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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION**

MANY CULTURES, ONE MESSAGE;
and
RED STATE POLITICS, d/b/a
“CONSERVATIVE ENTHUSIASTS,” a
Washington not-for-profit corporation,

Plaintiffs,

v.

JIM CLEMENTS, Chair; DAVE
SEABROOK, Vice Chair; JANE
NOLAND; BARRY SEHLIN; and
JENNIFER JOLY, in Their Official
Capacities as Officers and Members of the
Washington State Public Disclosure
Commission; and DOUG ELLIS in His
Official Capacity as Interim Executive
Director of the Washington State Public
Disclosure Commission,

Defendants.

No. C10-_____

**CIVIL RIGHTS COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CIVIL RIGHTS COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF – 1



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1 **INTRODUCTION**

2 1. This case concerns a law that chills and burdens the exercise of
3 fundamental First Amendment rights by forcing Washingtonians wishing to urge their
4 fellow citizens to take political action to first register with the government and comply
5 with time-consuming, complex, and invasive reporting requirements. The government
6 obtains the names, addresses, and occupations of such activists and then makes this
7 information available to the world, including those who would seek to harass, coerce and
8 threaten their ideological opponents into silence. But it is incontestable that the First
9 Amendment protects the ability of Americans to speak to their fellow citizens and urge
10 them to contact their elected representatives about vital policy questions. Indeed, this is
11 the very essence of the constitutional rights to speak, associate, assemble, and petition the
12 government in a representative democracy. Nonetheless, Washington law, and the rules
13 and regulations of the Washington Public Disclosure Commission (PDC or
14 “Defendants”) require that this integral aspect of self-governance be monitored and
15 regulated by the state.

16 2. In Washington, if an individual or group spends above a certain amount
17 urging fellow citizens to contact state officials, the government forces that individual or
18 group to register with the government and report the name, address, business or
19 occupation of the persons directing that communication, and the names and addresses of
20 anyone contributing as little as \$25 to these efforts. The speaker must continue to report



1 to the government every month until their political efforts are concluded. The
2 government makes all this information available to all by placing it on the Internet.

3 3. Plaintiffs are two independent, volunteer associations of concerned
4 individuals who seek to communicate with their neighbors about specific government
5 policies and urge their fellow Washingtonians to take political action. To this end,
6 Plaintiffs wish to finance and engage in grassroots efforts that will bring their message to
7 the widest audience possible via print, radio, television, demonstrations, and the Internet.

8 4. Under Washington's "Grass Roots Lobbying Campaigns" Law, Wash.
9 Rev. Code § 42.17.200, Plaintiffs must comply with burdensome, invasive, and complex
10 reporting and disclosure requirements in order to legally make these communications.
11 These limitations and their attendant burdens chill Plaintiffs' expressive and associational
12 conduct, expose them to harassment, coercion and retribution, and deter individuals from
13 associating with, and donating money to, their efforts.

14 5. Because Wash. Rev. Code § 42.17.200 is antithetical to the guarantees of
15 free speech, free association, and equal protection of the laws guaranteed by the U.S.
16 Constitution, Plaintiffs bring this action seeking (i) a declaration that Wash. Rev. Code §
17 42.17.200 is unconstitutional on its face and as applied to Plaintiffs, and (ii) a preliminary
18 and permanent injunction prohibiting Defendants' enforcement of this statute.

19 **JURISDICTION AND VENUE**

20 6. Plaintiffs bring this civil rights lawsuit under the First and Fourteenth
21 Amendments to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983;

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1 and 28 U.S.C. §§ 2201 and 2202. Plaintiffs seek declaratory and injunctive relief against
2 the enforcement of Washington’s Grassroots Lobbying Campaigns Law, Wash. Rev.
3 Code §§ 42.17.200, its implementing rules and regulations, Wash. Admin. Code § 390 *et*
4 *seq.*, and the practices and policies of the commissioners and executive director of the
5 PDC.

6 7. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

7 8. Venue is proper in this District per 28 U.S.C. § 1391(b)(1) and (2) because
8 a substantial part of the events giving rise to this complaint occurred in this District.

9 9. Venue is proper in the Tacoma Division under local CR 5(e)(1) because
10 the claim arose in Thurston County, Washington, where the Defendants, in their official
11 capacities as officers and members of the PDC, are headquartered.

12 **PARTIES**

13 10. Plaintiff Many Cultures, One Message (“MCOM”) is an unincorporated,
14 nonprofit volunteer association based in Seattle dedicated to preserving the diverse and
15 vibrant neighborhoods of Southeast Seattle. The PDC has issued a declaratory order
16 stating that MCOM must register and report as a grassroots lobbying sponsor if they
17 undertake their anticipated grassroots activities and spend beyond the thresholds listed in
18 Wash. Rev. Code § 42.17.200.

19 11. Plaintiff Red State Politics d/b/a “Conservative Enthusiasts”
20 (“Conservative Enthusiasts”) is a Seattle-based 501(c)(3) volunteer organization
21 dedicated to educating the public about the benefits of lower taxes, less regulation, and



1 smaller government. The PDC has issued a declaratory order stating that Conservative
2 Enthusiasts must register and report as a grassroots lobbying sponsor if they undertake
3 their anticipated grassroots activities and spend beyond the thresholds listed in Wash.
4 Rev. Code § 42.17.200.

5 12. Defendant Jim Clements is a commissioner and chair of the PDC. The
6 PDC is an agency of the State of Washington, created and empowered under Wash. Rev.
7 Code § 42.17.350, and headquartered in Olympia, Washington (Thurston County).
8 Commissioner Clements is sued in his official capacity.

9 13. Defendant Dave Seabrook is a commissioner and vice-chair of the PDC.
10 Commissioner Seabrook is sued in his official capacity.

11 14. Defendant Jane Noland is a commissioner of the PDC. Commissioner
12 Noland is sued in her official capacity.

13 15. Defendant Barry Sehlin is a commissioner of the PDC. Commissioner
14 Sehlin is sued in his official capacity.

15 16. Defendant Jennifer Joly is a commissioner of the PDC. Commissioner
16 Joly is sued in her official capacity.

17 17. Defendant Doug Ellis is interim executive director of the PDC. Mr. Ellis
18 is sued in his official capacity.

19 18. Defendants have direct authority over PDC personnel and the
20 responsibility and practical ability to ensure that the PDC's enforcement policies and
21 standards are implemented in a lawful manner in accordance with the U.S. Constitution.

CIVIL RIGHTS COMPLAINT
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1 **STATEMENT OF FACTS**

2 **Washington’s Requirements for Grassroots Lobbying Organizations**

3 19. In 1972, Washington voters passed Initiative 276, which regulates as
4 lobbyists private citizens who may never interact with a governmental official.

5 20. Specifically, Wash. Rev. Code § 42.17.200(1) regulates “grass roots
6 lobbying campaigns”—a term describing any person or group who has spent in the
7 aggregate either more than \$1,000 in any three months or \$500 in any one month
8 “presenting a program addressed to the public, a substantial portion of which is intended,
9 designed, or calculated primarily to influence legislation.”¹

10 21. “Legislation” is defined as all “bills, resolutions, motions, amendments,
11 nominations, and other matters pending or proposed in either house of the state
12 legislature, *and includes any other matter that may be the subject of action* by either
13 house or any committee of the legislature and all bills and resolutions that are pending
14 approval by the governor.” Wash. Rev. Code § 42.17.020(30) (emphasis added). Thus, if
15 any person or group spends more than \$500 in a month (or \$1,000 in three months)
16 talking to others about any public issue, they must register with the PDC because *any*
17 issue, topic, or matter may someday become the subject of action by the legislature.

¹ As passed, Wash. Rev. Code § 42.17.200 extended regulation to those spending \$500 in the aggregate in any three-month period or \$200 in any one-month period. However, Wash. Rev. Code § 42.17.370(11) requires the PDC to adjust these amounts “for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management.” The current threshold amounts are those set forth above. Wash. Admin. Code § 390-20-125.



1 22. Wash. Rev. Code § 42.17.200 places severe burdens on those considered
2 grassroots lobbyists. These burdens are particularly heavy for small organizations
3 comprised of part-time volunteers, such as Plaintiffs.

4 23. Within thirty days of becoming a “sponsor” of a grassroots lobbying
5 campaign, the sponsor must file a registration report with the PDC that states:

- 6 • The sponsor’s name, address, and business or occupation, and, if the sponsor
7 is not an individual, the names, addresses, and titles of the controlling persons
8 responsible for managing the sponsor’s affairs;
- 9 • The names, addresses, and business or occupation of all persons organizing
10 and managing the campaign, or hired to assist the campaign, including any
11 public relations or advertising firms participating in the campaign, and the
12 terms of compensation for all such persons;
- 13 • The names and addresses of each person contributing twenty-five dollars or
14 more to the campaign, and the aggregate amount contributed;
- 15 • The purpose of the campaign, including the specific legislation, rules, rates,
16 standards, or proposals that are the subject matter of the campaign;
- 17 • The totals of all expenditures made or incurred to date on behalf of the
18 campaign, which totals shall be segregated according to financial category,
19 including but not limited to the following: advertising, segregated by media
20 and, in the case of large expenditures, by outlet; contributions for
21 entertainment, including food and refreshments; office expenses, including

1 rent and the salaries and wages paid for staff and secretarial assistance, or the
2 proportionate amount thereof paid or incurred for lobbying campaign
3 activities; consultants; and printing and mailing expenses.

4 Wash. Rev. Code § 42.17.200(2).

5 24. Under Wash. Rev. Code §§ 42.17.390(2) & (3), .400(3) & (5), failure to
6 register can spark an investigation by the PDC, potentially leading to significant
7 penalties, including treble damages, the costs of the investigation, the government's legal
8 fees, and the revocation of one's ability to engage in grassroots political activism.

9 25. Private citizens and local prosecuting attorneys may also bring actions to
10 enforce this law. Wash. Rev. Code §§ 42.17.400(4) & (5).

11 26. Those bringing an enforcement action may subpoena the internal
12 documents of the sponsor. Private parties and government officials may thereby obtain a
13 sponsor's most sensitive internal documents. Wash. Rev. Code §§ 42.17.395 & .400(3).

14 27. A person who engages in "grassroots lobbying" without filing the
15 necessary paperwork with the government may be enjoined from making expenditures
16 for grassroots lobbying in the future. Wash. Rev. Code § 42.17.390(2).

17 **Structure and Activities of MCOM**

18 28. MCOM is a nonprofit, unincorporated association that was founded and is
19 funded by concerned volunteer citizen activists based in Southeast Seattle. MCOM does
20 not have any bylaws, articles of incorporation, or any other governing documents. It has
21 no formal membership structure and no employees.

1 29. MCOM was first formed to resist efforts by the City of Seattle to use
2 Washington's Community Renewal Law (CRL), Wash. Rev. Code § 81.35 *et seq.*, to
3 declare portions of Southeast Seattle a "Community Renewal Area." This designation
4 would have given the City the power to take, via eminent domain, private homes and
5 businesses in the area to transfer to private entities.

6 30. MCOM successfully mobilized public opposition to this plan and the City
7 halted its efforts to use the CRL in 2007.

8 31. MCOM's efforts included (1) distributing fliers; (2) organizing
9 community meetings; (3) contacting City agencies; and (4) otherwise informing citizens
10 about how to oppose use of the CRL in Southeast Seattle.

11 32. Because these efforts were directed largely at City officials regarding a
12 City proposal, MCOM was not required to register under Wash. Rev. Code § 42.17.200.

13 33. In the 2010 session of the Washington Legislature, legislators introduced
14 bills to reform the CRL and to prohibit eminent domain for economic development.

15 34. Similar bills had been considered in the 2006, 2007, 2008, and 2009
16 sessions of the Legislature. These bills did not pass.

17 35. In 2009, a bill promoting Transit Oriented Development (TOD) was
18 introduced in the Legislature.

19 36. MCOM was concerned that TOD would rely on use of the CRL.

20 37. Prior to the 2010 Legislative session, MCOM anticipated the need to
21 mobilize local residents and business owners to contact their legislators and the Governor

1 to (i) urge reform of the CRL and eminent domain laws, and (ii) to reject any TOD bill
2 that did not foreclose reliance on the CRL. MCOM anticipated that a successful effort to
3 promote its message would require expenditures of at least \$1000 in three months if these
4 bills progressed.

5 38. The bills about which MCOM intended to mobilize grassroots activism in
6 the 2010 session of the Washington Legislature died in their respective committees by
7 January 27, 2010. See Michelle Dupler, *What's killing Rob McKenna's eminent domain*
8 *reform?*, Tri-City Herald (Jan. 27, 2010), [http://www.tri-](http://www.tri-cityherald.com/2010/01/27/879783/whats-killing-rob-mckennas-eminent.html)
9 [cityherald.com/2010/01/27/879783/whats-killing-rob-mckennas-eminent.html](http://www.tri-cityherald.com/2010/01/27/879783/whats-killing-rob-mckennas-eminent.html).

10 39. MCOM is neither a candidate for political office nor a political committee
11 and no registered lobbyist, candidate, or political committee has or will report any
12 expenditures made by MCOM. MCOM does not pay any registered lobbyist to act on its
13 behalf and it does not expend money on behalf of any state officials.

14 40. MCOM anticipates communicating with people who are not its members
15 regarding eminent domain abuse.

16 41. MCOM has not and will not be compensated for its efforts.

17 42. MCOM reimburses its unpaid volunteers for expenditures made on
18 MCOM's behalf. Although MCOM members may also contact state officials and
19 legislators, they are not and will not be reimbursed for any expenditure related thereto.

20 43. MCOM anticipates that Legislation reforming the CRL and implementing
21 TOD will be considered by future sessions of the Legislature.

1 44. MCOM is not currently registered as a “grassroots lobbying campaign”
2 with the PDC pursuant to Wash. Rev. Code § 42.17.200.

3 45. MCOM will seek to develop support for eminent domain reform and
4 against the implementation of TOD premised on a use of the CRL in the coming months
5 and during the 2011 Legislative session and beyond.

6 46. MCOM fears that making expenditures to spread its political message in
7 this effort will require it to register as a “grassroots lobbying campaign” with the PDC.

8 47. The debate over the City’s plans regarding Southeast Seattle was, and
9 continues to be, highly contentious.

10 48. Town-hall meetings were, and continue to be, highly emotional and
11 volatile. For instance, private entities supporting the City’s use of the CRL attempted to
12 infiltrate grassroots training sessions sponsored by MCOM and consistently refused to act
13 respectfully and politely. Those who publically spoke out against the CRL and TOD
14 were attacked online by bloggers on the Rainier Valley Post, a local community
15 publication. Local business owners who openly opposed the City’s use of the CRL and
16 TOD also did so at the risk that financial harm would come to their businesses as a result
17 of their stand on these issues.

18 49. Eminent domain reform has been a contentious issue in Washington and
19 across the nation. Developers and their allies have sued reform activists for defamation
20 in Texas, Tennessee, and Oklahoma after these activists spoke out about eminent domain

1 abuse. A leading eminent domain reform activist in Washington was sued for libel after
2 criticizing two community leaders in Renton, Washington.

3 50. In light of the controversial nature of eminent domain reform, land use
4 regulation, and the experience of eminent domain reform activists in Washington and
5 across the country, MCOM reasonably anticipates that public disclosure of the names,
6 addresses, and occupations of its volunteers, and the names and addresses of its
7 contributors, will result in threats, harassment, or reprisals to its members and supporters.

8 51. In light of the controversial nature of eminent domain reform, land use
9 regulation, and the experience of eminent domain reform activists in Washington and
10 across the country, MCOM reasonably anticipates that public disclosure of the names,
11 addresses, and occupations of its volunteers, and the names and addresses of its
12 contributors, will discourage and interfere with the willingness of individuals to associate
13 with, or financially support, MCOM or its activities.

14 52. MCOM does not wish to register as a “grassroots lobbying campaign”
15 with the PDC under Wash. Rev. Code § 42.17.200, nor does it wish to comply with any
16 of the onerous reporting and disclosure requirements that accompany this classification.

17 53. Complying with Wash. Rev. Code § 42.17.200 would be extremely
18 burdensome for MCOM, a small, informal organization comprised of part-time
19 volunteers, and would interfere with their ability to communicate their message.

1 54. MCOM wants to continue its advocacy against the CRL and TOD beyond
2 the next legislative session and into the future. It plans to use methods of advocacy that
3 are materially similar to those it has already used at the local level.

4 **Structure and Activities of Conservative Enthusiasts**

5 55. Conservative Enthusiasts is an organization that has been in existence for
6 three years and is registered with the State of Washington as “Red State Politics.” It is
7 registered as a 501(c)(3) nonprofit corporation under the Internal Revenue Code. It is run
8 by unpaid volunteers and has no employees.

9 56. In the past, Conservative Enthusiasts has not spent \$500 in the aggregate
10 in any one month or \$1,000 in the aggregate in any three months on presenting a program
11 addressed to the public, a substantial portion of which was intended, designed, or
12 calculated primarily to influence legislation, as those terms are defined in Wash. Rev.
13 Code § 42.17.020. Conservative Enthusiasts anticipates, however, that in future sessions
14 of the Legislature, legislators will seek to raise taxes, increase regulation, and grow the
15 size of the State government.

16 57. Conservative Enthusiasts wants to take an active role in opposing these
17 efforts, including urging its supporters to contact state officials about these issues.

18 58. To date, Conservative Enthusiasts has advanced its political goals by (1)
19 speaking with elected officials; (2) establishing a public website; and (3) hosting monthly
20 meetings and speakers about public policy issues. Conservative Enthusiasts has also
21 organized petition drives and political rallies.



1 59. As it grows, Conservative Enthusiasts plans to take the following
2 additional actions to advance its goals: (1) establish an electronic contact system with
3 interested individuals; (2) encourage individuals to send letters and e-mails to state
4 officials; (3) create a database to leverage resources and effectively manage its contacts;
5 (4) mobilize and educate its members and the public about legislation; (5) run advocacy
6 ads in direct response to political activity by opposing groups; (6) hire several staff
7 members to support its efforts; (7) further develop its website to assist with its education
8 and advocacy efforts; and (8) participate in strategic litigation efforts.

9 60. It will solicit contributions and all contributions are and will be placed in a
10 general fund.

11 61. Conservative Enthusiasts anticipates that if its ability to engage in
12 advocacy were not affected by operation of Wash. Rev. Code § 42.17.200, it would spend
13 at least \$500 in the aggregate in one month or \$1,000 in aggregate in three months
14 organizing efforts regarding these initiatives.

15 62. Conservative Enthusiasts is not a candidate or a political committee and
16 no registered lobbyist, candidate, or political committee has or will report any
17 expenditures made by Conservative Enthusiasts. Conservative Enthusiasts does not pay
18 any registered lobbyist to act on its behalf and does not endorse political candidates. It
19 does not make any expenditures on behalf of state officials.

20 63. Conservative Enthusiasts intends to communicate with people who are not
21 members of Conservative Enthusiasts about its legislative initiatives. Conservative

1 Enthusiasts reimburses its volunteers for expenditures made on Conservative Enthusiasts’
2 behalf. Although its members may make contact with state officials concerning speaking
3 engagements and pending legislation, such volunteers will not be reimbursed for any
4 expenses incurred. Conservative Enthusiasts will not be paid for its political activities.

5 64. Conservative Enthusiasts fears that making the expenditures needed to
6 spread its political message in the coming months will require it to register as a
7 “grassroots lobbying campaign” with the PDC under Wash. Rev. Code § 42.17.200(1).

8 65. Conservative Enthusiasts is not currently registered as a “grassroots
9 lobbying campaign” with the PDC pursuant to Wash. Rev. Code § 42.17.200.
10 Consequently, Conservative Enthusiasts has not prepared or filed any of the reports or
11 disclosures prescribed under this regulation.

12 66. Conservative Enthusiasts does not wish to register as a “grassroots
13 lobbying campaign” with the PDC under Wash. Rev. Code § 42.17.200, nor does it wish
14 to comply with any of the onerous reporting and disclosure requirements that accompany
15 this classification.

16 67. Proponents of lower taxes, less government spending, and reduced
17 government regulation have been the target of numerous efforts to harass and silence
18 their message here in Washington and across the country. Opposition from labor unions,
19 government officials, and hostile members of the media has been pronounced.

20 68. As an anti-tax, small government group, Conservative Enthusiasts has
21 requested (and will continue to request) and received police protection at its rallies and

1 demonstrations to ensure that Conservative Enthusiasts' ideological opponents do not
2 disrupt or otherwise harass their peaceful political activity.

3 69. In light of the controversial nature of the issues it addresses, and the
4 experience of anti-tax activists in Washington and across the country, Conservative
5 Enthusiasts reasonably anticipates that public disclosure of the names, addresses, and
6 occupations of its volunteers, and the names and addresses of its contributors, will result
7 in threats, harassment, or reprisals to its members and supporters.

8 70. In light of the controversial nature of the issues it addresses, and the
9 experience of anti-tax activists in Washington and across the country, Conservative
10 Enthusiasts reasonably anticipates that public disclosure of the names, addresses, and
11 occupations of its volunteers, and the names and addresses of its contributors, will
12 discourage individuals from associating with, or financially supporting, Conservative
13 Enthusiasts or its activities.

14 71. Complying with Wash. Rev. Code § 42.17.200 would be extremely
15 burdensome for Conservative Enthusiasts, a small, informal organization comprised of
16 part-time volunteers, and would interfere with its ability to effectively communicate its
17 message.

18 72. Conservative Enthusiasts intends to engage in advocacy on behalf of
19 smaller government and lower taxes in the next legislative session and beyond.

20 **The Petition for Declaratory Order**

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1 73. Wash. Rev. Code § 42.17.160 provides exemptions from “registration and
2 reporting under ... 42.17.200.” In particular, Wash. Rev. Code § 42.17.160 exempts the
3 following from having to register as grassroots lobbyists: “working members of the
4 press,” “persons who lobby without compensation,” and certain public officials,
5 including the governor, the lieutenant governor, and members of the Legislature.

6 74. Plaintiffs reviewed the agency materials concerning grassroots lobbying
7 on the PDC’s website, but were unable to determine if the statutes applied to them.
8 Specifically, the exemption for persons who are not compensated for lobbying appeared
9 to directly apply to Plaintiffs, neither of whom is, or will be, compensated for any
10 grassroots efforts.

11 75. On December 3, 2009, Plaintiffs filed a joint Petition for a Declaratory
12 Order (the “Petition”) with the PDC pursuant to Wash. Rev. Code § 34.05.240 and WAC
13 390-105-250. The Petition asked: (1) must Plaintiffs register as grassroots lobbying
14 campaigns under Wash. Rev. Code § 42.17.200; and (2) must Plaintiffs file monthly
15 statements with the PDC pursuant to Wash. Rev. Code § 42.17.200(3).

16 76. The PDC posted the Petition on its website and invited various
17 “stakeholders” to submit testimony. The PDC also determined the petition would be
18 heard at its January 28, 2010, regular meeting.

19 77. Prior to that meeting, the PDC sent Plaintiffs a series of questions about
20 their organizational makeup and activities. Plaintiffs provided timely responses to these
21 inquiries.

1 78. PDC staff submitted its recommendation to the PDC on January 21, 2010.
2 The PDC staff recommended that Defendants send Plaintiffs a letter indicating that they
3 were covered by Wash. Rev. Code § 42.17.200 and that none of the exemptions in Wash.
4 Rev. Code § 42.17.160 applied.

5 79. On January 27, 2010, media reports indicated that the bills in the
6 Washington Legislature about which MCOM was concerned had died in their respective
7 committees. *See Michelle Dupler, What's killing Rob McKenna's eminent domain
8 reform?*, *Tri-City Herald* (Jan. 27, 2010), [http://www.tri-
9 cityherald.com/2010/01/27/879783/whats-killing-rob-mckennas-emin.html](http://www.tri-cityherald.com/2010/01/27/879783/whats-killing-rob-mckennas-emin.html).

10 80. One day later, at the January 28, 2010, meeting, the PDC concluded that,
11 if Plaintiffs' made expenditures in excess of the amounts in the statute, Plaintiffs would
12 be grassroots lobbying organizations under Wash. Rev. Code § 42.17.200 and none of the
13 exemptions of section Wash. Rev. Code § 42.17.160 applied to Plaintiffs. In particular,
14 the PDC determined that Wash. Rev. Code § 42.17.160(4), which exempts unpaid
15 lobbyists from having to register, did not apply to grassroots lobbying. The PDC also
16 determined that it would issue a declaratory order in response to the Petition.

17 81. On February 26, 2010, the PDC approved the final version of Declaratory
18 Order No. 16 adopting the conclusion that Plaintiffs must register if they undertake their
19 anticipated grassroots activities.

20 **Harm to Plaintiffs**

1 82. The registration and reporting requirements contained in Wash. Rev. Code
2 § 42.17.200 burden the free speech of each Plaintiff by creating expensive, complex, and
3 time-consuming administrative requirements that interfere with, and chill Plaintiffs'
4 ability to exercise, their right to engage in political speech and association. These
5 burdens are especially heavy for small, informal organizations comprised of part-time
6 volunteers such as Plaintiffs.

7 83. The registration and reporting requirements contained in Wash. Rev. Code
8 § 42.17.200, and Defendants' dissemination of the information contained in such reports,
9 prevent Plaintiffs from exercising their right to engage in anonymous political speech.

10 84. The registration and reporting requirements contained in Wash. Rev.
11 Code § 42.17.200, and Defendants' dissemination of the information contained in such
12 reports, violates the right to engage in anonymous political speech and association of both
13 Plaintiffs and any potential donors or volunteers who wish to support Plaintiffs' efforts.

14 85. The registration and reporting requirements contained in Wash. Rev. Code
15 § 42.17.200, and Defendants' dissemination of the information contained in such reports,
16 create the reasonable probability that Plaintiffs' respective members will face threats,
17 harassment, or reprisals if their names, addresses, and occupations were disclosed.

18 86. The registration and reporting requirements contained in Wash. Rev. Code
19 § 42.17.200, and Defendants' dissemination of the information contained in such reports,
20 chill Plaintiffs' ability to associate with, and have individuals contribute to, their causes.

1 87. Plaintiffs both anticipate attempting to limit their respective expenditures
2 to \$500 in one month or \$1000 in three months in order to avoid the registration and
3 reporting requirements of Wash. Rev. Code § 42.17.200. Plaintiffs also anticipate
4 changing the content of their communications to avoid the registration and reporting
5 trigger amounts. Such limitations interfere with Plaintiffs' right to exercise their
6 unfettered ability craft their message.

7 88. The government's exemption of media entities and public officials in
8 Wash. Rev. Code § 42.17.160 from the registration and reporting requirements contained
9 in Wash. Rev. Code § 42.17.200 discriminates against those citizens who do not fall into
10 those categories and deprives Plaintiffs and others of the equal protection of the laws.

11 89. The registration and reporting requirements contained in Wash. Rev. Code
12 § 42.17.200, and the interaction of such statute with the exemptions listed in Wash. Rev.
13 Code § 42.17.160, result in regulations that are vague, overbroad, and deprive Plaintiffs
14 of their right to receive fair notice of what the law requires.

15 90. The PDC's procedures for obtaining a formal declaration of the
16 application of such laws are lengthy and complex and do not allow Plaintiffs and others
17 to receive a definitive statement regarding the application of such laws in a timely
18 manner.

19 91. This lack of clarity also leaves Plaintiffs and others at risk of arbitrary and
20 *ad hoc* enforcement of such laws.

1 92. Plaintiffs face a credible threat of prosecution if, as they intend, they (i)
2 make expenditures in excess of the financial limits in Wash. Rev. Code § 42.17.200 for a
3 program addressed to the general public, a substantial portion of which is intended,
4 designed or calculated primarily to influence legislation, and (ii) do not register.

5 **CONSTITUTIONAL VIOLATIONS**

6 **COUNT 1**

7 **(First Amendment – Anonymous Speech and Association)**

8 93. Plaintiffs re-allege and incorporate by reference all of the allegations
9 contained in all of the preceding paragraphs.

10 94. Plaintiffs wish to make expenditures greater than \$500 in one month or
11 \$1000 in three months to communicate with their fellow citizens to urge them to contact
12 state officials regarding pressing policy issues.

13 95. Plaintiffs wish to engage in this fundamental First Amendment activity
14 without having to first register with the government, subsequently report on a monthly
15 basis, or have the government disclose the names, addresses, and occupations of those
16 managing Plaintiffs' affairs.

17 96. Plaintiffs wish to engage in this fundamental First Amendment activity
18 without having to first register with the government, subsequently report on a monthly
19 basis, or have the government disclose the names, addresses of those contributing \$25 or
20 more to the campaign and the aggregate amount they have contributed.

1 97. Plaintiffs wish to engage in this fundamental First Amendment activity
2 without having to first register with the government, subsequently report on a monthly
3 basis, or have the government disclose the totals of all expenditures made or incurred to
4 date on behalf of the campaign, segregated according to financial category, including but
5 not limited to the following: advertising, segregated by media, and in the case of large
6 expenditures, by outlet; contributions; entertainment, including food and refreshments;
7 office expenses including rent and the salaries and wages paid for staff and secretarial
8 assistance, or the proportionate amount thereof paid or incurred for lobbying campaign
9 activities; consultants; and printing and mailing expenses.

10 98. Plaintiffs wish to engage in this fundamental First Amendment activity
11 without having the government post any such information over the Internet or otherwise
12 disseminate it, or cause it to be disseminated, to third parties.

13 99. Wash. Rev. Code § 42.17.200 and the PDC's regulations, on their face and
14 as applied by the PDC, prohibit Plaintiffs and others from engaging in anonymous
15 political speech and association.

16 100. The application of Wash. Rev. Code § 42.17.200 and the PDC's
17 regulations, on their face and as applied by the PDC, severely burden the right of
18 Plaintiffs and others to engage in anonymous speech and association in violation of the
19 First Amendment.

20 101. The application of Wash. Rev. Code § 42.17.200 and the PDC's
21 regulations, on their face and as applied by the PDC, create the reasonable probability

1 that Plaintiffs' respective members, supporters and contributors, and their potential
2 members, supporters, and contributors, will face threats, harassment, or reprisals if their
3 names, addresses, and occupations were disclosed by Defendants.

4 102. The application of Wash. Rev. Code § 42.17.200 and the PDC's
5 regulations, on their face and as applied by the PDC, chill Plaintiffs' and others' right to
6 anonymous speech and association.

7 103. Wash. Rev. Code § 42.17.200 and the PDC's regulations, on their face and
8 as applied by the PDC, are not supported by any compelling, important, substantial or
9 even legitimate state interest, and are not sufficiently tailored to support any such interest
10 or interests.

11 104. Plaintiffs have no adequate remedy at law.

12 **COUNT 2**

13 **(First Amendment – Burdening Protected Speech and Association)**

14 105. Plaintiffs re-allege and incorporate by reference all of the allegations
15 contained in all of the preceding paragraphs.

16 106. Wash. Rev. Code § 42.17.200 and the PDC's regulations, on their face and
17 as applied by the PDC, impose onerous, expensive, time-consuming, and complex
18 registration, reporting, and disclosure requirements on Plaintiffs and others that are in
19 excess relative to any compelling, important, substantial or even legitimate state interest.

1 107. The application of such registration, reporting, and disclosure
2 requirements severely burdens Plaintiffs' and others' right to freedom of speech and
3 association.

4 108. The application of such registration, reporting, and disclosure
5 requirements chills Plaintiffs' and others' right to freedom of speech and association.

6 109. Complex, burdensome, and expensive administrative and reporting
7 requirements can constitute a ban on speech. *Citizens United v. Fed. Election Comm'n*,
8 130 S. Ct. 876, 175 L. Ed. 2d 753, 780-81 (2010).

9 110. Wash. Rev. Code § 42.17.200's registration, reporting, and disclosure
10 requirements are burdensome alternatives to free speech and act to suppress and delay
11 political speech.

12 111. Wash. Rev. Code § 42.17.200's registration, reporting, and disclosure
13 requirements will cause Plaintiffs to change the frequency, content, amount, and timing
14 of their political speech in violation of the First Amendment.

15 112. Wash. Rev. Code § 42.17.200's registration, reporting, and disclosure
16 requirements are not supported by any compelling, important, substantial or even
17 legitimate state interest, and are not sufficiently tailored to support any such interest or
18 interests.

19 113. Plaintiffs have no adequate remedy at law.

20 **COUNT 3**

21 **(First Amendment – Vagueness and Overbreadth)**

CIVIL RIGHTS COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF – 24



Washington Chapter
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1 114. Plaintiffs re-allege and incorporate by reference all of the allegations
2 contained in all of the preceding paragraphs.

3 115. Wash. Rev. Code § 42.17.200 and the PDC's regulations, on their face and
4 as applied by the PDC, are fatally overbroad and vague because they deprive Plaintiffs
5 and others of their right to receive fair notice of what the law requires.

6 116. The lack of clarity in such law and regulations leave Plaintiffs and others
7 at risk of arbitrary and *ad hoc* enforcement of such laws.

8 117. Wash. Rev. Code § 42.17.160 and the PDC's regulations, on their face and
9 as applied and interpreted by the PDC, are fatally overbroad and vague because they do
10 not sufficiently indicate who is, and who is not, required to register and report as a grass
11 roots lobbyist under Wash. Rev. Code § 42.17.200.

12 118. As such, Wash. Rev. Code § 42.17.200 and .160 and the PDC's
13 regulations, on their face and as applied and interpreted by the PDC, severely burden
14 Plaintiffs' and others' right to freedom of speech and association.

15 119. As such, Wash. Rev. Code § 42.17.200 and .160 and the PDC's
16 regulations, on their face and as applied and interpreted by the PDC, chill Plaintiffs' and
17 others' right to freedom of speech and association.

18 120. Wash. Rev. Code § 42.17.200 and .160 and the PDC's regulations, on
19 their face and as applied and interpreted by the PDC are so vague and complex that
20 speakers in Washington must undertake the expense and time of seeking a declaratory
21 order or other forms of pre-enforcement determinations from the PDC in order to have

1 clear guidance as to whether their activities qualify as a grassroots lobbying campaign.
2 Such costs constitute a violation of the First Amendment.

3 121. The application of onerous reporting and disclosure requirement to “any
4 person” under § 42.17.200 is a vague, overbroad, and facially invalid regulation that
5 sweeps in a whole class of speakers protected by the First Amendment.

6 122. The application of onerous reporting and disclosure requirements to cover
7 “bills, resolutions, motions, amendments, nominations, and other matters pending or
8 proposed in either house of the state legislature, and includes any other matter that may
9 be the subject of action by either house or any committee of the legislature and all bills
10 and resolutions that ... are pending approval by the governor” under Wash. Rev. Code §
11 42.17.200 is a vague, overbroad, and facially invalid regulation that sweeps in speech
12 protected by the First Amendment.

13 123. The disclosure requirements of Wash. Rev. Code § 42.17.200(2)(a)-(e) are
14 overbroad, requiring Plaintiffs and others to report information that is not substantially
15 related to any purported government interest.

16 124. Because of the brevity of Washington’s legislative sessions and the
17 inherent mercurial nature of legislative activity, citizen activists, including MCOM and
18 Conservative Enthusiasts, must be able to mobilize the public quickly and in response to
19 unforeseeable contingencies during the legislative process. Bills about which activists
20 wish to communicate may already be the subject of legislative action by the time the

1 PDC could provide a definitive answer to such activists regarding the application of
2 Wash. Rev. Code § 42.17.200.

3 125. MCOM was unable to receive a definitive answer from the PDC regarding
4 their interpretation and application of Wash. Rev. Code § 42.17.200 until after the bills
5 about which MCOM was concerned in the 2010 session of the Washington Legislature
6 had died in their respective committees.

7 126. The PDC's pre-enforcement mechanisms for determining application of
8 Wash. Rev. Code § 42.17.200 and Wash. Rev. Code § 42.17.160 are therefore
9 insufficient to cure the vagueness, ambiguity, and overbreadth problems present in these
10 statutes.

11 127. Because of the significant and overwhelming lack of clarity in such
12 statutes, it is unknown whether the PDC will, in the future and as its composition changes
13 from time to time, adhere to its current interpretation of the application of such statutes to
14 Plaintiffs. Such uncertainty does not provide Plaintiffs with forewarning of what the law
15 requires and leaves them open to the risk of *ad hoc* enforcement.

16 128. Plaintiffs have no adequate remedy at law.

17 **COUNT 4**

18 **(First Amendment – Right to Petition)**

19 129. Plaintiffs re-allege and incorporate by reference all of the allegations
20 contained in all of the preceding paragraphs.

1 130. The ability of grassroots campaigns to exercise their First Amendment
2 right “to petition the Government for a redress of grievances” depends on their freedom
3 from unreasonable regulations that would substantially burden their activities.

4 131. Wash. Rev. Code § 42.17.200 is not sufficiently tailored to serve any
5 compelling, important, substantial or even legitimate state interest.

6 132. The application of Wash. Rev. Code § 42.17.200 and the PDC’s
7 regulations, on their face and as applied by the PDC, severely burden Plaintiffs’ and
8 others’ right to petition the government for redress of grievances.

9 133. Plaintiffs have no adequate remedy at law.

10 **COUNT 5**

11 **(Fourteenth Amendment – Equal Protection)**

12 134. Plaintiffs re-allege and incorporate by reference all of the allegations
13 contained in all of the preceding paragraphs.

14 135. Plaintiffs have the right to enjoy equal protection of the law under the
15 Fourteenth Amendment to the U.S. Constitution.

16 136. Wash. Rev. Code § 42.17.200 and .160 and the PDC’s regulations, on
17 their face and as applied and interpreted by the PDC, place an arbitrary burden on the
18 First Amendment rights of Plaintiffs and others, but does not impose similar burdens on
19 the First Amendment rights of the media and certain public officials.

1 137. As such, Wash. Rev. Code § 42.17.200 and .160 and the PDC's
2 regulations, on their face and as applied and interpreted by the PDC, unconstitutionally
3 discriminate against Plaintiffs and others in the exercise of fundamental rights.

4 138. The state has no interest—legitimate, compelling, or rational—in
5 determining who gets to speak about policy issues. Private citizens are entitled to the
6 same rights as professional journalists, media companies, and public officials.

7 139. Because Wash. Rev. Code § 42.17.200 and .160 and the PDC's
8 regulations, on their face and as applied and interpreted by the PDC, grant immunity to
9 some citizens to engage in grassroots lobbying without having to register and report, but
10 not others, these laws deprive Plaintiffs and others of the equal protection of the laws.

11 140. Plaintiffs have no adequate remedy at law.

12 **COUNT 6**

13 **(First Amendment – Prior Restraint)**

14 141. Plaintiffs re-allege and incorporate by reference all of the allegations
15 contained in all of the preceding paragraphs.

16 142. Wash. Rev. Code § 42.17.200 and the PDC's regulations, on their face and
17 as applied by the PDC, require Plaintiffs and others to register with Defendants and file
18 monthly reports in order to engage in constitutionally protected speech and association.

19 143. As such, Wash. Rev. Code § 42.17.200 and the PDC's regulations, on
20 their face and as applied by the PDC, constitute a prior restraint on Plaintiffs' and others'
21 free speech and association.

1 144. Plaintiffs have no adequate remedy at law.

2 **COUNT 7**

3 **(Entitlement to Declaratory Relief)**

4 145. Plaintiffs re-allege and incorporate by reference all of the allegations
5 contained in all of the preceding paragraphs.

6 146. For reasons including, but not limited to, those stated in this Complaint, an
7 actual dispute exists between Plaintiffs and Defendants within this Court's jurisdiction as
8 to the exercise of Plaintiffs' constitutional rights. Absent a declaration of Plaintiffs'
9 constitutional rights, Defendants will continue to violate Plaintiffs' rights. Therefore, the
10 Plaintiffs are entitled to a declaratory judgment that Wash. Rev. Code § 42.17.200 and
11 .160 and the PDC's regulations, on their face and as applied and interpreted by the PDC,
12 violate the United States Constitution, as well as such other and further relief as may
13 follow from entry of such a declaratory judgment.

14 **COUNT 8**

15 **(Entitlement to Injunctive Relief)**

16 147. Plaintiffs re-allege and incorporate by reference all of the allegations
17 contained in all of the preceding paragraphs.

18 148. For reasons including but not limited to those stated in this Complaint, the
19 Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or
20 minimize the continuing irreparable harm to their constitutional rights.

1 149. Plaintiffs, therefore, are entitled to a preliminary and permanent injunction
2 prohibiting the Defendants from violating their constitutional rights, as well as such other
3 and further relief as may follow from entry of such injunctive relief.

REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request relief as follows:

1. For entry of judgment declaring that Wash. Rev. Code § 42.17.200 and .160 and the PDC’s regulations and interpretations implementing such statutes are unconstitutional on their face and as applied to Plaintiffs;

2. An Order that preliminarily and permanently enjoins Defendants from further implementing and performing their duties in administering and enforcing Wash. Rev. Code § 42.17.200 and the laws and regulations implementing such statute;

3. For an award of attorney’s fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

4. For such further legal and equitable relief as the Court may deem just and proper.



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Dated: April 14, 2010

Respectfully submitted,

INSTITUTE FOR JUSTICE
Washington Chapter

/s/ William R. Maurer

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