letter noted that the statements in the committee's political advertisements did not concern whether FF had formally endorsed Lynda Wilson's candidacy; rather, the communications represented that Ms. Wilson had FF's "support." The Respondents provided the following information as the basis for the committees' statements in their advertising that FF supported Ms. Wilson, and that she was in fact connected with FF:
- Tom McCabe and Scott Roberts, respectively FF's CEO and Citizen Action Network Director, in their official capacity as agents of FF, appeared at Ms. Wilson's place of business during the 2014 campaign and made statements in support of Ms. Wilson's candidacy in a YouTube video.
 - Ms. Wilson included a picture on her 2014 campaign Web site of her signing FF's "Pledge," in which candidates agreed not to accept campaign contributions from labor unions if the source of the funds were member dues. The Web posting also provided information concerning a recent FF study relating to the issue of labor unions and member dues being used to make political contributions.

- The photograph of Ms. Wilson signing the FF pledge was also featured on the “front/landing page” of FF’s Web site with a hyperlink to a page with a larger image of Ms. Wilson signing the pledge.
- A FF podcast featuring Ms. Wilson as a guest was broadcast in June of 2014, in which Jamie Lund, FF Senior Policy Analyst, discussed the FF pledge with Ms. Wilson. During the Podcast Mr. Lund “lauded” Ms. Wilson as the first candidate to sign the pledge.
- After the 2014 general election, FF included a link on its Web site entitled “*big governments union lose big in national and state elections.*” The linked information asserted that Ms. Wilson’s victory in her race against Monica Stonier was “a worthwhile reminder of the limits of union’s political influence, despite their vast financial coffers of coercively collected union dues.”
- Tom McCabe made a monetary contribution to the 2014 Lynda Wilson campaign. PDC staff reviewed Monetary Contributions reports (C-3 reports) filed by Ms. Wilson, and confirmed that Tom McCabe’s name was disclosed on a C-3 report as having made a \$125 contribution to Ms. Wilson’s campaign on February 20, 2014.
- Ms. Wilson is a member of the FF, and described her affiliation in the 2014 Primary Election Voters Guide under “community service.” Ms. Wilson’s spouse Tracy Wilson is a trustee of FF; as such, the Respondents stated that his duties included setting the compensation for FF CEO Tom McCabe.

III. **Detailed Findings**

- 3.1 The complaint contained ten exhibits, including: (1) a CD-ROM of television political advertising sponsored by WEA-PAC; (2) three direct mail electioneering communications (one sponsored by WEA-PAC and two sponsored by WT 17 PAC); (3) a link to a broadcast advertisement sponsored by WEA-PAC; (4) an email sent from Mr. Abernathy to Comcast cable demanding that the WEA-PAC broadcast advertisement be pulled until the alleged false statements about FF were removed; (5) an emailed response received by Mr. Abernathy from a Comcast representative concerning the advertisement; (6) two emails sent from Mr. Abernathy to Jay Petterson, treasurer for WT 17 PAC concerning the alleged false statements being made about FF; and (7) Mr. Petterson’s mailed response to Mr. Abernathy.

James Abernathy Correspondence with WT 17 PAC

- 3.2 On October 22, 2014, James Abernathy, General Counsel for FF, sent an email to WT 17 PAC asking them to remove “all false statements” about FF in the electioneering communications and independent expenditures sponsored by WT 17 PAC in opposition to Lynda Wilson. The statements at issue included a statement on the committee’s Web

site asserting that “Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy.”

- 3.3 On October 23, 2014, Mr. Abernathy sent an email to WT 17 PAC acknowledging that the group’s Web site had been slightly changed, but stating that the changes did not remedy the situation. Mr. Abernathy requested WT 17 PAC make additional changes to the site, including the statement that “Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of the Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy. That means they pay less than their fair share, and working families get stuck with the bill.”
- 3.4 On October 29, 2014, Jay Petterson, Treasurer for WT 17 PAC, responded by letter to Mr. Abernathy, informing him that the PAC would not be making any further changes to its Web site, and would not be removing the statements made about the FF, Mr. McCabe, and his position with the FF.

WEA-PAC Political Advertisement

- 3.5 In his complaint, Mr. Abernathy alleged that WEA-PAC produced and distributed political advertisements in 2014 in the form of electioneering communications opposing Ms. Wilson, including a WEA-PAC television commercial and direct mail piece that contained alleged false statements concerning FF’s support for Ms. Wilson. Mr. Abernathy stated that FF is a not-for-profit, non-partisan organization, and the statements concerning FF’s support for Ms. Wilson were false.
- 3.6 Mr. Abernathy stated that FF does not support candidates seeking election to office and the statement FF “... *supports big corporations and tax loopholes is also false...*” He said the statements made by WEA-PAC injured FF as an organization, and that WEA-PAC “...*knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of the statements.*”
- 3.7 Mr. Abernathy included with his complaint Exhibit A, a copy of an electioneering communication produced and sponsored by WEA-PAC. The communication asked if Ms. Wilson will put “...*schools before a corporate tax loophole,*” concluding, “*We don’t think so.*” The advertisement went on to state:

“Lynda Wilson (R) is a member of the extreme Freedom Foundation, which supports providing more wasteful tax loopholes for profitable Wall Street banks and other big corporations. They stand up for big corporations at the expense of working families.”

WEA-PAC Response

3.8 On December 12, 2014, Michael Gawley and Shelby A. Hopkins submitted a response to the citizen action letter on behalf of WEA-PAC. **Exhibit #2.** The response included several embedded Web links that the committee believed “*show clearly that the FF supported Lynda Wilson in her candidacy.*”

3.9 WEA-PAC’s response referred to an April 23, 2014, YouTube video posting, showing a meeting hosted by Ms. Wilson at her place of business. The video began with an image of Ms. Wilson’s campaign yard sign, with the on-screen title “Freedom Foundation – Fighting Labor Union Political Manipulation.” The video included Tom McCabe and Scott Roberts, FF CEO and Citizen Action Network Director, and showed both men making statements in support of Ms. Wilson’s candidacy during the video, including the following:

“For every dollar they [unions] spend defending their idea, is a dollar they don’t have to spend against our good candidates [gesturing at Ms. Wilson] that are trying to move forward. It’s a very, very good idea.” – Scott Roberts

“You have a great candidate in the 17th District, a great candidate...Frank Chopp...is coming down to campaign against Lynda, which tells me he’s worried about this seat, and that’s good news...It’d be great if we could continue the momentum and pick up two or three [seats] every year, and eventually, hopefully in the next cycle, the Republicans could take over the House, and Lynda could be the next speaker of the House.” — Tom McCabe

3.10 WEA-PAC’s response stated that during the 2014 election cycle, a picture of Ms. Wilson signing the FF’s “pledge” (in which candidates agreed not to not accept campaign contributions from labor unions “if they are taken by force as workplace representation dues or fees”) was prominently featured on the “front/landing page” of FF’s Web site, with a link to a page with a larger image of Ms. Wilson signing the pledge.

3.11 The response stated that the same photograph of Ms. Wilson signing FF’s pledge was also featured on Ms. Wilson’s campaign Web site in a June 12, 2014 posting. The Web posting showed a photograph of Ms. Wilson and Mr. McCabe with a copy of FF’s pledge, together with information concerning a recent FF study relating to the issue of labor unions and member dues monies being used to make political contributions.

3.12 The response letter also referred to a FF Podcast featuring Ms. Wilson as a guest that was broadcast in June of 2014, in which Jamie Lund, FF Senior Policy Analyst, discussed the FF pledge with Ms. Wilson. The letter indicated that Mr. Lund “lauded” Ms. Wilson as the first candidate to sign the pledge. The response went on to state, “*One need only listen to the jovial tenor and tone of the broadcast to reach the logical conclusion that it is supportive of Ms. Wilson, while being equally derisive of her opponent Ms. Monica Stonier.*”

- 3.13 The response letter stated after the 2014 general election, FF included a link on its Web site entitled “*big governments union lose big in national and state elections.*” The linked information asserted that Ms. Wilson’s victory in her race against Monica Stonier was “a worthwhile reminder of the limits of union’s political influence, despite their vast financial coffers of coercively collected union dues.”
- 3.14 The response letter indicated that Mr. McCabe made a monetary contribution to the 2014 Lynda Wilson campaign. PDC staff reviewed Monetary Contributions reports (C-3 reports) filed by Ms. Wilson, and confirmed that Tom McCabe’s name was disclosed on a C-3 report as having made a \$125 contribution to Ms. Wilson’s campaign on February 20, 2014.
- 3.15 The response letter stated that “...Ms. Wilson is a member of the FF, and proudly states so in her submission to the 2014 Primary Election Voters Guide under “Community Service”. In addition, the letter stated that Lynda Wilson’s spouse Tracy Wilson is a trustee of FF, and that his duties include setting the compensation for Tom McCabe as FF CEO.
- 3.16 PDC staff reviewed Ms. Wilson’s Personal Financial Affairs Statement (F-1 report) filed on January 6, 2014. Ms. Wilson’s F-1 Supplement form discloses her spouse’s position as a trustee for FF.

Working Families for the 17th PAC

- 3.17 Mr. Abernathy alleged that WT 17 PAC produced and distributed political advertisements in opposition to Ms. Wilson containing false statements about FF’s support for candidates for political office. He stated that the committees “...*knew these statements were false or, in the least, displayed a reckless disregard for the truth or falsity of these statements.*”
- 3.18 Mr. Abernathy alleged that WT 17 PAC made false statements about FF’s support for Ms. Wilson in several political advertisements, including the statement that “*Republican Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy,*” and a direct mail advertisement describing Ms. Wilson’s “connection” to FF, and the organization’s support for her. (The advertisement included the statement “Lynda Wilson is supported by the extreme right like Tom McCabe, CEO of The Freedom Foundation, which opposes eliminating wasteful tax loopholes that benefit big corporations and the wealthy.”) Finally, Mr. Abernathy’s complaint addressed a Web site sponsored by WT 17 PAC, which included the statement, “*Lynda Wilson is supported by the extreme Freedom Foundation, which favors protecting wasteful tax loopholes for profitable big corporations and the wealthy.*”

WT 17 PAC Response

- 3.19 On December 16, 2014, Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP submitted a response on behalf of WT 17 PAC. **Exhibit #3.** Mr. Iglitzin stated that the alleged false statements about FF made in WT 17 PAC's political advertisements were true, and did not constitute libel or defamation.
- 3.20 Mr. Iglitzin stated that that WT 17 PAC's statement that Lynda Wilson "is supported" by FF is "*absolutely 100% true*" and that the evidence was "*...persuasively and comprehensively set forth by Mr. Gawley and Ms. Hopkins in WEA-PAC's December 12, 2014 letter.*" He stated that he would not be repeating that response in full, but will instead provide highlights.
- 3.21 Mr. Iglitzin stated that on April 23, 2014, Mr. McCabe and Mr. Roberts gave speeches and made statements at Ms. Wilson's place of business, and that the "*...presence of these Freedom Foundation representatives, in their capacity as agents of FF, at Ms. Wilson's place of business during the campaign season is enough, even without more, to establish FF's support of Ms. Wilson.*" He stated that organizations like FF "*...do not appear at a candidate's private business and give speeches if they do not to at least some extent support that candidate...*" He concluded by stating that the content of the statements made by Mr. McCabe and Mr. Roberts at Ms. Wilson's place of business "strongly confirms" FF's "*...actual support for Ms. Wilson.*"
- 3.22 Mr. Iglitzin stated that Ms. Wilson posted a photograph of her with Mr. McCabe on her campaign Web site in June of 2014 holding a copy of FF's pledge, which Ms. Wilson had signed. He stated that it is reasonable to infer that FF did not object to Ms. Wilson's use of the photograph; he indicated that this "*clearly states or implies Freedom Foundation's support of her.*" He stated that FF "*...cannot acquiesce in this implicit statement of its support for Ms. Wilson when communicated by Ms. Wilson, [and then] accuse Working Together PAC of acting with actual malice when it makes what is essentially the exact same assertion.*"
- 3.23 Mr. Iglitzin also referred to the June 12, 2014 FF podcast that featured Ms. Wilson and Jamie Lund discussing her candidacy, and the FF pledge that she has signed as a candidate. He stated that "*Absent evidence that Freedom Foundation's podcast has ever featured a guest whose politics and policies it does not support, the inference would be unmistakable from the mere fact of Ms. Wilson's appearance on this podcast that Freedom Foundation supports her.*" He stated that the WEA-PAC's response concerning the podcast confirms the conclusion that FF supported Ms. Wilson, that Mr. McCabe also made a personal contribution to Ms. Wilson's campaign. He added that "*one may reasonably infer that the politically sophisticated Mr. McCabe would not financially support a candidate for public office whom the organization he runs does not itself support.*"
- 3.24 Mr. Iglitzin stated WT 17 PAC did not make a statements in its political advertisements or on its Web site that FF *endorsed* Lynda Wilson; instead, the committee used the term

“support,” which he stated “*cannot be read as meaning the same thing as the term endorse.*”

Additional Information

- 3.25 Ms. Wilson’s campaign made fifteen expenditures totaling more than \$46,000 to Allied Communication Strategies, a political consulting firm founded by FF CEO Tom McCabe, along with two fellow former staff members of the Building Industry Association of Washington, Brian Minnich and Erin Shannon.

IV. Scope

- 4.1 PDC staff reviewed the following:

- The Citizen Action Letter filed by James Abernathy on behalf of the Freedom Foundation, with attached evidence;
- a December 12, 2014, response letter filed on behalf of the WEA-PAC by Michael J. Gawley and Shelby A. Hopkins; and
- a December 16, 2014, response letter filed on behalf of the Working Together for the 17th PAC by Dmitri Iglitzin, an attorney with the law firm Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP.

- 4.2 PDC staff also reviewed Ms. Wilson’s 2014 Campaign Summary Receipts & Expenditures reports (C-4 reports), and Ms. Wilson’s Personal Financial Affairs Statement (F-1 report) filed in January 2014.

V. Law

- 5.1 **RCW 42.17A.335** States in part the following: “(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

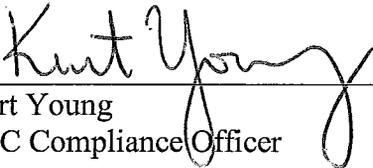
(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, "libel or defamation per se" means statements that

tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

(3) It is not a violation of this section for a candidate or his or her agent to make statements described in subsection (1)(a) or (b) of this section about the candidate himself or herself because a person cannot defame himself or herself. It is not a violation of this section for a person or organization referenced in subsection (1)(c) of this section to make a statement about that person or organization because such persons and organizations cannot defame themselves.”

Respectfully submitted this 7th day of January, 2015.



Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** November 10, 2014, 45-Day Citizen Action Complaint filed by James Abernathy of the Freedom Foundation, pursuant to RCW 42.17A.765(4) alleging violations of RCW 42.17A.335 by WEA-PAC and WT 17 PAC.
- Exhibit #2** December 12, 2014, response letter submitted by Michael Gawley and Shelby A. Hopkins on behalf of WEA-PAC.
- Exhibit #3** December 16, 2014, response letter submitted by Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP on behalf of WT 17 PAC.