

No. 77724-1

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IN THE  
SUPREME COURT OF THE STATE OF WASHINGTON

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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.*

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**BRIEF *AMICUS CURIAE* OF THE CAMPAIGN LEGAL CENTER  
IN SUPPORT OF RESPONDENTS**

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**I. STATEMENT OF INTEREST**

*Amicus Curiae* Campaign Legal Center, Inc. (CLC) is a nonpartisan, nonprofit organization which works in the area of campaign finance law, generating public policy proposals and participating in state and federal court litigation throughout the nation regarding disclosure, political advertising, contribution limits, enforcement issues, and many other matters. In addition to participating as *amicus curiae* in this case before the trial court and in many other campaign finance-related cases throughout the nation, the CLC served as counsel to defendant intervenors Senator John McCain, Senator Russell Feingold, *et al.*, in *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), before the U.S. Supreme Court. The CLC has a longstanding, demonstrated interest in campaign finance law and this case directly implicates the CLC's interest.

**II. STATEMENT OF THE CASE**

Between September 1 and September 10, 2004, appellants Voters Education Committee *et al.* (VEC) aired a television ad throughout the State of Washington critical of Deborah Senn, a candidate for Attorney General in the September 14, 2004 primary election.<sup>1</sup> Clerk's Papers (CP)

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<sup>1</sup> The script of the VEC ad at issue in this case, entitled "Better," read:

4, 20, 440. The VEC had neither registered nor filed reports with the Public Disclosure Commission (PDC) prior to running the ad, as is required by state law of entities meeting the definition of “political committee.” CP 5, 478.

On September 10, 2004, the PDC initiated an enforcement proceeding against the VEC, alleging that the VEC had failed to comply with state law requirements of “political committee” registration and reporting under RCW 42.17.040–090. CP 89. On the same day, the VEC initiated this lawsuit against the PDC alleging, *inter alia*, that the PDC violated the VEC’s constitutional rights through enforcement of the “political committee” registration and reporting requirements. CP 6–7.

The PDC’s enforcement proceeding was moved to the King County Superior Court and assigned to the same judge scheduled to hear the VEC’s case. On August 12, 2005, Judge Richard Jones issued an oral decision granting the PDC’s summary judgment motion—ruling that the

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Who is Deborah Senn looking out for? As Insurance Commissioner, Senn suspended most of the \$700,000 fine against an insurance company in exchange for the company’s agreement to pay for four new staff members in Senn’s own office. Senn even tried to cover up the deal from state legislators. The Seattle Post Intelligencer said Senn’s actions easily could lead to conflict of interest abuses. Log on to learn more.

AMENDED BRIEF OF APPELLANTS at 6–7.

VEC ad triggered “political committee” registration and reporting requirements, and that the obligation to register and report as a “political committee” did not violate the VEC’s federal or state constitutional rights. CP 422–29. The VEC appealed the Superior Court decision to this Court.

### **III. ARGUMENT**

The VEC admittedly exists for the purpose of influencing candidate elections in the State of Washington. The VEC registered with the Internal Revenue Service (IRS) as a Section 527 political organization—the tax status reserved *exclusively* for organizations with the purpose of influencing candidate elections. The VEC spent more than \$500,000 on advertising opposing a candidate for state office—advertising which the VEC itself characterized in its brief as “election-related speech.” *See* CP 134; AMENDED BRIEF OF APPELLANTS at 38–48. The VEC falls squarely within the state law definition of “political committee”—a state law that is clearly constitutional under U.S. Supreme Court precedent.

The State of Washington’s “political committee” registration and reporting requirements are a clear and constitutional means of advancing

the state’s long-recognized compelling interests in “providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering data necessary to enforce more substantive electioneering restrictions.” *McConnell*, 540 U.S. at 196. *See also Buckley v. Valeo*, 424 U.S. 1, 66–68 (1976); *Alaska Right To Life Committee (AKRTL) v. Miles*, 441 F.3d 773, 792 (9th Cir. 2006).

The U.S. Supreme Court in *Buckley* made clear that disclosure requirements for Section 527 political organizations such as the VEC raise no vagueness problems. *Buckley*, 424 U.S. at 76–80. The *McConnell* Court made clear that the statutory terms “support” and “oppose,” which serve as the foundation of Washington’s definition of “political committee,” are not unconstitutionally vague. *McConnell*, 540 U.S. at 170 n.64. We respectfully urge this Court to reject the VEC’s contention that the now-outdated distinction between “express advocacy” and “issue advocacy” (a distinction the U.S. Supreme Court declared “functionally meaningless” in *McConnell*) bars the PDC from enforcing state disclosure laws with regard to the VEC. 540 U.S. at 217.

**A. The VEC admittedly exists for the purpose of influencing candidate elections and is a “political committee” under Washington state law.**

**1. By registering with Internal Revenue Service as a Section 527 political organization, the VEC publicly declared that its purpose is to influence candidate elections.**

The VEC “is registered as a Section 527 political organization under Internal Revenue Code.” CP 4. The VEC’s choice of tax status is a compelling fact in this case. Under federal tax law, a Section 527 “political organization” *must* be “organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures . . . for the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State or local public office.” 26 U.S.C. § 527(e)(1)–(2).<sup>2</sup> Section 527 tax status is reserved for organizations existing for the purpose of influencing *candidate elections*—and is not available to organizations dedicated to other activities.<sup>3</sup>

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<sup>2</sup> See also FRANCES R. HILL & DOUGLAS M. MANCINO, TAXATION OF EXEMPT ORGANIZATIONS ¶ 18.03[1] (2002).

<sup>3</sup> Organizations dedicated to activities not intended to influence candidate elections—such as legitimate issue advocacy—but wishing to obtain tax-exempt status, must do so under a different section of the tax code. Religious and charitable organizations, for example, may obtain tax-exempt status under Section 501(c)(3) of the tax code and are *prohibited* from intervening in candidate campaigns. See 26 U.S.C. § 501(c)(3); see also HILL &

