No. 77724-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

VOTERS EDUCATION COMMITTEE *et al.*, Plaintiffs / Appellants

v.

STATE OF WASHINGTON *ex rel.* WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION *et al.*, Defendants / Respondents

and

DEBORAH SENN, Intervenor.

BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES IN SUPPORT OF PLAINTIFFS / APPELLANTS

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I. INTEREST OF THE *AMICUS CURIAE*

Founded in 1912, the Chamber of Commerce of the United States (the "Chamber") is the only national institution that represents the unified interests of businesses in the United States. The Chamber is the world's largest business federation, representing more than three million companies and organizations of every size, sector, and geographical region. The Chamber also works with nearly 3,000 state and local chambers, 830 affiliated associations, and over 90 American Chambers of Commerce abroad. Among other activities, the Chamber promotes the public discussion of issues that are important to the free enterprise system. The Chamber's Institute of Legal Reform ("ILR") also works closely with local chambers and other supporters of civil justice reform to educate the public about the importance of integrity and impartiality in the enforcement of the law.

The Chamber has a direct interest in this appeal for three reasons. *First*, the Chamber is integral to the case. As part of its voter education program in 2004, the Chamber donated $1.5 million to appellant Voters Education Committee ("VEC"), which VEC used to fund the advertisement at issue. As a result, the Chamber was subjected to substantial non-party document and deposition discovery below by

intervenor Deborah Senn. The Chamber also submitted an *amicus* brief in support of VEC's motion for summary judgment.

Second, after the trial court issued its decision in this case, the Chamber was the target of a petition for a Public Disclosure Commission ("PDC") enforcement action filed by Public Citizen, a self-proclaimed "watchdog" group represented by Ms. Senn's own counsel. Public Citizen asserted that the Chamber is a "political committee" subject to state registration and reporting requirements because of its donation to VEC. This legal theory was strongly influenced by the trial court's decision below. On April 3, 2006, Public Citizen's petition was denied by the Attorney General.

Finally, the Chamber also has a strong interest in efforts to regulate issue advocacy and voter education programs. The Chamber was a named plaintiff in *McConnell v. FEC*, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003). The instant, highly-publicized case may have significant ramifications for the Chamber's voter education efforts nationwide in future election cycles. Indeed, the imposition of registration and reporting requirements on an entity such as VEC, on the basis of the challenged advertisement, would adversely impact the Chamber's political speech and the broader public discussion of important policy matters during election season.

II. STATEMENT OF ISSUES

1. Did the express advocacy test, which was established in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d (1976) and applied in *Washington State Republican Party v. Public Disclosure Commission*, 141 Wn.2d 245 (2000) ("*WSRP*"), survive *McConnell v. FEC*, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003)?

2. Does the First Amendment contemplate or tolerate a subjective test for express advocacy?

3. Did the trial court err by holding that VEC's use of the term "cover up" outweighed its discussion of governmental ethics and conflicts of interest, and rendered the challenged advertisement express advocacy?

III. SUMMARY OF ARGUMENT

The trial court ruled that VEC's sponsorship of a television advertisement discussing the public record of Attorney General candidate Deborah Senn rendered VEC a "political committee" that is subject to state registration and reporting regulations because: (1) the United States Supreme Court eliminated the express advocacy test in *McConnell*; and (2) the advertisement contained a "character attack" that constituted express advocacy. *See* Verbatim Report of Proceedings ("RP") at 5-6.

This ruling should be reversed on three independent grounds. *First*, the Court's decision in *McConnell* left the express advocacy test

established by *Buckley*, 424 U.S. at 44, in force. Indeed, as in *Buckley*, the *McConnell* Court made plain that *only* precisely drawn regulations, such as those applying the bright-line "express advocacy" test, are permissible limitations on political speech.

Second, the First Amendment bars subjective definitions of express advocacy, such as the "character attack" standard applied by the trial court. *See* RP at 5-6. This Court in *WSRP*, 141 Wn.2d at 265-69, and several federal courts have *rejected* such subjective standards.

Finally, the VEC advertisement cannot reasonably be construed as a "character attack" in any event because it focused on the public policy issues of governmental ethics and conflicts of interest. The trial court acknowledged that the "vast majority" of the advertisement was issue advocacy, but concluded that its use of the term "cover up" – which merely quoted a local newspaper article discussing Ms. Senn's actions – converted it to express advocacy. *See* RP at 5-6. This interpretation cannot stand, given the relevance of ethics and conflicts of interest to the office of State Attorney General.

IV. ARGUMENT

A. *Buckley's* Express Advocacy Test for Political Speech Survived *McConnell*

The trial court's ruling that "the distinction between express or issue advocacy is no longer the controlling law" (RP at 4) is not only

erroneous, but also undercuts fundamental First Amendment restrictions on the regulation of political speech. If allowed to stand, the ruling threatens to hamper public discussion and debate of public policy issues during election periods.

1. The Express Advocacy Test Is a Crucial Limitation on The Regulation of Political Speech.

As this Court recognizes, "[t]he right to speak out at election time is one of the most zealously guarded under the First Amendment." *WSRP*, 141 Wn.2d at 264. Accordingly, restrictions on political speech are subject to strict scrutiny, and must be "narrowly tailored to serve a compelling governmental interest." *FEC v. Beaumont*, 539 U.S. 146, 162, 123 S. Ct. 2200, 156 L. Ed. 2d 179 (2003).

Imprecise restrictions suffer from the "constitutional deficiencies" of vagueness and overbreadth, and their invalidation can "be avoided only by reading [a provision] as limited to communications that include explicit words of advocacy of election or defeat of a candidate." *Buckley*, 424 U.S. at 43. This formulation has become known as the "express advocacy" test, and it has been repeatedly reaffirmed by the Supreme Court and other federal courts as the constitutionally-mandated limiting construction of campaign finance statutes that would otherwise be vague or overbroad. *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S.

238, 249, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986) ("*MCFL*") (requiring "explicit" and "express" advocacy through "the use of language such as 'vote for,' 'elect,'" and similar phrases); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 356, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995) (relying on *Buckley* in striking down a prohibition on political literature that did not "expressly advocate" the election or defeat of a candidate). This Court, in *WSRP*, applied the express advocacy test to interpret the statutes at issue here. *See* 141 Wn.2d at 263-66.

Express advocacy consists of "explicit words" that "expressly advocate the election or defeat of a clearly-identified candidate" *and* exhort the listener to act (*e.g.*, vote) for or against the candidate. *See Buckley*, 424 U.S. at 43-44 & n.52, 80 & n.108; *WSRP*, 141 Wn.2d at 264-65. Because the financing of political speech is of compelling interest to the Government only under certain limited circumstances, such as the prevention of corruption, it may be regulated *only* pursuant to bright-line objective rules. *See WSRP*, 141 Wn.2d at 265-66. As the *WSRP* Court explained:

> the express advocacy standard . . . reflects three concerns: [1] in order to avoid vagueness and a chilling effect on political speech, *Buckley* requires the definition of election-related speech to be sharply drawn; [2] in order to avoid extensive intrusion into the internal communications of an organization or the mind of an individual to identify intent, the standard focuses on the content of the speech; and [3] in

> order to assure that general political speech is not restricted, election-related speech must be narrowly defined, even if to do so results in some election-related speech evading regulation.

Id. at 266.

In contrast, other speech that lacks any exhortation to act for the election or defeat of a candidate is "beyond the reach of government regulation" because there is no sufficiently compelling reason to justify governmental intrusion under the First Amendment. *Id.* at 263-64. Thus, although an express advocacy advertisement stating "vote against Senn" could be regulated, a spot opining that "Senn had a poor record as Insurance Commissioner" could *not* be. Although the second statement is critical of Ms. Senn, it is not an exhortation to vote against her, and thus is not express advocacy.

2. *McConnell* Did Not Abrogate, but Reinforced, the Express Advocacy Test.

Despite the long pedigree and fundamental importance of the express advocacy test, the trial court ruled that it "is no longer the controlling law." RP at 4. Absent any analysis, the court claimed that *McConnell* "overturned a significant portion of *Buckley* as relied upon by our State Supreme Court in *WSRP*." *Id.* The court based this sweeping assertion on a sentence from the *McConnell* decision, in which the Supreme Court observed that the express advocacy test is "functionally

meaningless." 540 U.S. at 193. Instead of abrogating the express advocacy test, however, the Court implicitly left it in full force and effect.[1]

In *McConnell*, the Supreme Court reviewed the Bipartisan Campaign Reform Act of 2002 (the "BCRA"). Of particular relevance here, the Court considered and ultimately upheld a precisely-tailored statutory provision regulating so-called "electioneering communications." *See* 2 U.S.C. § 434(f)(3)(A)(i).[2] In analyzing the new regulation, the *McConnell* Court reiterated that the express advocacy standard is a rule of statutory construction that applies whenever a statute purports to regulate independent political speech but suffers from vagueness or overbreadth. *See* 540 U.S. at 191-94. By a 5-4 majority the Court held that Congress had solved any vagueness and overbreadth problems by setting forth clear, objective, and reasonably limited criteria by which the regulated "electioneering communications" were to be judged, without need for application of the express advocacy standard. *See id.* For this reason, the

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[1] *See generally* James M. Bopp & Richard E. Coleson, *The First Amendment is Still Not a Loophole: Examining McConnell's Exception to Buckley's Rule Protecting Issue Advocacy*, 31 N. KY. L. REV. 289, 291-318 (2004) (explaining how *McConnell* reaffirmed *Buckley's* express advocacy test).

[2] To be deemed "electioneering communications" within BCRA, speech must: (i) be broadcast on radio or television; (ii) refer to a current candidate for federal office; (iii) be aired within the candidate's electoral market and be available to at least 50,000 people; (iv) promote, support, attack, or oppose the candidate; (v) be aired within 60 days of a general election, or within 30 days of a primary election; and (vi) be paid for with corporate or union funds. *See* 2 U.S.C. § 434(f)(3)(A)(i).

"electioneering communications" test did not supplant, but merely *supplemented*, the express advocacy test.

The trial court did not purport to apply any of this analysis to the state statutory scheme at issue here. Moreover, the trial court misread *McConnell*, which emphatically did *not* overrule the express advocacy test. Tellingly, the trial court did not point to any language in the Court's decision that even arguably does so. On the contrary, the language relied upon by the trial court merely repeats the common criticism that the express advocacy test can be circumvented, a truism that both the *Buckley* Court and this Court properly understood as a necessary cost of protecting political speech. *See Buckley*, 424 U.S. at 42 ("the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application."); *WSRP*, 141 Wn.2d at 266 ("in order to assure that general political speech is not restricted, election-related speech must be narrowly defined, even if to do so results in some election-related speech evading regulation.") Despite its well-known limitations, however, the express advocacy test has remained a bedrock principle of First Amendment jurisprudence since 1976. *See, e.g., MCFL,* 479 U.S. at 249; *McIntyre,* 514 U.S. at 356. For this reason, the *McConnell* Court's quoted observation, standing alone, cannot reasonably be deemed sufficient to void the express advocacy test.

3. Courts and the FEC Have Continued To Apply the Express Advocacy Test Since *McConnell.*

Further evidencing the continued vitality of the express advocacy test, lower courts and the Federal Election Commission ("FEC") have relied on it even after *McConnell.* For example, in *Anderson v. Spear*, 356 F.3d 651 (6th Cir. 2004), the Sixth Circuit concluded that *McConnell* "left intact the ability of courts to make distinctions between express advocacy and issue advocacy, where such distinctions are necessary to cure vagueness and over-breadth in statutes which regulate more speech than that for which the legislature has established a significant governmental interest." *Id.* at 664. Hence, the court limited to express advocacy a state law curb on "electioneering" because the statute was vague. *Id.* at 665.

Likewise, in *ACLU of Nevada v. Heller*, 378 F.3d 979 (9th Cir. 2004), the Ninth Circuit struck down as facially unconstitutional a Nevada statute that required the identification of the financial sponsors of political pamphlets and other publications. *Id.* at 1002. The court quoted *Anderson* with approval in considering whether the statute – covering "any material or information relating to an election" – could be saved by limiting it to express advocacy only. *Id.* at 985-86. The court declined to save the statute because it was not restricted to "advocacy," and thus was too broad for even the express advocacy standard to save. *Id.* at 986. *See also*

Landell v. Sorrell, 382 F.3d 91, 106 (2d Cir. 2004) (*Buckley* "remains the seminal case governing the constitutional review of campaign finance reform efforts"), *cert. granted*, 126 S. Ct. 36 (2005).

In addition, the FEC – which is the federal agency charged with interpretation and enforcement of campaign finance and federal election laws – has also applied the express advocacy test in several Advisory Opinions since *McConnell*.[3] In view of these lower court decisions and FEC Advisory Opinions, there can be no doubt that the trial court erred in concluded that the express advocacy test is extinct.

B. The First Amendment Bars Subjective Definitions of Express Advocacy Such as the "Character Attack" Standard Adopted By the Trial Court.

Recognizing the tenuousness of its conclusion that *McConnell* eliminated the express advocacy test, the trial court also held that speech attacking a candidate's "character" constitutes express advocacy, even when unaccompanied by the objective exhortations enumerated in *Buckley*. *See* RP at 5. Evidencing the inherent imprecision in what constitutes a "character attack," the trial court exercised its own subjective

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[3] *See, e.g.*, FEC Adv. Op. 2004-33 (Sept. 10, 2004) (social welfare group may pay for issue advertisements that are narrated by a Congresswoman because they do not contain express advocacy); FEC Adv. Op. 2004-7 (Apr. 1, 2004) (MTV may not disseminate election information at voter events that expressly advocate the election or defeat of candidates or political parties); FEC Adv. Op. 2003-37 (Feb. 14, 2004) (phrases such as "vote for George W. Bush for President" are express advocacy).

review of the VEC advertisement, concluding that it was express advocacy because its use of the term "cover up" – which merely quoted from a local newspaper article that used this very term in describing Ms. Senn's actions – was (in the court's view) an attack on Ms. Senn's character. *Id.* This analysis is antithetical to *Buckley* because it broadens, rather than narrows, the scope of government regulations on political speech, and it also contravenes *McConnell's* mandate for precise regulations.

1. Courts Have Repeatedly Rejected Subjective Tests for Express Advocacy.

Courts, including this Court in *WSRP*, have made plain that the test for express advocacy must be *objective* and clear. For this reason, *WSRP* ruled that the express advocacy test "is an exacting one, with *any doubt* whether a communication is an exhortation to vote for or against a particular candidate to be *resolved in favor of the First Amendment freedom to freely discuss issues*." 141 Wn.2d at 265 (emphasis added). The Court accordingly declined to examine the context and timing of speech to determine whether it expressly advocated the election or defeat of a candidate, because of the prospect that such a *subjective* standard would "chill" protected expression. *Id.* at 267-69. Similarly, in *Chamber of Commerce v. Moore*, 288 F.3d 187 (5th Cir. 2002), the Fifth Circuit held that communications discussing the character traits of a candidate are

not express advocacy "even if the statements amount to an endorsement of the candidate," unless they *also* include "words that exhort viewers to take specific electoral action for or against the candidates." *Id.* at 197-98.

In addition, at least *three* federal courts have invalidated a proposed federal regulation, 11 C.F.R. § 100.22(b), which would have considered "communications discussing or commenting on a candidate's character" as express advocacy. 60 Fed. Reg. 35295. *See Virginia Soc'y for Human Life v. FEC*, 263 F.3d 379, 392 (4th Cir. 2001) (holding that the regulation violates the First Amendment because it shifts the express advocacy determination from explicit words to "the unpredictability of audience interpretation"); *Maine Right to Life Comm., Inc. v. FEC,* 98 F.3d 1 (1st Cir. 1996) (same, based on the regulation's likely chilling effect on speech); *Right to Life of Dutchess County v. FEC,* 6 F. Supp. 2d 248, 253-54 (S.D.N.Y. 1998) (same, based on the regulation's restriction of communications that do not contain explicit words of advocacy). Notably, the proposed regulation was based upon the Ninth Circuit's definition of express advocacy in *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), a decision this Court criticized in *WSRP*. *See* 141 Wn.2d at 267-69.

Despite these decisions, the trial court invoked the following passage from *WSRP* as the *only* support for its express advocacy

determination: "when a candidate's character . . . [is] attacked, the ad may be subject to only one reasonable interpretation: an exhortation to vote against the candidate." *WSRP*, 141 Wn.2d at 269. The quoted observation by the Court was *dicta*, however, because the Court did not conclude that the advertisements before it were critical of a candidate's character, and the issue was not germane to the Court's ruling. *See id.* at 273. Moreover, it would be unreasonable to read the Court's reference to subjective considerations of "character" as a qualification of its otherwise objective, bright-line test for express advocacy. Indeed, *WSRP* noted that a context-based approach to express advocacy, such as evaluating the role of "character," would "invite too much in the way of regulatory and judicial assessment of the meaning of political speech." *Id.* at 268.[4]

Even if *WSRP* were interpreted to allow regulation of attacks on a candidate's character, however, such a rule was foreclosed by *McConnell*. The *McConnell* Court made plain that only *objective bright-line* standards for the regulation of political speech are constitutionally permissible. *See* 540 U.S. at 170 n.64, 193-94. In upholding the electioneering communication portion of BCRA, the Court emphasized that its

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[4] There is ample room to debate what is and is not a "character attack." Calling a candidate "a habitual liar" might go more to the essence of his or her "character" than criticism for discrete public policy errors, but even that judicial determination is difficult for the speaker to predict in advance.

"components are both easily understood and *objectively determinable*." *Id.* at 194 (emphasis added). Accordingly, *WSRP* cannot properly be read to equate express advocacy with attacks on a candidate's character.

2. Subjective Tests of Express Advocacy Impermissibly Chill Political Speech.

We cannot overstate the chilling effect upon speech that would result from requiring courts and regulatory agencies to determine whether a candidate's "character" has been "attacked" in the scores of political advertisements aired every year in Washington. Review of these decisions would be by different state and federal judges, and could conceivably present factual issues requiring resolution by juries. Even if, by some happenstance, some measure of consistency could be found in these decisions – with no arbitrariness, bias, or error – this "character attack" standard could not provide fair notice to speakers, but would instead *freeze* independent political speech. *Cf. WSRP*, 141 Wn.2d at 265-66; *Buckley*, 424 U.S. at 43.

The chilling potential of a subjective express advocacy test could be devastating to legitimate issue advocacy, including the Chamber's voter education efforts. For years, the Chamber and ILR have spent millions of dollars annually to fund advertisements and grassroots efforts intended to raise awareness about important public policy issues, including litigation

reform, international trade, labor relations, telecommunications, and health care. In many of these efforts, candidates are identified because of their close association with certain issues, and their official actions involving those issues. Indeed, voter education efforts and other forms of issue advocacy are typically at their peak close to election contests because this context offers a unique opportunity to raise awareness among voters who only then are paying attention to policy debates. Without precise regulations, groups such as the Chamber and ILR would need to "steer far wider of the unlawful zone" than the First Amendment permits, to avoid the risk of violations caused by subjective interpretations of their communications. *See Buckley*, 424 U.S. at 41 n.48.

C. The Trial Court Erred by Concluding That VEC's Use of the Term "Cover Up" Outweighed Its Discussion of Governmental Ethics and Conflicts of Interest.

The VEC advertisement discussed the issues of governmental ethics and conflicts of interest in connection with Ms. Senn's performance as Insurance Commissioner. Despite the trial court's recognition that the vast majority of the advertisement was "issue advocacy beyond the reach of government [and] protected by the First Amendment" (RP at 5), the court nonetheless held that the ad was ultimately a "character attack" because it quoted a newspaper's use of the term "cover up." *Id.* at 6. The court's failure to give greater weight to the *issues* discussed, in view of

WSRP's ruling that any doubt is to be resolved *against* the regulation of political speech, was legal error. *See* 141 Wn.2d at 265.

As this Court has explained, "[t]he right to freely discuss issues in the context of an election, *including public issues as they relate to candidates for office*, is precisely the kind of issue advocacy the [United States Supreme] Court recognized was beyond the reach of regulation." *Id.* at 267 (emphasis added). In the realm of issue-oriented speech, the identification of candidates is inevitable because "candidates . . . are intimately tied to public issues involving legislative proposals and *governmental actions*." *Buckley*, 424 U.S. at 42 (emphasis added).

This fact is plainly demonstrated by the issues of governmental ethics and conflicts of interest, which are invariably linked to actions by officials in each branch of government. For example, Washington law prevents state officers and employees from accepting gifts, *see* R.C.W. 42.52.110, or engaging in business transactions that conflict with the proper discharge of their official duties. R.C.W. 42.52.020. Washington has also created several government offices to administer and enforce its

ethics laws, including the Executive Ethics Board, Legislative Ethics Board, and Commission on Judicial Conduct.[5]

Of course, Washington is not unique. Many States prohibit, or require disclosure of, governmental conflicts of interest, including Arizona, California, Idaho, Indiana, Louisiana, Nevada, and Texas.[6] Legislatures in other States have recently enacted, or are currently considering, more stringent codes of conduct for Executive Branch officials, legislators and lobbyists.[7] Similarly, the United States Congress has proposed its own ethics reforms in an effort to curb abuses of official

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[5] Indeed, Washington also has specific statutes prohibiting *quid pro quos* of the sort allegedly engaged in by Ms. Senn. The Washington Pubic Disclosure Act declares that it is "the public policy of the state of Washington . . . that the people have the right to expect from their elected representatives at all levels of government the utmost of *integrity, honesty, and fairness in their dealings*." R.C.W. 42.17.010(2) (emphasis added). Additionally, "the public confidence at all levels is essential and must be promoted by all possible means," R.C.W. 42.17.010(5), which include "assuring the people of the impartiality and honesty of the officials in all public transactions and decisions." R.C.W. 42.17.010(6). Finally, "full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society." R.C.W. 42.17.010(11).

[6] *See* Ariz. Rev. Stat. § 38-504; Cal. Gov't Code § 87100; Idaho Code Ann. §§ 59-703(4), 704; Ind. Code § 4-2-6-5.5(a); La. Rev. Stat. § 42:1116.A; Nev. Rev. Stat. § 281.230.1; Tex. Gov't Code § 572.058(a).

[7] *See* S. 51, 65th Gen. Assem., Reg. Sess. (Colo. 2006); 2005 Conn. Acts 5 (Spec. Sess.); 2005 Ga. Laws 212; S. 6809, 2005-06 Leg., Reg. Sess. (N.Y. 2006); S. 1433, 50th Leg., Reg. Sess. (Okla. 2006); S. 1, 2005 Gen. Assem., Reg. Sess. (Pa. 2005); 2005 S.D. Sess. Laws 40. *See also* Leah Rush & David Jimenez, *States Outpace Congress in Upgrading Lobbying Laws: 24 states have made disclosure strides since 2003*, The Center for Public Integrity, Mar. 1, 2006, *available at* http://www.publicintegrity.org/hiredguns/report.aspx?aid=781.

government positions.[8] The importance of ethics reform issues is even underscored by the fact that certain so-called "watchdog" organizations, such as Public Citizen, have undertaken their own issue advocacy campaigns to push government ethics reform.

The trial court recognized that "*WSRP* . . . defined issue advocacy as advocacy that intends to inform the public about particular issues germane to an election." RP at 5. Because ethics and conflicts of interest are issues of undoubted relevance to the offices of Attorney General and Insurance Commissioner, it was legitimate issue advocacy for VEC to identify one example of an official act by Ms. Senn—her attempt to cover up a *quid pro quo*—that ran afoul of acceptable ethical standards. The trial court plainly erred by equating the subjective concept of "character attack" with express advocacy.

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[8] *See* S. 2349, 109th Cong. (2006); H.R. 5112, 109th Cong. (2006); H.R. 4975, 109th Cong. (2006).

V. CONCLUSION

For the foregoing reasons, the Court should reverse and remand with instructions for the trial court to enter summary judgment for VEC.

Dated: May 3, 2006.

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I certify that on this day I caused true and correct copies of the foregoing "Brief of *Amicus Curiae* Chamber of Commerce of the United States in Support of Plaintiffs/Appellants" to be served upon all parties and counsel of record herein, ***via email and U.S. Mail***, as follows:

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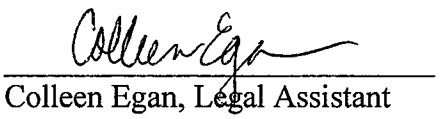
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: May 3, 2006 at Seattle, Washington.



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