UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

Family PAC, Plaintiff, vs. **Rob McKenna**, in his official capacity as Attorney General of Washington, and **Jim Clements**, **David Seabrook**, **Jane Noland**, **Jennifer Joly**, and **Barry Sehlin**, members of the Public Disclosure Commission, in their official capacities, Defendants.	No. 3:09-cv-05662-RBL **Plaintiff's Reply in Support of Motion for Summary Judgment** NOTE ON MOTION CALENDAR: Re-Noted for June 25, 2010 The Honorable Ronald B. Leighton **ORAL ARGUMENT REQUESTED**

BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, Indiana 47807-3510
(812) 232-2434

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Introduction

Plaintiff Family PAC seeks summary judgment on all counts in its Verified Complaint for Declaratory and Injunctive Relief. For the reasons set forth herein and in Plaintiff's Memorandum in Support of Motion for Summary Judgment ("Summ. J. Mem."), Plaintiff should be granted summary judgment on all counts.

Argument

I. The challenged provisions are subject to strict scrutiny.

The $5,000 contribution limit and the $25 and $100 disclosure thresholds are subject to strict scrutiny. (*See* Summ. J. Mem. 3-4.) In *Davis v. FEC*, the Supreme Court explained that level of scrutiny depends on the extent of the First Amendment burden. 128 S.Ct. 2759, 2775 (2008) ("the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights"); *see also Doe v. Reed*, 2010 WL 2518466 at *7 (quoting same). When the burden on speech is high, the level is strict. *Davis*, 128 S.Ct. at 2774-75. *Citizens United* did not change this analysis. *Citizens United v. FEC*, 128 S.Ct. 876, 898 (2010) (discussing strict scrutiny); *id*. at 914 (discussing exacting scrutiny); *see also Doe v. Reed* at *7. And because the burdens of the challenged provision in this case are high, the correct level of scrutiny is strict. (Summ. J. Mem. 3-4.) Under the Supreme Court's analysis in *Davis*, "exacting scrutiny" and "strict scrutiny" are synonymous when the burden of a statute on First Amendment rights are high. The government bears the burden of demonstrating that its statute is narrowly tailored to serve a compelling government interest. *Cal. Pro-Life Council, Inc. v. Randolph* ("*CPLC-II*"), 507 F.3d 1172, 1178 (9th Cir. 2007) (*citing Republican Party of Minnesota v. White*, 536 U.S. 765, 774-75 (2002). Washington cannot meet this burden.[1]

II. The prohibition on contributions in excess of $5,000 during the twenty-one days preceding a general election is not narrowly tailored to serve a compelling government interest.

Plaintiffs presented four reasons the $5,000 contribution limit is not narrowly tailored to a compelling government interest: 1) contribution limits are unconstitutional; 2) the limit is

[1] The challenged provisions are also unconstitutional under the lesser "substantial relation" to "sufficiently important governmental interest" standard. *Davis*, 128 S. Ct. 2775.

underinclusive because different limits are imposed depending on when contributions are made; 3) the limit is underinclusive because it allows political parties to make and receive contributions in excess of $5,000 during the same period; and 4) the limit is unconstitutional because it applies only to general elections. Each is independently sufficient to render the $5,000 contribution limit unconstitutional.

Rather than confront each argument directly, Defendants advance two general arguments. First, Defendants suggest the $5,000 contribution limit is not a "contribution limit," but is instead a "timing mechanism." (Defs.' Resp. to Pl.'s Mot. for Summ. J. ("Defs.' Resp.") 22.) Second, Defendants argue a contribution limit that is under-inclusive is constitutionally permissible post-*Citizens*. (Defs.' Resp. 21-22.) Neither is sufficient to meet the state's burden that its statute is narrowly tailored to serve a compelling government interest.

Defendants' first argument is refuted by the statutory text itself, which states:

> It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for statewide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a bona fide political party as defined in this chapter, excluding the county central committee or legislative district committee.

RCW § 42.17.105(8).

The statute defines the $5,000 as a "contribution," and immediately proceeds to put a limitation on that contribution in direct contravention of the Supreme Court's mandate against such limits. *Citizens Against Rent Control v. City of Berkeley* ("*CARC*"), 454 U.S. 290, 299-300 (1981). That Defendants prefer to call it by a different name does not change the fact that in operation, the statute is a contribution limit. Thus, RCW § 42.17.105(8) is an unconstitutional contribution limit and the statute should be found unconstitutional on that basis alone.[2]

Defendants' second argument also fails. Relying solely on *Citizens United*, Defendants argue a contribution limit, like a compelled disclosure provision, can apply to some speech, but

[2] Similarly, in its Statement of the Case, Defendants attempt to divert attention from the statute's actual language and recast the contribution limit as a timing mechanism. (Defs.' Resp. 9-10.)

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not other speech. (Defs.' Resp. 22 (citing *Citizens United*, 130 S.Ct. at 915).) The argument is flawed at its most basic level. Contribution limits, unlike compelled disclosure provisions (which are sometimes constitutional), are always unconstitutional with respect to ballot measures.

In *CARC* the decision did not turn on the amount of the limit or its timing. Rather, *CARC* held that *all* contribution limits are unconstitutional in ballot measures elections because they operate as a direct restraint on the freedom of association. 454 U.S. at 296. Nothing in *Citizens United* challenges this important distinction. Washington cannot choose to regulate less speech if it cannot regulate *any* speech.

Defendants also fail to address the under-inclusiveness of the $5,000 contribution limit. First, the statute is under-inclusive because it applies a $5,000 contribution limit to some groups and a $50,000 contribution limit to others. RCW § 42.17.105(8). Second, the $5,000 contribution limit applies to general elections, but not primary or special elections.[3] *Id*. Under-inclusiveness calls into question the very justification for the limits. *See Republican Party of Minnesota v. White*, 536 U.S. at 780; *see also City of Ladue v. Gilleo*, 512 U.S. 43, 52-53 (1994).

The State failed to explain why it applies a $5,000 contribution limit to one group and a $50,000 contribution limit to others. If the state cannot offer a constitutional justification for differentiating between the groups, then the very justification of the $5,000 contribution limit is suspect. *Id*.

The State has also failed to explain why it applies the $5,000 contribution limit before general elections, but does not limit contributions before primary or special elections.[4] Surely the

[3] The statute is actually under-inclusive for a third reason. Individuals can spend unlimited amounts of money during the 21 days preceding a general election, provided that they do not associate with other citizens. (Defs.' Resp. 9; Ellis Decl. ¶¶ 60-61.) Thus, the $5,000 contribution limit is a direct restraint on the freedom of association. *CARC*, 454 U.S. at 296 ("To place a Spartan limit—or indeed any limit—on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association"); *see also Citizens United*, 130 S.Ct. at 898 (" Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others").

[4] The fact that ballot measures are not voted on at primary or special elections is immaterial. The statute applies equally to candidate and ballot measure elections. Candidate elections involve primary and special elections. And while the State is correct that it imposes limits on contributions to candidates, no such limits apply to contributions to political parties or PACs. And political parties and PACs can spend unlimited funds in primaries and special elections to promote or defeat candidates.

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State's purported interest in "'push[ing] the big money' out early," applies equally in those contests as well.[5] Absent a justification for not applying the $5,000 limit in those situations, the justification advanced by the State poses a "challenge to the credulous." *Id.*

Defendants also suggest a more narrowly tailored method: timely disclosure. Defendants state that the "purpose" behind RCW § 42.17.105(8) is "to 'push the big money' out early so more timely disclosure" may occur. (Defs.' Resp. 9.)[6]

The State's own evidence undermines its argument that the $5,000 contribution limit is needed to "give voters timely access to such information before the cast their ballots." (Defs.' Resp. 9.) The disclosure law requires committees making and receiving contributions in excess of $1,000 during a "special reporting period" to file reports within 48 hours.[7] RCW § 42.17.105(3). The State proudly asserts that reports filed electronically are available to the public within a matter of minutes. (Smith Decl. (#2) ¶ 9 (electronically filed reports available within 15 minutes of filing; paper reports available within an hour of filing.).) Moreover, if a committee has already filed a "special report," any subsequent contributions from the same contributor must be filed within 24 hours, regardless of the subsequent contribution's size. RCW § 42.17.105(3). Nearly instantaneous reporting of contributions negates any argument that a blanket ban on contributions in excess of $5,000 during the 21 days of a general election is necessary to provide voters with information before they cast their votes.

Defendants attempt to salvage the statute by stating that groups have knowledge of the law prior to engaging in a ballot measure campaign also fails. (Defs.' Resp. 10.) While groups may

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[5] Indeed, some primary contests *are* the general election, particularly in districts dominated by one political party. And special elections function in the same manner as general elections.

[6] Although Defendants' briefing calls this the "purpose" of the law, its supporting materials fail to establish this fact. The materials state only that this is believed to be the purpose of the law. (Ellis Decl. ¶ 59 ("It is my understanding that a purpose of RCW 42.17.105(8) was to 'push the big money' out early . . . .").)

[7] The 21 days before a general election is a "special reporting period." RCW § 42.17.105(1)(a)(i).

have knowledge of the law, it does not solve the constitutional infirmities of the statute.[8] Knowledge of an unconstitutional statute's existence does not solve the basic, unavoidable, and inescapable problem of the statute's unconstitutionality.

Defendants argument is truly breathtaking in its scope. The State defends the contribution limit on the ground that it has the power to determine when ("well before" the election) voters must have all "important" information. (Defs.' Resp. 16.) The next logical step is to ban all electioneering (books, pamphlets, television advertising) the moment ballots are distributed by mail, lest any voter feel he or she cast an uninformed ballot. The First Amendment "protects expression which is eloquent no less than that which is unconvincing." *Kingsley Int'l. Pictures Corp. v. Regents*, 360 U.S. 684, 689 (1959). That some speech may fall on deaf ears, or that some voters may regret casting an uninformed ballot, is not an interest that can overcome the tremendous burden on the freedoms of speech and association protected by the First Amendment. It is for the people to decide "what is 'responsible,' what is valuable, and what is truth." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 349 n.11 (1995).

And as the Supreme Court recently said in *Citizens United*, the First Amendment protects a speakers right to "speak . . . in the heat of political campaigns, when speakers react to messages conveyed by others." *Citizens United*, 130 S.Ct. at 895. And because voters have ballots in their hands during this 21 day period, it is of paramount importance that a speaker have the ability to speak and respond to messages from others during this period. Washington's $5,000 contribution limit is a direct restraint on that freedom of speech and association, and must be found unconstitutional because it is not narrowly tailored to serve a compelling government interest.

III. The Public Disclosure Law's $25 and $100 reporting thresholds are not narrowly tailored to serve a compelling government interest.

The burden of proof is on the State to demonstrate that the $25 and $100 disclosure thresholds are narrowly tailored to serve a compelling government interest. *FEC v. Wisconsin*

[8] This is an equitable argument left over from the preliminary injunction stage of this litigation, where Defendants argued an injunction on the eve of the election was unwarranted because the public had been aware of the $5,000 contribution limit well in advance of the 21-day period. It has no application at this stage of the litigation. Likewise, Plaintiff is not relegated to seeking statutory or administrative amendments to protect its constitutional rights.

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Right to Life ("*WRTL-II*"), 551 U.S. 449, 478 (2007); *see also ACLU of Nevada v. Heller*, 378 F.2d 979, 991 (9th Cir. 2004). Simply establishing a compelling interest in disclosure of campaign contributors is only half of the State's burden. The State must justify each application of its statute. *WRTL-II*, 551 U.S. at 479 (rejecting "prophylaxis-upon-prophylaxis approach" to justifying regulations restricting speech). In other words, the State must demonstrate that is has a compelling government interest in disclosing the name and address of every individual that contributes more than $25 and the occupation and employer of every individual that gives more than $100. Defendants failed to meet its burden at to either threshold.

The only possible interest the State has in the context of ballot measure disclosure is a limited informational interest. (Summ. J. Mem. 16.) And while the Supreme Court recently spoke approvingly of disclosure provisions, *Citizens United*, 130 S. Ct. at 916, it did not say that disclosure provisions are exempt from First Amendment analysis.[9] *Buckley* suggests there is a constitutional floor, 424 U.S. 1, 84 (1976), a point re-emphasized by the Ninth Circuit. *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021 (9th Cir. 2009). In making the assumption that every type of disclosure is justified merely by stating that such disclosure ensures transparency, without evidentiary support, Defendants fail to establish that the $25 and $100 disclosure thresholds are narrowly tailored to serve its compelling state interest.

Defendants proffer five main reasons in their attempts to justify their disclosure statute: "[The information on $25 donors] enables the electorate to follow the money and answer questions such as 1) who gave; 2) how much did they give; 3) who they gave to and when; 4) are there many contributions from similar groups, such as from a particular industry; and 5) if so, what does that say about the candidate or measure?" (Defs.' Resp. 6.)[10]

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[9] *Citizens United* involved the disclosure of contributions of more than $1,000. 2 U.S.C. § 434(f).

[10] Defendants provide two other informational interests that cannot justify these restrictions on speech. First, Defendants make the statement that this information "enables enforcement of the disclosure laws, so that the true sources of contributions can be revealed to the voters and contribution limits can be implemented." (Defs.' Resp. 6-7.) This is the "enforcement interest" that has been invalidated as a legitimate interest. *Canyon Ferry Road*, 556 F.3d at 1031-32 (noting that the Enforcement Interest cannot justify ballot-measure disclosure because its necessary only to enforce contribution limits—limits that are unconstitutional in the context of a ballot-measure election); *Cal. Pro-Life Council v. Getman*, 328 F.3d 1088, 1105 n.23 (9th Cir. 2003)(same).

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In listing the reasons they believe justify the infringement of First Amendment rights found in their disclosure regime, Defendants mistake any type of information related to a ballot measure with the actual information that serves the informational interest, and may, in limited circumstances, justify an intrusion into otherwise protected First Amendment speech. In the context of ballot measures, to the limited extent an informational interest exists, the interest is not in who gave to a campaign, or in what amount. Instead, the interest is in providing information about the ballot measure itself.[11]

Thus, information about donors at this low threshold does not actually serve the State's proffered interest in information about the ballot measure itself—i.e., what the effect of the ballot measure will be, who stands to benefit from the legislation, etc. Instead, this information on individuals who gave as little as $25 only serves to inform a voter about the character and beliefs of the contributor himself, and even then, only marginally so. *Canyon Ferry*, 556 F.3d at 1033 ("As a matter of common sense, the value of this financial information to the voters

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Second, Defendants state that "[t]he reality of so-called 'smaller donors' and their impact on election campaigns is also a subject of increasing national interest and study." (Defs.' Resp. at 7.) While this may or may not be the case (Defendants point only to four articles/reports from 2008-2010 about the number of small donors participating in recent campaigns, yet do not show that there were fewer articles on this subject in previous years or less interest in the subject), this is an inappropriate informational interest to justify disclosure laws. The only possibly valid informational interest of Defendants—informing voters about the content of a particular ballot measure—has nothing to do with the effects of small donations on campaigns. Moreover, the actual information that would aid this supposed interest is not the individual names of those who gave $30 to a recent ballot measure, as Washington requires, but the aggregate numbers involved in particular ballot measure campaigns. If this were a legitimate interest of the state, the requirements that individuals disclose personal information would therefore be overbroad and unconstitutional. *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973); *Bd. Of Airport Commissioners v. Jews for Jesus*, 482 U.S. 569, 574–76 (1987).

[11] Defendants also attempt to argue that ballot measures are complicated, and therefore the information on donors at these low thresholds will help voters interpret the meaning of the ballot measure. (Defs.' Resp. 14.) Knowing who donated to a ballot measure does little to lessen the complexity of the ballot issue itself. Instead, the issue of complexity is dealt with by making the measure simpler and clearer for the voter—an issue that should be, and has been, addressed by the Washington legislature through other means that are not intrusive upon First Amendment rights. *See, e.g.*, RCW § 29A.72.050 (setting forth requirements for concise summaries of ballot measures).

Moreover, as set forth in Plaintiff's Summary Judgment Memorandum, all the information about a ballot measure is contained in the ballot measure itself. (Summ. J. Mem. 15.) In a candidate election, the candidate's votes remain unknown at the time of the election itself, as do the specific items he may be called to vote upon. These votes and topics remain unknown until the legislation is proposed and the candidate actually casts those votes, months or years after the election takes place. Knowing a candidate's donors in a candidate context thus may help a voter determine how a candidate may vote on a host of issues that may arise during his term in office. Unlike a candidate, a ballot measure is a specific measure, the entire text of which is available at the time an individual votes upon it. While some voters may see a benefit in obtaining interpretations of a measure's potential effects, this does not change the fact that everything about the content of the measure is known the moment it is circulated in the ballot measure context, and it will not change upon becoming law.

declines drastically as the value of the expenditure or contribution sinks to a negligible level."). This information about the contributor does not further the informational interest used by the State to justify this low threshold, and it does not satisfy the informational interest the Supreme Court offered in the *Buckley* or *Citizens United*.

Although the burden of proof in justifying the donor disclosure regime lies with Defendants, they do not point to a single study or report stating that Washington citizens use information on small donors to further their knowledge of the ballot measure itself. To attempt to show that "[t]his information [on donors at the $25 disclosure threshold] is heavily used by the public and the media to 'follow the money' in state campaigns," the State relies not on actual studies or research, but on the number of visitors to the Washington Public Disclosure Commission's website. (Defs.' Resp. 17; *see also* Ellis Decl. ¶ 14 ("during fiscal year 2009, the PDC website received 40,423 unique visitors").)[12] While these numbers may seem impressive on first glance, they do not indicate the number of individuals who actually access the ballot measure reports. Instead, these numbers only indicate visitors to the entire PDC website. In addition to the disclosure reports on ballot measures, the PDC website contains, among other items, disclosure reports on candidate elections, manuals and brochures for people participating in campaigns, lobbyist expenditures, and enforcement activity of the PDC. While it would be foolish for Plaintiffs to state that none of these 40,400+ visitors to the PDC website accessed information on small donors to ballot measure campaigns, to use the information in the manner Defendants do—i.e., to prove the statement that small donor information "is heavily used by the public and the media to 'follow the money' in state campaigns"—is equally disingenuous.

[12] Defendants also cite to several news articles that use data from the disclosure reports. Most of these articles deal with candidate reports, which, as set forth above, implicate not just an informational interest, but a corruption and enforcement interest not present in ballot measure campaigns, which presumably makes such reports of more import than they are in ballot measures campaigns. Of the examples provided by Defendants, only two specifically mention ballot measures. (*See* Decl. of Anderson (#2) ¶ 3, Exhs. A, D) The portion of the first of these articles mentioning ballot measures consists of one paragraph in of a sixteen paragraph article, dealing with money spent on two ballot measure campaigns. It does not discuss information on specific donors, let alone donors at or near the $25 and $100 thresholds. Instead, the article provides "horserace" information—i.e., information on what groups are leading the race to raise money. The second of these articles on ballot measures deals not with a small donor, but with a donation by a large company of over $1,000. Two articles on ballot measure disclosure unrelated to donors at or near the low thresholds do not show that this information is "heavily used," as Defendants claim. (Defs.' Resp. 4.)

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Defendants are forced to rely upon such inapplicable and dubious numbers because the only actual research regarding the information on donors at these low levels is contrary to the position that they have taken. Although Defendants state that the information on the Public Disclosure website is "heavily used," their own research indicates exactly the opposite conclusion. In 2008, the Public Disclosure Commission surveyed the public on the Public Disclosure Law. (Troupis Decl., ¶ 4, Exh. 1.) Not only did the individuals who responded to the Public Disclosure Commission's survey not use the information on its website, the majority of those who responded to the survey were not even aware of the *existence* of the Public Disclosure Commission. (*Id*. at Exh. 1, Bates No. 001483.)

As set forth in Plaintiffs' Summary Judgment Memorandum, there have been few studies on the use of information found through disclosure, but what few studies have been done on the subject have shown that this information is not useful to, or used by, the general public and the media. (*See* Summ. J. Mem. 11-13.) Rather than provide contrary evidence to this research, Defendants attack the credibility of those conducting the research cited by Plaintiff.[13] However, Defendants never provide any studies that refute these findings. Indeed, the studies cited by Plaintiffs are cited in scholarly papers. *See, e.g.*, Lloyd Hitoshi Mayer, *Disclosures on Disclosure*, Notre Dame Law School Law Studies Research Paper No. 10-17, 24. n. 113 (2010).

Moreover, even those who are predisposed to find that people use information such as that disclosed by Washington do not find contrary results to that asserted by Plaintiff when conducting their own research. A study conducted in 2007 by an individual who expected to see more and better articles in the news where disclosure occurred found only negligible effects on reporting with disclosure regimes. Raymond J. La Raja, *Sunshine Laws and the Press: The Effect of Campaign Disclosure on News Reporting in the American States*, 6 Election L.J. 236 (2007).

[13] Specifically, Defendants object that some of the research was conducted by an individual employed by a group who are not in favor of disclosure, while other research was conducted for a group that is not in favor of disclosure. Using Defendants' criteria, all declarations and evidence they have submitted in support of their Response and contentions that disclosure at these low thresholds is of constitutional informational interest should be of equally dubious nature in the eyes of Defendants. Three of their declarants are employed by the Public Disclosure Commission, and the other is an appointed officer of the Commission, and the Commission is an entity that is in favor of disclosure. (*See* Krier Decl. ¶ 2; Ellis Decl. ¶ 2; Anderson Decl. (#2) ¶ 2; Smith Decl. (#2) ¶ 2).

The study reached numerous conclusions, including the result that "the study shows that newspapers publish relatively few articles about campaign finance. Apparently, the demand for articles on campaign finance is rather inelastic unless a significant scandal emerges involving money. And even when disclosure regimes require frequent filings and nearly instantaneous disclosure, reporters do not accelerate the turnaround time for articles about money in politics." *Id*. at 246-47. Moreover, the study noted an inherent problem in relying solely on what is reported regarding campaign finance: "It is conceivable that many stories are fed to journalists by political actors—such as candidates or interest groups—with an important stake in the outcome of an election. . . . If this is so, then the accountability mechanism begins not with the news media . . . but with third party groups that often have partisan agendas." *Id*. at 248. Others who support disclosure recognize that low thresholds, such as those in Washington, both intrude on the private lives of donors and provide no information to voters. Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 Election L.J. 295, 326 (2005). Thus, even those who are inclined to side with Defendants, when confronted with actual studies, recognize that disclosure regimes do not serve the informational interest Defendants argue, especially at the low thresholds which Defendants defend.

Defendants also argue, through the declarations cited in their brief, that the disclosure of occupations, such as lawyers or doctors, "is a valuable piece of information for voters." (Ellis Decl. ¶ 54.) To the extent that certain groups stand to benefit from a ballot measure is not going to be found by noting that your neighbor gave a specific amount, but from the large donors who gave significant amounts. Indeed, even if there is marginal benefit in being able to determine that many lawyers gave a money to one side of an issue, as Defendants suggest, this anecdotal, unsupported evidence to justify their supposed informational interest is dubious at best. For this to actually support Defendants' hypothesis, multiple leaps of logic are required to find that it actually supports Defendants' stated informational interest. First, this requires that an individual or an entity with the ability to disseminate information accesses, analyzes, comes up with a viable theory as to why it is important that members of this profession donated, and then uses or disseminates this information. The only studies that exist on this have shown that this does not

happen. (S. J. Mem. 11-13; see also *infra*). Second, it is probable that certain groups—such as the lawyers used in the hypothetical advanced by Defendants—are more likely to be active in campaigns in general, regardless of whether they, as a profession, have a vested interest in the outcome of the ballot measure. Defendants' hypothetical assumes that other potential causes for donations have been ruled out; similarly, anyone disseminating such information would also have to rule out such other causes. Third, Defendants' hypothetical also assumes that there will be enough donations from an identifiable profession to be of statistical import. Finally, such information would have to be valuable to voters when making their decision about the ballot measure itself. If such information is available, but not of importance to voters when they make their decision, it cannot be used as a justification for burdening speech.

Moreover, Defendants' argument suggests that voters can and should have access to any sort of information that could be of the sort useful to voters to determine information about the ballot measure, such as income, race, or who an individual voted for not only at the last election, but over the course of a lifetime. Defendants do not address this argument, which Plaintiffs laid out in detail in their Summary Judgment Memorandum. (Summ. J. Mem. 15.) *See also Doe v. Reed* at *13 (Alito, J., concurring).

Finally, Defendants attempt to save their unconstitutionally low disclosure thresholds by claiming that these thresholds are entitled to deference, because the Legislature regularly reviews these amounts and determines that they are still proper disclosure thresholds. In support of this argument, Defendants state that the legislature has chosen not to increase the disclosure thresholds. (Defs' Resp. 7.) However, mere review of a statute orwholesale re-codification of the law is not the same as the specific requirement of the Supreme Court that mechanisms to adjust thresholds to reflect inflation. *Randall v. Sorrell*, 548 U.S. 230, 261 (2006). Indeed, Defendants present no evidence that the legislature actually looked at this specific section of the law when reviewing it (such as transcripts of proceedings on the floor of the legislature or committee reports). Unless the specific requirements of *Randall* set forth by Plaintiff in its Summary Judgment Memorandum are met, the threshold is unconstitutional merely for its failure to regularly adjust for inflation. (*See also* Summ. J. Mem. 20-22.)

When looking at the constitutionality of the low disclosure limits set by Washington, it may be best to end at the beginning—in other words, when the Public Disclosure Law was enacted. Defendants provide extensive information and briefing about the implementation of the Public Disclosure Law. However, this information is limited to the first aspect of the Public Disclosure Law: that there is an interest in disclosing money raised and spent in ballot measure campaigns. (Defs.' Resp. 3.) Defendants neglect an important other aspect of the Public Disclosure Law: "That small contributions by individual contributors are to be encourage, and that not requiring the reporting of small contributions may tend to encourage such contributions." RCW § 42.17.10(9). By disclosing the personal information on these small donors, whom the law was enacted to protect, Defendants not only act unconstitutionally, as set forth above, but they ignore one of the very purposes for which the law was enacted, and which they now purport to protect.

Conclusion

For the foregoing reasons and the reasons set forth in Plaintiff's Memorandum in Support of Motion for Summary Judgment, the Court should grant summary judgment for Plaintiff Family PAC on all claims presented in the Verified Complaint.

Dated this 25th day of June, 2010.

Respectfully submitted,

/s/ Sarah E. Troupis

James Bopp, Jr. (Ind. Bar No. 2838-84)*
Barry A. Bostrom (Ind. Bar No. 11912-84)*
Randy Elf (N.Y. Bar No. 2863553)*
Sarah E. Troupis (Wis. Bar No. 1061515)*
Scott F. Bieniek (Ill. Bar No. 6295901)*
Zachary S. Kester (Ind. Bar No. 28630-49)*
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, Indiana 47807-3510
(812) 232-2434
(812) 235-3685 (facsimile)
Counsel for Plaintiff Family PAC

Joseph Backholm
FAMILY POLICY INSTITUTE OF WASHINGTON
16108 Ash Way, Ste. 111A
Lynnwood, Washington 98087
(425) 608-0242
Counsel for Plaintiff Family PAC

**Pro Hac Vice Application Granted*

CERTIFICATE OF SERVICE

I, Sarah E. Troupis, am over the age of 18 years and not a party to the above-captioned action. My business address is 1 South Sixth Street; Terre Haute, Indiana 47807-3510.

On June 25, 2010, I electronically filed the foregoing document described as Plaintiff's Reply in Support of Motion for Summary Judgment with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

Linda A. Dalton
lindad@atg.wa.gov
Counsel for Defendant Rob McKenna
and Defendant Members of the Public Disclosure Commission

Nancy J. Krier
nkrier@pdc.wa.gov
Counsel for Defendant Members of the Public Disclosure Commission

I declare under the penalty of perjury under the laws of the State of Indiana that the above is true and correct. Executed this 25th day of June, 2010.

/s/ Sarah E. Troupis
Sarah E. Troupis
Counsel for Plaintiff Family PAC

BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, Indiana 47807-3510
(812) 232-2434