

# Exhibit A



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## Local News

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# Mayor Ed Murray re-election campaign has everything but an opponent

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BY [MIKE LEWIS](#), KIRO Radio Reporter | January 16, 2017 @ 11:03 am

(AP)

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As he begins ramping up a campaign for a second term, Seattle Mayor Ed Murray has a quarter of a million dollars in his campaign bank, the seemingly broad support of labor, a package of successful, first-term initiatives and a benign city council.

Indeed, Murray seems to lack only one major component as he seeks to run for the job he's held since 2014: Any opposition candidate on the horizon.

“Um, I don't know of anyone,” offered Nicole Grant, the executive secretary-treasurer of the [King County Labor Council](#), a labor group that expects Murray to seek its endorsement. “There's still some time left but no one comes to mind.”

**Related: [Seattle decides to ditch its bike share program Pronto](#)**

Nor does anyone come to mind from the business groups generally courted by prospective candidates. “We haven't heard of other candidates at this point,” said Alicia Teel, director of communications for the [Seattle Chamber of Commerce](#).

Names that were floated at one point or another — Councilmembers Mike O'Brien, Tim Burgess and Kshama Sawant – all have given zero indication that a run for mayor's seat is likely. Indeed Burgess is **retiring from city politics** altogether.

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## Mayor Ed Murray campaign



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Sandeep Kaushik, the mayor's political advisor who will run the re-election effort, said Mayor Ed Murray is treating the upcoming campaign as if an opponent is going to surface at some point.

“We haven't seen a serious opponent emerge yet but there's a long time to go before the filing deadline,” he said. “Our assumption is that we're going to have serious opposition and we're going to campaign hard and work hard to talk to voters to get their support.


“The mayor believes you should never take the support of the voters for granted.”

Both Murray's supporters and detractors have joked recently that the mayor's re-election kickoff effort can be seen in the drifts of salt on many Seattle streets when freezes or snow are predicted. Former Mayor Greg Nickels famously lost his 2009 re-election campaign, in part, [because his administration declined to salt the streets](#) before a record Seattle snow.

The subsequent snowfall and sheet ice paralyzed Seattle traffic and transit for days. And Nickels is [hardly the only mayor](#) who lost an election because of [an inadequate response to snow](#).

Along with de-icing salt, Murray plans to hang his campaign effort on a handful of policy successes: The city's \$15 minimum wage; the [Pre-K initiative](#), the Secure Scheduling and Sick Leave ordinances.

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“The mayor has a very strong track record of progressive achievement in his first term,” Kaushik said. ‘Mayor Murray is a mayor who believes in active and activist government.’ 

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While critics hold the [oft-delayed Bertha tunnel dig](#), uneven [response to homelessness](#), workplace initiatives that have [angered business owners](#) and an increasingly unaffordable Seattle as his liabilities, no candidate has emerged to build a campaign on these issues.

Not yet, anyway. The filing deadline isn’t until June and the primary is August. But it is this time of year when candidates begin sending out feelers to gauge support and build a campaign staff.

And while no opponents have emerged yet, Murray is taking no chances. A recent poll by Murray’s campaign staff shows the mayor at a 60 percent approval rating. And \$51,000 worth of fundraising in December alone isn’t just for upcoming campaign expenses – it’s also there to intimidate any prospective, unannounced candidates.

Noted Kaushik: “We think we’re off to a great start and we’re going to build on it.”

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# Exhibit B

# Mayor Murray issues statement denouncing Trump’s attack on transgender rights

 [murray.seattle.gov/mayor-murray-issues-statement-denouncing-trumps-attack-transgender-rights/](http://murray.seattle.gov/mayor-murray-issues-statement-denouncing-trumps-attack-transgender-rights/)

Office of the  
Mayor

2/22/2017

Today, Mayor Ed Murray issued the following statement in response to the Trump administration’s announcement reversing the Obama administration’s legal guidance to allow transgender students to use the restroom that corresponds with their gender identity:

*“The bullying coming from the White House reached even more alarming levels today when the Trump administration specifically began targeting school kids. By rescinding federal guidance from the Department of Education to stand up for Title IX protections allowing transgender students to use the bathroom that matches their gender identity, the new administration is sending a message that it no longer respects individual rights and ratcheting up the fear among marginalized communities.”*

For the for the last 11 years, Washington state law has protected our transgender students. The 2006 passage of the Anderson-Murray Act, which Mayor Murray co -sponsored when he was a state legislator, specifically protects transgender people from discrimination in public accommodations.

In the last two years, Mayor Murray has helped advance rights and protections for Seattle’s transgender community. In 2015, he passed legislation requiring all City-controlled and privately operated places of public accommodation to designate existing and future single-stall restrooms as all-gender facilities.

And last year, Mayor Murray signed an executive order that, among other actions, instructed Seattle’s Office for Civil Rights (OCR) to develop uniform guidance and trainings for front-line City staff, such as police officers, on how to best continue providing safe and inclusive spaces for all residents, including transgender and gender-diverse people.

“Unlike the Trump administration, Seattle is committed to expanding rights—not undoing them,” Mayor Murray said. “As the new administration continues to assault civil liberties, we will stand up for all students in Seattle schools. We will also stand by court precedent.”

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# Exhibit C



# City joins lawsuit for transgender student rights

 [murray.seattle.gov/city-joins-lawsuit-transgender-student-rights/](http://murray.seattle.gov/city-joins-lawsuit-transgender-student-rights/)

Office of the Mayor

3/2/2017

Today, Mayor Ed Murray and City Attorney Pete Holmes announced the City of Seattle is joining dozens of cities in an [amicus brief](#) filed with the U.S. Supreme Court in support of a transgender student. The student is challenging a high school restroom access policy that forces transgender students to use a separate single-stall restroom instead of accessing a restroom consistent with a student's gender identity.

"President Trump's recent attack on transgender people's equality is part of an ongoing and dangerous assault on civil rights across the country," said Mayor Murray. "Forcing transgender students to use separate restrooms or locker rooms is discriminatory and creates a 'separate but equal' status for students who simply want to be treated like any other student. Trans people are unfortunately more likely to be victims of violence for who they are — forcing a student to use separate facilities puts them in danger by outing them to other students and by teaching their peers transgender people are not equal. I am proud the City of Seattle is a leader in creating protections and safer accommodations for transgender people, and we are ready to join the case at the Supreme Court to fight for policies that protect people, not outdated fears."

The brief, filed in the case of *Gloucester County Bd v. G.G.*, argues that Title IX — a federal law forbidding discrimination in schools on the basis of sex — protects transgender students from discrimination. The brief also notes that for decades more than 200 jurisdictions, including Seattle, have adopted and enforced local laws prohibiting discrimination against transgender people. The brief also counters the argument that allowing transgender students to access facilities consistent with their gender identity would compromise the privacy interests of other students or threaten public safety.

The U.S. Supreme Court is scheduled to hear arguments on March 28.

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# Exhibit D



Local Politics

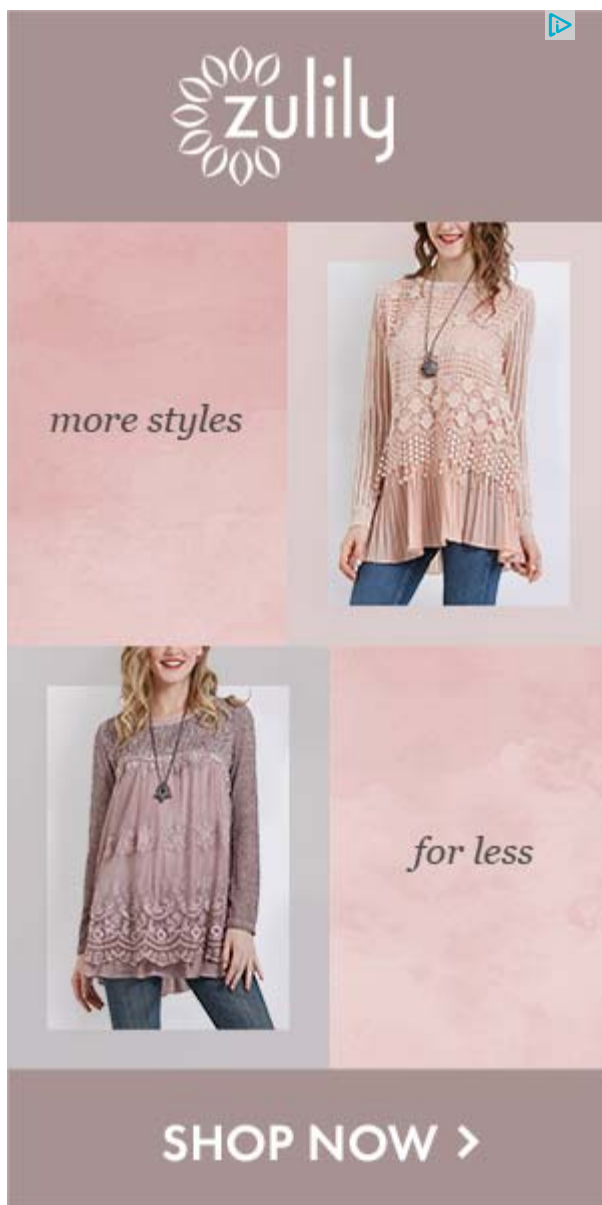
# Seattle sues Trump administration over 'sanctuary cities' order



Originally published March 29, 2017 at 2:07 pm Updated April 5, 2017 at 4:53 pm



Seattle Mayor Ed Murray says the city is suing the federal government, arguing that President Donald Trump's executive order on "sanctuary cities" violates the Constitution. (Steve Ringman/The Seattle Times)



**Seattle will argue that an executive order by President Donald Trump violates the Constitution by trying to make local governments enforce federal immigration law.**



By [Daniel Beekman](#) 

*Seattle Times staff reporter*

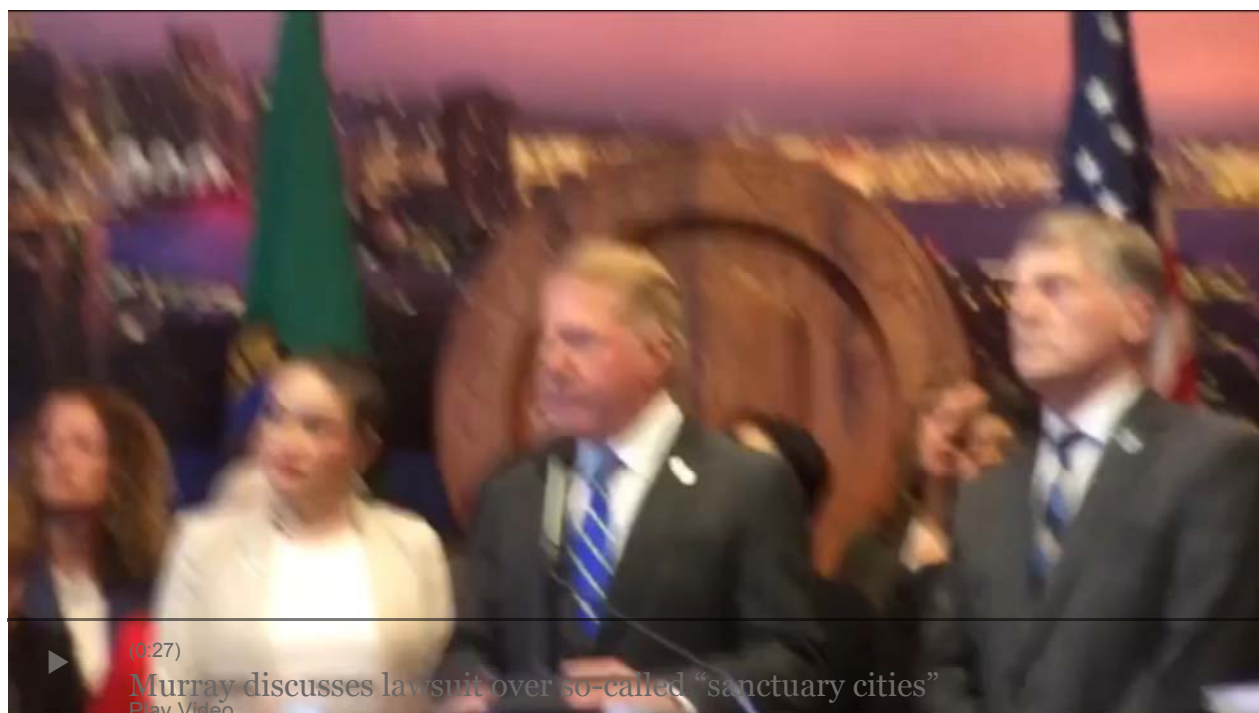
Seattle is suing President Donald Trump over his executive order cracking down on so-called “sanctuary cities” for how they handle people living in the United States illegally.

The city is doing nothing wrong by limiting its own involvement in immigration enforcement, while Trump is overreaching by trying to make cities do the work of the federal government, Mayor Ed Murray and City Attorney Pete Holmes said Wednesday.



The goal of [the lawsuit](#), filed in U.S. District Court in Seattle, is to have the executive order declared unconstitutional, Murray said at a news conference, accusing the Trump administration of waging “a war on cities.”

“Our lawsuit is staying true to our values,” the mayor said. “We value civil rights, we value the courts and we value the Constitution.”



Seattle is suing the federal government, Mayor Ed Murray announced today. He said the executive order by President Trump violates the constitution by trying to make local governments enforce federal law. (Steve Ringman / The Seattle Times)

Murray's announcement came two days after [U.S. Attorney General Jeff Sessions said the Department of Justice would turn up the pressure](#) and withhold grants from "sanctuary" jurisdictions for not doing more to help the Trump administration capture and deport people.


Seattle is following in the footsteps of other jurisdictions, including San Francisco, which in late January [became the first city in the country to challenge Trump's order](#) in court.

## Featured Video



"It keeps you living:" A life at Emerald Downs (2:38)

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“This administration has created an atmosphere of anxiety in cities across America and created chaos in our politics,” Murray said. “It is time for cities to stand up.”

[Trump’s Jan. 25 executive order](#) said certain cities and other local governments “willfully violate federal law in an attempt to shield aliens from removal from the United States.”

It said such jurisdictions “have caused immeasurable harm to the American people and to the very fabric of our republic.”

The order cited a federal law — [U.S. Code Section 1373](#) — that covers the sharing of information between local governments and federal immigration authorities.

And it warned, far in advance of Sessions’ comments this week, that jurisdictions violating that law would be cut off from all federal grants.

Seattle expects to receive more than \$150 million in federal funds this year, including \$2.6 million in grants from the Department of Justice.

ADVERTISING



Murray has said he is willing to lose “every penny” of that rather than alter how the city approaches immigration enforcement.

The “sanctuary” label is unofficial. It isn’t a legal term with a single, agreed-upon definition.

Generally, people use it to describe jurisdictions with policies and practices that restrict their own roles in civil immigration enforcement.

For example, Murray refers to [Seattle as a sanctuary city](#) because of an ordinance barring city employees from inquiring about a person's immigration status, unless required by law or court order.



Police officers are exempted when they have reason to believe a person has previously been deported and is committing or has committed a felony.

Hundreds of American cities have similar rules. Leaders of those cities say they want immigrants to feel comfortable interacting with local officers as victims of and witnesses to crimes.

“It’s when you marginalize people and drive them away from city services and make them fearful of the police and push them underground that these communities become unsafe,” Murray said.

It’s not completely clear whether the Trump administration considers Seattle a sanctuary city.

The president’s executive order characterized sanctuary jurisdictions as jurisdictions that refuse to comply with U.S. Code Section 1373, and Murray has repeatedly said that Seattle is in compliance.

Seattle law directs city employees, including police officers to “cooperate with, and not hinder, enforcement of federal immigration laws.”





Rather than prohibit city employees from sharing information with federal immigration authorities, Seattle's sanctuary ordinance merely limits the collection of information, the city says.

But city officials say they believe the Trump administration may treat Seattle as a sanctuary city, anyway.

In its lawsuit, the city will argue Trump's order violates the 10th Amendment of the Constitution by attempting to make local governments enforce federal immigration law.

Seattle also will argue the executive order violates the Taxing and Spending Clause of the Constitution by holding hostage, for matters of immigration enforcement, funds not directly related to immigration enforcement.

Though the Trump administration has yet to withhold grants from Seattle or take action against the city in any way, the city will argue it has standing to sue because the executive order has created uncertainty and made it difficult for Murray to draw up his next city budget.

The mayor said the lawsuit is personal for him. He mentioned meeting with Seattle Public Schools students from immigrant families and said his grandparents faced discrimination when they emigrated from Ireland.



“The intensity is because I’ve spent time in classrooms in this city and I’ve seen how scared these kids are,” Murray said.

The city is working on the lawsuit with the international law firm Mayer Brown, and Andrew Pincus, a high-powered attorney with the firm who has argued 25 cases before the U.S. Supreme Court. The firm is providing its services pro bono.

The lawsuit names Trump, Attorney General Jeff Sessions and Homeland Security Secretary John Kelly as defendants.

Hours before Murray’s announcement in Seattle Wednesday, Police Chief Kathleen O’Toole was one of 12 police chiefs and mayors to meet in Washington, D.C., with Kelly about immigration enforcement and other issues.

Kelly listened carefully to the group and “indicated he really wants to work collaboratively,” O’Toole said.

He also acknowledged a lack of clarity on what makes a jurisdiction a “sanctuary,” O’Toole said.



“I think he’s somebody who seems to be a pragmatist,” she said. “It wasn’t a combative meeting.”

This marks the latest challenge from Washington state to a Trump executive order. Attorney General Bob Ferguson sued the administration over Trump’s first executive order for a travel ban from seven majority-Muslim countries.

A [federal judge in Seattle issued a temporary restraining order to halt](#) the ban. An appeals-court panel upheld the ruling and Trump later issued a more narrowly written ban.

Sessions on Monday took specific aim at jurisdictions, such as King and Snohomish counties, which reject at least some requests by Immigration and Customs Enforcement (ICE) to hold people in jail beyond when they would otherwise be released.

San Francisco’s sanctuary- cities lawsuit is broader in scope than Seattle’s because San Francisco operates a jail.

Because Seattle doesn’t manage a jail, it doesn’t receive requests from ICE to hold people.



It's possible that King County, which jails people arrested by Seattle police, could join the city's lawsuit.

Holmes said his office is following lawsuits elsewhere, including San Francisco and Santa Clara County.

Those two have a joint hearing with a judge in California next month, and an initial ruling could set the tone for Seattle's case. Seattle filed a friend-of-the-court brief in the Santa Clara case last month.

Seattle is not seeking a temporary restraining order in its own case, Holmes said.

Murray said he expects other cities to join Seattle's lawsuit "in the days and weeks ahead."

In his annual State of the City speech last month, the mayor said Seattle was filing Freedom of Information Act requests with the Trump administration seeking details about the sanctuary cities order. Those requests are still active, Holmes said.



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# Exhibit E

The Washington Post

The Fix

# He lobbied for gay rights and opposed Trump — now Seattle’s mayor is accused of sexually assaulting minors

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By **Avi Selk** April 10

Seattle Mayor Ed Murray, a nationally famous champion of gay rights and progressive causes, has been accused by three men of having sex with them as children.

An unnamed man filed a child sex abuse lawsuit against the mayor on Thursday, alleging Murray “repeatedly criminally raped and molested” him when he was a homeless 15-year-old in the 1980s.

The unnamed plaintiff and two other men gave interviews to the Seattle Times — all telling similar stories about a politico in his late 20s and 30s, who befriended street kids, paid them and had his way with them.

“I don’t necessarily think that he destroyed my life,” Jeff Simpson told the newspaper after describing years of molestation from age 13 on. “But I believe a lot of the problems I have stemmed from this.”

Murray, a gay rights pioneer-turned-leading opponent of President Trump’s immigration policies, canceled a planned event after news of the lawsuit broke Thursday and held a brief news conference the next day.

The mayor, 61, took no questions, but dismissed the suit as accusations from a “troubled” man.

“These allegations, dating back to a period of more than 30 years, are simply not true,” he said, noting that he still plans to run for reelection later this year.

Raised in Seattle, Murray was a campaign manager for Washington's first openly gay state senator in the 1980s, according to the Associated Press.

Toward the end of the decade, according to the lawsuit, he met a homeless, drug-addicted 15-year-old on a bus.

“Young and curious, D.H. encountered Ed Murray upon the bus and developed a friendly interaction,” reads the lawsuit.

This quickly turned into a regular negotiation, it reads, with the teen “willing to do whatever Mr. Murray asked for as little as \$10 to \$20.”

The plaintiff, now 46, was named only by initials in the lawsuit. But he gave an interview to the Times, recalling: “He'd be doing certain things, and I'd tell him to stop, and he wouldn't stop.”

The lawsuit — filed because the statute of limitations precludes criminal charges after so many years — goes into explicit detail about the alleged sexual encounters between the two.

It describes the apartment's floor plan. It also describes intimate physical descriptions of Murray that match the account of another accuser who did not sue: Lloyd Anderson.

Anderson told the Times that he met the future mayor as a teen in the early 1980s — when he and Simpson were both living in a group home in Portland.

Murray invited Anderson home and gave him \$30 and some marijuana in return for oral sex, he told the newspaper.

Simpson told the Times he lived off-and-on with Murray for years, having sex regularly, and reported the molestation to his group home manager after an argument in 1984 — though nothing came of it.

Authorities pursued a sodomy investigation against Murray that same year, according to the Associated Press, but dropped it.

Anderson and Simpson took their accusations to the media and Washington lawmakers in 2008, the Times reported — when Murray was a state senator known for championing same-sex marriage and other gay rights causes.

The Times explained why it didn't print the accusations until last week, when claims in the public lawsuit echoed their accounts:



“Murray denied the accusations to reporters and hired an attorney, who worked to discredit the men largely based on their criminal pasts,” the paper reported. “Neither the Seattle Times nor other media publicly reported the allegations, and Murray’s political career continued to rise.”

He won the Seattle mayor's office in 2012, wooing liberal voters with a promise to raise the minimum wage to \$15 an hour.

This year, Murray became a leading voice in the West Coast resistance to Trump's agenda — particularly the president's promise to target undocumented immigrants.

His office did not immediately reply to The Washington Post, though Murray's personal spokesman called the lawsuit “a shakedown effort within weeks of the campaign filing deadline,” according to the Associated Press.

The plaintiff, however, said he never asked Murray for money, and decided to sue in an effort to heal after breaking a long drug addiction.

“You don't do no dirt to nobody and think you're going to get away with it, you know,” he told the Times.

*A previous version of this article incorrectly said the Seattle Times interviewed Murray's accusers after the lawsuit was filed. A Times reporter told The Post that all three men gave interviews before the filing.*

### **More reading:**

MSNBC host’s conspiracy theory: What if Putin planned the Syrian chemical attack to help Trump?

It’s now illegal in Russia to share an image of Putin as a gay clown

Avi Selk is an American-Canadian nomad. He reported for the Dallas Morning News from 2009 until December 2016, when he joined the general assignment desk. 🐦 Follow @aviselk

# Exhibit F

[seattlepi.com http://www.seattlepi.com/local/politics/article/Mayor-Murray-loves-his-stressful-job-I-am-6827565.php](http://www.seattlepi.com/local/politics/article/Mayor-Murray-loves-his-stressful-job-I-am-6827565.php)

## Mayor Ed Murray loves his stressful job: 'I am going to run for re-election'

By [Joel Connelly](#), SeattlePI Updated 9:05 am, Saturday, February 13, 2016



Seattle Mayor Ed Murray confers with U.S. Labor Secretary Tom Perez. Seattle has enacted a phased in \$15-an-hour minimum wage. The Obama administration has been unable to get Congress to enact a \$10-an-hour federal minimum wage.

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Ed Murray is usually profiled as intense and sensitive -- he is both -- but the Seattle mayor insists he is a happy warrior in a job from which voters sent packing his three recent predecessors.

Murray is already looking ahead to extending his stay on the seventh floor of City Hall as he prepares to deliver next Tuesday's "state of the city" speech.

"I love being mayor more than anything I have ever done. I am going to run for re-election (in 2017)," Murray said in an interview. He is just over halfway through his term.

"There are days I figure, I was made for this job," he added. "I could not go back to being a legislator."

Tension goes with the job: A mayor's screw-ups are out in the open for all to see.

The great New York Mayor Fiorello LaGuardia once quipped: "When I make a mistake, it's a beaut." Mayor Greg Nickels found that out when snow clogged Seattle streets for days in December 2008. He didn't survive the 2009 primary.

During the 2001 Fat Tuesday riot, in which a young man was beaten to death, Mayor Paul Schell slumbered a few blocks away in his condominium. Shell was a political casualty in the September primary.

Murray will never be caught napping. He keeps two phones by his bed so Seattle Police Chief Kathleen O'Toole can reach him at any time. With any developing situation, and any disorder, "the mayor should know," he said.

He has experienced days that drain.

On June 7, 2014, Murray spent hours at Seattle Pacific University, where a gunman had killed one student and injured two other people. He ended the day at the memorial for two young gay men, Dwone Anderson-Young and Ahmed Said, gunned down in Leschi as they walked home from a club.

"Part of leadership is being out there," said Murray. After a pause, he added: "It motivates me."

The first half of Murray's term has seen prosperity -- Seattle is high in all sorts of rankings of where to live and work -- but growth has inflicted severe pains on the less well-off.

The city has made genuine strides in addressing inequality.

The ramp-up to a \$15-an-hour minimum wage was hammered out by a Murray-appointed panel and celebrated in Seattle by U.S. Labor secretary Tom Perez. A city-wide pre-school system is in its embryonic stage.

A U.S. Justice Department's monitor has praised progress in reforming the Seattle Police Department. The city's voters were persuaded to approve a \$930 million "Move Seattle" transportation plan, even though they drive on bumpy streets where repairs were promised a decade ago.

By looking at the Seattle mayor's office, you could swear that Murray was up for re-election next month.

Hizzoner runs a highly political, pretty high-pressure operation.

Aides rotate out, often to other city jobs, professing their continued loyalty but remarking on the pace. Murray keeps up the pace with an average of about three public announcements a week. He attends weekend community events at the pace of a New York mayor.

Why does this man have to run so hard? A trio of reasons:

-- He is being pressed by far-left activists who aren't seeking solutions but use every social issue as an organizing tool. The city has a cadre of professional protesters. "It is as if the left has been exposed to tactics of the far right," Murray said.

The mayor is clearly frustrated with those who, in his words, "will not cooperate, do not collaborate," and are in the business of "vilifying people on their own side." Murray believes Seattle could be "a model for the rest of the country of how progressives can collaborate to get things done."

-- Murray is having to revise the "Seattle way," the city's process-driven style, defined as everybody being consulted on everything. He believes in consultation, but "with a deadline."

The Murray solution is to appoint a task force, load it down with people who normally don't get along and hammer on it to work out an answer at least barely acceptable to all.

It doesn't work at times. Homelessness defies all deadlines. The crisis involves mentally ill people, a heroin epidemic and housing programs gutted by the Reagan administration and never restored, leading to the extraordinary challenge of getting people out of shelters and into housing.

-- It's in Murray's DNA. He's a product of the Kennedy-Johnson years in which government was seen as an agent of change, with a duty to help people. He's a social-gospel Catholic educated by Holy Cross fathers at the University of Portland.

Liberal Seattle is a lightning rod for the state's political right, even to the point of coining a vague derogatory term: "Seattle values."

"If you're a statewide candidate, run against Seattle," Todd Herman, 770 radio host, urged Republicans at their annual Roanoke Conference last month.

Senate Majority Leader Mark Schoesler, a Republican from Ritzville, spoke disparagingly of "the Sawant Democrats' way of doing business," a reference to Seattle City Councilwoman Kshama Sawant.

Murray bristles a bit. Sawant is not a Democrat and not a game player. The mayor also worries a bit, as he puts it, "that Seattle could be seen floating away from the rest of the state."

But he is fiercely proud of the city's activist government.

"Marriage equality was a Seattle value that is not a state value," he said. "A higher minimum wage is a Seattle value. Pre-K (education) is a Seattle value that is now a state value.

"Another Seattle value? Business is booming and moving here."

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**H E A R S T**

# Exhibit G

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17 APR 06 PM 1:30

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CASE NUMBER: 17-2-09152-9 SEA

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7 SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR KING COUNTY

9 D.H.,

10 Plaintiff,

11 v.

12 MAYOR EDWARD MURRAY,

13 Defendant.

NO.

**COMPLAINT FOR DAMAGES:  
CHILD SEX ABUSE & ILLEGAL  
CHILD PROSTITUTION**

14  
15 COMES NOW the Plaintiff, by and through his attorneys of record, and by way of  
16 claim allege, and upon information and belief upon all other matters, as follows:

17 **I. PARTIES**

18 1. Plaintiff D.H. is an adult male born in February of 1971 and is the child sex  
19 victim Ed Murray.<sup>1</sup>

20 2. Defendant the Honorable Mayor Edward Murray, now age 61, is a Seattle  
21 resident and at the time of most of these incidents previously resided at [REDACTED]  
22 [REDACTED] Seattle, Washington.

23  
24  
25  
26 <sup>1</sup> For the related privacy principles, see *R.P. v. Seattle School District*, WL 639408 (Feb 18, 2014) (holding that sex abuse victim's identity is protected from public disclosure).



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## II. FACTS

3. As a young child, at the age of fifteen (15), the plaintiff, D.H., would frequently ride the Metro Bus Number-7 in the Capitol Hill area. D.H. had recently dropped out of ██████████ high school during the 9<sup>th</sup> grade. D.H. was homeless and his parents were also on drugs. Young and curious, D.H. encountered Ed Murray upon the bus and developed a friendly interaction. Mr. Murray was approximately age thirty-two (32) at the time, and propositioned D.H. for private visits at his Capitol Hill apartment. D.H. recalls Mr. Murray's old phone number: ██████████ D.H. recalls that as you enter the apartment, the bathroom is to the right, and across from the bathroom was the sole bedroom.

4. The interaction turned sexual. Prior to the sex acts, Mr. Murray asked D.H. his age, and he responded truthfully, age 15. Mr. Murray propositioned D.H. in the form of sex acts for money – a form of child prostitution. Addicted to drugs at the time, D.H. was willing to do whatever Mr. Murray asked for as little as \$10-20 dollars. The sex acts included various forms of intercourse – anal of course – and oral sex acts, with Mr. Murray always on the receiving end of oral interactions. At times, the sex turned aggressive, beyond a point to which D.H. was comfortable and/or felt that to which he had agreed. During the relevant time-frame back 1986, D.H. recalls discussing the sexual encounters with his friend, F.W. Eventually, D.H. came to understand that Mr. Murray was doing work in politics at a location “*across the street from the King County Jail*” at the time.

5. D.H. recalls that Mr. Murray most enjoyed having his nipples pinched during sex – Mr. Murray has a very freckled chest. At the time, and likely still so, Mr. Murray had a distinctive genital region including reddish pubic hair and a unique mole on his scrotum – it is

1 a small bump. Mr. Murray indicated that he enjoyed sex more if D.H. was dirty -- literally  
2 unclean -- and told D.H. not to bathe prior to sex. The sexual interactions at issue – underage  
3 sex for small-amounts of money – continued for an extended period of time. Admittedly,  
4 D.H. was convicted of various charges that include an extensive drug addiction, and acts of  
5 prostitution in 1990 during unrelated sting operation.  
6

7 6. On at least one occasion, D.H. was at Mr. Murray’s home when another  
8 apparently under-aged boy was at the apartment. D.H. was of the understanding that Mr.  
9 Murray was having sex with the other boy for money at the same time. D.H. recalled the  
10 other light-skinned boy from the Broadway area, where everyone would hang out. Mr.  
11 Murray wanted D.H. to participate in the sex acts as a group. D.H. participated indirectly, but  
12 “*did not fully indulge*” out of embarrassment at the proposition.  
13

14 7. As an independent contention that can be expressly admitted or denied: Mr.  
15 Murray has had sex with at least one (1) underage boy for money. This question should be  
16 easy to answer and not require *any* investigation by Mr. Murray. Mr. Murray has either (1)  
17 had sex with an underage boy for money, or (2) Mr. Murray has not. To the extent that Mr.  
18 Murray suggests an inability to respond to this overall Complaint based upon D.H. being  
19 referenced solely by his initials, Mr. Murray can still respond to this contention. Mr. Murray  
20 cannot reasonably respond, “*which boy*” to this contention.  
21

22 8. Only within the immediate past was it that D.H.’s father died. This event, the  
23 death of D.H.’s father, prompted moments of reflection and introspection that included  
24 counseling at Sound Mental Health. These moments of reflection, and awareness that Mr.  
25 Murray maintains a position of authority, prompted the filing of this lawsuit in an attempt at  
26

1       accountability, and to hopefully give courage for other potential victims to come forward and  
2       speak out. According to D.H., he and Mr. Murray have had a few brief telephone interactions  
3       over the years. D.H. would be shocked if Mr. Murray does not recall *exactly* who he was.  
4       D.H. is currently participating in the Reach Program and trying to stay clean and move his life  
5       in a positive direction.

6               9.       An early step in this lawsuit will be deposing Mr. Murray, which should occur  
7       within the first ninety (90) days of filing. D.H. believes that it will be hard, if not nearly  
8       impossible for Mr. Murray to deny the abuse. Notably, Mr. Murray has accepted collect calls  
9       at his home from D.H. over the years. Natural speculation would lead some people to believe  
10       that D.H.’s actions are politically motivated – which is not exactly true. In this regard, D.H. is  
11       disturbed that Mr. Murray maintains a position of trust and authority, and believes that the  
12       public has a right to full information when a trusted official exploits a child. To the extent  
13       that D.H. has any political motivations for outing Mr. Murray, they stop there. It should be  
14       noted that at no point in time, not even prior to filing this lawsuit, did D.H. make any financial  
15       demands of Mr. Murray – other than trading sex acts for money as described herein. D.H. has  
16       counseling records.

### 19                               **III.    CHILDHOOD SEX ABUSE**

20               10.       Mr. Murray repeatedly and criminally raped and molested D.H. when he was  
21       legally unable to consent. Mr. Murray’s violations were repugnant and unlawful under  
22       chapter 9A.44 RCW and/or RCW 9.68A.040. RCW 9.68A.005 explains that “The legislature  
23       finds that the prevention of sexual exploitation and abuse of children constitutes a government  
24       objective of surpassing importance. The care of children is a sacred trust and should not be  
25

1 abused by those who seek commercial gain or personal gratification based on the exploitation  
2 of children. The legislature further finds that the protection of children from sexual  
3 exploitation can be accomplished without infringing on a constitutionally protected activity.  
4 The definition of 'sexually explicit conduct' and other operative definitions demarcate a line  
5 between protected and prohibited conduct and should not inhibit legitimate scientific,  
6 medical, or educational activities. The legislature further finds that children engaged in  
7 sexual conduct for financial compensation are frequently the victims of sexual abuse.  
8 Approximately eighty to ninety percent of children engaged in sexual activity for financial  
9 compensation have a history of sexual abuse victimization. It is the intent of the legislature to  
10 encourage these children to engage in prevention and intervention services and to hold those  
11 who pay to engage in the sexual abuse of children accountable for the trauma they inflict on  
12 children." According to RCW 9.68A.100, "(1) A person is guilty of commercial sexual abuse  
13 of a minor if: (a) He or she pays a fee to a minor or a third person as compensation for a  
14 minor having engaged in sexual conduct with him or her..." RCW 9.68A.102(3) explains  
15 that "Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act  
16 or sexual conduct itself, does not constitute a defense to any offense listed in this section.  
17  
18

19 **IV. STATUTE OF LIMITATIONS: RCW 4.16.340**

20 11. According to RCW 4.16.340, (1) All claims or causes of action based on  
21 intentional conduct brought by any person for recovery of damages for injury suffered as a  
22 result of childhood sexual abuse shall be commenced within the later of the following periods:  
23 (a) Within three years of the act alleged to have caused the injury or condition; (b) Within  
24 three years of the time the victim discovered or reasonably should have discovered that the  
25  
26

1 injury or condition was caused by said act; or (c) Within three years of the time the victim  
2 discovered that the act caused the injury for which the claim is brought: PROVIDED, That the  
3 time limit for commencement of an action under this section is tolled for a child until the child  
4 reaches the age of eighteen years. (2) The victim need not establish which act in a series of  
5 continuing sexual abuse or exploitation incidents caused the injury complained of, but may  
6 compute the date of discovery from the date of discovery of the last act by the same  
7 perpetrator which is part of a common scheme or plan of sexual abuse or exploitation. (3) The  
8 knowledge of a custodial parent or guardian shall not be imputed to a person under the age of  
9 eighteen years. (4) For purposes of this section, “child” means a person under the age of  
10 eighteen years. (5) As used in this section, “childhood sexual abuse” means any act  
11 committed by the defendant against a complainant who was less than eighteen years of age at  
12 the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW  
13 9.68A.040 or prior laws of similar effect at the time the act was committed.  
14  
15

16 12. Finding—Intent—1991 c 212: “The legislature finds that: (1) Childhood  
17 sexual abuse is a pervasive problem that affects the safety and well-being of many of our  
18 citizens. (2) Childhood sexual abuse is a traumatic experience for the victim causing long-  
19 lasting damage. (3) The victim of childhood sexual abuse may repress the memory of the  
20 abuse or be unable to connect the abuse to any injury until after the statute of limitations has  
21 run. (4) The victim of childhood sexual abuse may be unable to understand or make the  
22 connection between childhood sexual abuse and emotional harm or damage until many years  
23 after the abuse occurs. (5) Even though victims may be aware of injuries related to the  
24 childhood sexual abuse, more serious injuries may be discovered many years later. (6) The  
25  
26

1 legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood  
2 sexual abuse cases. At that time the legislature intended to reverse the Washington supreme  
3 court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986). It is still the  
4 legislature's intention that *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986) be reversed, as  
5 well as the line of cases that state that discovery of any injury whatsoever caused by an act of  
6 childhood sexual abuse commences the statute of limitations. The legislature intends that the  
7 earlier discovery of less serious injuries should not affect the statute of limitations for injuries  
8 that are discovered later.” D.H.’s statute of limitations is preserved under these assorted  
9 provisions. By and through this civil litigation process, D.H. intends to seek answers  
10 regarding the abuse, and the impact upon her life and personal well-being.  
11

12 **V. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests a judgment against Defendant:

14 (a) Awarding Plaintiff general damages including loss of consortium and special  
15 damages in an amount to be proven at trial;

16 (b) Awarding him reasonable attorney’s fees and costs as available under law;

17 (c) Awarding him any and all applicable interest on the judgment; and

18 (d) Awarding him such other and further relief as the Court deems just and proper  
19 under the circumstances of this case.  
20

21 //

22 //

23 //

24 //

1 Respectfully submitted this 4<sup>th</sup> day of April, 2017.

2 CONNELLY LAW OFFICES, PLLC

3 *Lincoln C. Beauregard*

4 By \_\_\_\_\_

5 Lincoln C. Beauregard, WSBA No. 32878

6 Julie A. Kays, WSBA No. WSBA No. 30385

Attorney for Plaintiff

7 L.A. LAW & ASSOCIATES, PLLC

8 *Lawand Anderson*

9 By \_\_\_\_\_

10 Lawand Anderson, WSBA No. 49012

11 Attorney for Plaintiff

# Exhibit H





# SLOG

NEWS

## Guest Editorial: The Motivation Is Political

by [Mayor Edward B. Murray](#) · Apr 14, 2017 at 9:00 am

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**Mayor Ed Murray** KELLY O

Last Wednesday night, I received the shock of my life when I learned what all of Seattle would read about the next day: an anonymous person is accusing me of terrible acts that allegedly occurred thirty years ago.

I have denied this accusation, and will continue to do so. It is simply not true.

To be clear, I will remain focused on running the city and will continue building upon the many accomplishments we have achieved together during my time as mayor, including reforming the police department, building more affordable housing, raising the minimum wage, closing racial disparities in our public schools, addressing homelessness, and so much more.

I will not let any unfounded accusation upend my administration.

But I think it's important for the public to understand how this unfounded accusation was given a public airing in the first place. The *Seattle Times* wonders in an editorial how much voters must continue to endure. But what the *Times* refers to as “sordid theater” all could have been avoided, not coincidentally, by the *Seattle Times* itself.

Assume for the sake of argument that the accuser is not telling the truth. Under this assumption, I have been deeply wronged – and that matters to me. But how we got to this point, where a sitting mayor must now publicly defend himself against something so reprehensible but untrue and prove his innocence – that matters to our democracy.

By way of background, the *Seattle Times* called me the night before it was set to publish. The *Times* shared some details of the accusation – although not the filing itself – only hours before the story was printed online. To this day, the identity of the accuser is unknown to me. I had no opportunity to present the *Seattle Times* with any information or evidence that might refute the accusation made against me, or to demonstrate that the story was verifiably false and that it should not, could not be printed.

I have a deep respect for the press, and understand the pressures to break the news when an explosive claim like this is made – but in this case, this imperative was not sufficiently balanced with the truth. Troublingly, the *Seattle Times* made the editorial decision to lower the standard of proof. Instead of seeking to verify – with evidence – the unsubstantiated accusation, it was enough only that the accusation was made.

The *Seattle Times* notes that it investigated an earlier accusation against me made in 2008 and found it without merit, but changed its mind in light of the new accusation.

Let's explore that for a moment.

The first accuser attempted to take his accusation public only after he sought payment from me. He has a history of making false allegations against other guardian figures. And, most importantly, law enforcement had long ago investigated and declined to prosecute.

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Additionally, his extensive criminal history is very relevant. I would never suggest that those with criminal histories cannot be victims of abuse. Rather, his criminal history proves he cannot be trusted. He has been convicted of numerous crimes of dishonesty, including identity theft, fraud, false emergency reporting and forgery, in addition to numerous convictions related to robbery, theft, unlawful use of weapons, delivery of controlled substances, criminal conspiracy and even attempted kidnapping.

The *Seattle Times* rightly rejected his accusation at the time.

In 2012, the accuser tried to bring his claims forward again as I was leading the fight for marriage equality – an important detail, for reasons which will become clear shortly. The *Seattle Times* and other media outlets rejected these claims then too.

So why is all this important? Because the *Seattle Times* reports that the new and old accuser claim not to be associated with each other. This is a crucial point. Because if they are associated with each other, then there are not actually two independent accusations being made, but rather one already discredited accusation being reiterated.

Salaciously, both accusers provided the same description about distinguishing marks related to my private anatomy. Their accusations against me rest upon their being correct about this description, because unlike my phone number or address, these details are not readily publicly available.

This week, I proved this description categorically false.

It brought me no great joy to do so in a public forum, but the *Seattle Times* did not grant me the opportunity to provide such a critical piece of evidence before it printed its story. Not only does this evidence show that the accusers have fabricated their claims against me, but I believe it shows they have coordinated with each other.

Coordination implies motivation, and I believe the motivation is political. This accusation, after all, is a hateful, homophobic stereotype brought to life.

Here's what I know:

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Since 2008, the virulently bigoted Faith & Freedom Network has actively opposed my work to champion LGBTQ rights, and has openly resented my successful effort to pass the civil rights bill in 2008 and marriage equality in 2012. Since 2008, Gary Randall, its president and founder, has written about me on his blog (paid for by the Faith & Freedom Network PAC) more than 120 times. Just this week Randall admitted that he personally pitched the previous accusations against me to the *Seattle Times* and other legislators in 2008. He attacked me relentlessly during the marriage equality debate in 2012, and wrote about the accusations against me then.



Fast forward to 2017. Another civil rights effort that I am championing – this one regarding equal rights for transgender individuals – is under assault from the far right. An individual named Jack Connelly and his wife have contributed \$50,000 to the "Just Want Privacy" campaign opposing basic restroom rights for transgender people. And Connelly's law firm is the very same firm that has now brought forward the lawsuit against me. Indeed, the accuser's primary attorney has admitted in the press that his partner holds firm anti-LGBTQ positions – positions which led me as a senator and chair of the Senate Democratic Campaign Committee to refuse to support Connelly when ran for the state Senate in 2012.

These are not coincidences. Given the involvement of right wing organizations, the LGBTQ community should be extremely concerned, and I will continue to explore the connections between my accusers, anti-LGBTQ groups and each other. It is also not a coincidence that the lawsuit was timed to be filed just weeks before the campaign filing deadline, with the opposing counsel attempting to rush to depose me before the deadline as well. In the legal filing, the accuser admits that he seeks to remove me as mayor.

This is the agenda that the *Seattle Times'* eagerness to break a story has furthered.

But not only did The *Seattle Times* rush to publish a damaging but untrue and unsubstantiated story, it rushed to judgement only six days later by calling on me not to run for re-election based on its own damaging but untrue and unsubstantiated story. This effort of self-fulfilling prophecy sets a reckless precedent. Not a single community leader has made

a similar statement, electing instead to let the democratic and judicial process work. It is extremely unorthodox for a newspaper to get out in front of the community and the process in an attempt to influence an outcome like this.

Again, assume for the sake of argument that my accuser is not telling the truth.

What has been the cost to our city?

*Ed Murray is the 53rd Mayor of Seattle.*

*Comments are now opened.*

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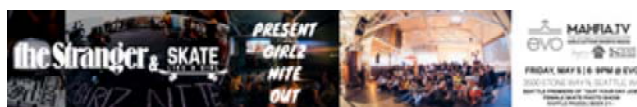
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# Exhibit I

74 Tex. L. Rev. 147

Texas Law Review

November 1995

Note

TO PROVIDE FOR THE LEGAL DEFENSE: LEGAL DEFENSE FUNDS AND FEDERAL ETHICS LAW<sup>d</sup>

Johnny Carter

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## WESTLAW LAWPRAC INDEX

### ETH--Ethics & Conflicts of Interest

“Few men have the virtue to withstand the highest bidder.”

--George Washington<sup>1</sup>

#### I. Introduction

Forty years ago, Senator Paul Douglas wrote an influential little book, *Ethics in Government*.<sup>2</sup> The book noted the corruptive influence of large campaign donations on candidates for public office.<sup>3</sup> It strongly criticized the acceptance of gifts by senators and congressmen<sup>4</sup> and proposed mandatory financial disclosure and a code of government ethics.<sup>5</sup> This book represented the beginning of an ethics revolution that has forever altered the way government does business. Nevertheless, there are more opportunities for corruption today than forty years ago because more money and power are concentrated in Washington today than ever before.<sup>6</sup> Ironically, one of those opportunities is open only to those officials who are already in legal trouble. Over the past fifteen years, public officials have collected millions of dollars of private donations to fund their legal defenses. Invariably, special interests rush to contribute, raising many of the same concerns Senator Douglas wrote about forty years ago.

**\*150** Legal defense funds are a relatively new phenomenon in Washington,<sup>7</sup> and the law governing them is quirky, allowing officeholders to accept very large donations. This Note will examine the methods and consequences of federal legal defense fund regulations in order to develop positive suggestions for change. The remainder of this Introduction explores some established funds and demonstrates the prevalence of the funds in Washington. Part II of this Note examines the factors that have led to the recent rise of legal defense funds. Part III explains the law governing legal defense funds. Part IV examines the structure of federal laws regulating corruption. Part V shows how legal defense funds are an anomaly in the law regulating corruption and examines the various interests weighing for and against stricter regulation of legal defense funds. Finally, it proposes a balanced approach that preserves the ability of officials to collect legaldefense **\*151** funds while allaying public concerns about corruption associated with the funds.

No one knew more about how to use power than Dan Rostenkowski. He was elected to Congress in 1958, with the backing of Richard J. Daley, the boss of Chicago.<sup>8</sup> He did not rock the boat in Congress; instead, he became “very skillful at the inside politics of the House--the vote counting and vote trading and pork barreling.”<sup>9</sup> Within five years,

Rostenkowski's skill landed him a spot on the powerful Ways and Means Committee. Ways and Means dealt with tax policy and determined on which committees other members would serve.<sup>10</sup> By 1981, he had become chairman of the Committee,<sup>11</sup> and, as one commentator put it, "When you're the chairman of the Ways and Means Committee, people just love to give you money and other nice things."<sup>12</sup> When he wanted to have a gala to celebrate the bicentennial of the Ways and Means Committee, donors kicked in \$768,000 to pay for it.<sup>13</sup> Rostenkowski was considered by some the "second-most powerful man in Washington."<sup>14</sup> But his style, honed in the ward politics of Chicago and the Old Boy's Club of 1960s Washington, did not jibe well with the modern politics of the 1990s. In 1992, a grand jury quietly began investigating various practices of Rostenkowski's office.<sup>15</sup> The investigation climaxed in a seventeen-count indictment in May 1994, alleging mail fraud, wire fraud, tampering with a witness, concealing facts from Congress, and embezzlement of public funds.<sup>16</sup> Rostenkowski was prepared, having amassed a hefty legal defense fund to combat the allegations.<sup>17</sup> The contributors were a who's who of corporate America: Anheuser-Busch PAC, Federal Express, Metropolitan Life Insurance, Pepsi Cola General Bottlers Inc., Philip Morris, The Tobacco Institute, Donald Trump, Tyson Corporation, and others.<sup>18</sup> The fund eventually reached over \$1.4 million.<sup>19</sup> But when he was defeated **\*152** in the November 1994 election by an unknown Republican,<sup>20</sup> Rostenkowski quickly lost his ability to raise cash.<sup>21</sup> The Rostenkowski prosecution has devolved into a prolonged, relatively low-profile turf war between government prosecutors and the former congressman.<sup>22</sup>

Until he was forced to resign,<sup>23</sup> Bob Packwood was one of the most powerful men in Washington, the ranking Republican or the Chairman of the Senate Finance Committee for a decade.<sup>24</sup> In November 1992, three weeks after Packwood was elected to a fifth term, The Washington Post ran a front-page story chronicling the stories of several women who accused Packwood of sexual harassment and other sexual improprieties.<sup>25</sup> The stories multiplied until twenty-eight women had accused Packwood of forcibly grabbing, fondling, or kissing them.<sup>26</sup> The Senate Select Committee on Ethics launched an investigation that Packwood fought every step of the way.<sup>27</sup> He hired high-priced lawyers<sup>28</sup> and began to incur massive legal bills.<sup>29</sup> Within two months of the initial allegations, Packwood had established a legal defense fund.<sup>30</sup> He was a very successful fundraiser. Public outrage accompanied the disclosure of large contributions to the fund by corporate executives and corporate lobbyists. Some angry consumers initiated personal boycotts of contributors such as MCI and Amoco.<sup>31</sup> Many CNN employees vehemently protested the donation **\*153** that CNN's parent company, Turner Broadcasting System, made to the fund.<sup>32</sup> Donations eventually tapered off,<sup>33</sup> but Packwood's fund still had raised \$636,000 through June 1995.<sup>34</sup> This amount provided a sharp contrast to the resources available to Packwood's accusers, who "had to scramble for pro bono legal assistance to help fend off Packwood's counterattacks and to prepare them to testify before the Ethics Committee . . ."<sup>35</sup> The women sought twenty-six dollar donations and sold T-shirts and bumper stickers to raise money.<sup>36</sup>

Public interest in legal defense funds reached a new level when President Clinton, beset by the Whitewater scandal and a sexual harassment lawsuit, established a fund on June 28, 1994.<sup>37</sup> Criticism was immediate and withering.<sup>38</sup> Nevertheless, the Clinton fund garnered \$608,080 in its first six months of operation.<sup>39</sup> Donors included celebrities such as Barbra Streisand, Sean Penn, and Garrison Keillor, as well as the usual bevy of corporate officers.<sup>40</sup>

No other sitting president has had a legal defense fund,<sup>41</sup> but funds have been common in the legislative branch for a number of years. In addition to Senator Packwood, Senators David Durenberger,<sup>42</sup> Orrin Hatch, **\*154** <sup>43</sup> Mark Hatfield,<sup>44</sup> Alan Cranston,<sup>45</sup> Alphonse D'Amato,<sup>46</sup> Harrison Williams,<sup>47</sup> Tom Harkin,<sup>48</sup> Brock Adams,<sup>49</sup> Joe Biden,<sup>50</sup> and Kay Bailey Hutchison<sup>51</sup> have created large funds to support their efforts to fend off various legal

problems. In addition to Rostenkowski, Representatives Barney Frank,<sup>52</sup> Jim Wright,<sup>53</sup> Nicholas Mavroules,<sup>54</sup> \*155 Floyd Flake,<sup>55</sup> Harold Ford,<sup>56</sup> Joseph McDade,<sup>57</sup> Mary Rose Oakar,<sup>58</sup> Mel Reynolds,<sup>59</sup> Walter R. Tucker,<sup>60</sup> Charles Diggs,<sup>61</sup> Dan Flood,<sup>62</sup> Robert Garcia,<sup>63</sup> Frank Thompson Jr.,<sup>64</sup> George Hansen,<sup>65</sup> Don Young,<sup>66</sup> John Jenrette,<sup>67</sup> and Gerry Studds<sup>68</sup> have used legal defense funds. Even congressional aides have established funds.<sup>69</sup> Executivebranch \*156 employees have also established funds, but usually only after leaving office.<sup>70</sup>

## II. The Advent of the Legal Defense Fund

Legal defense funds are a new phenomenon in American politics. They have only been prevalent since the late 1970s.<sup>71</sup> A key to understanding the political and regulatory dynamics of legal defense funds is understanding the reasons legal defense funds have become widespread only recently. This Part will set forth three interrelated reasons for the advent of legal defense funds: the increased cost of legal services, the increased investment in politics, and the increased exposure of corruption.

### A. The Increased Cost of Legal Services

Top-notch legal services have become incredibly expensive. It is not uncommon for a powerful official with legal troubles to amass more than a million dollars of legal expenses. Examples include former Senator David Durenberger, who was indicted for illegally billing the government for the use of a condominium,<sup>72</sup> Senator Packwood,<sup>73</sup> and Representative Rostenkowski. \*157 <sup>74</sup> The congressman most afflicted with legal fees is Representative Harold Ford, who spent \$4.5 million defending himself against various fraud charges.<sup>75</sup> As of January 1995, President Clinton had been billed \$655,000 by Williams & Connolly, which is handling Whitewater, and \$601,246 by Skadden, Arps, Slate, Meagher, & Flom, which is handling the Paula Jones sexual harassment case.<sup>76</sup> In fact, the fund has paid \$45,855 to defend itself against lawsuits by public interest groups.<sup>77</sup> These high fees provide a strong incentive for an officeholder to open a legal defense fund.

### B. The Increased Investment in Politics

Over the last twenty years, private entities have been increasingly willing to invest money in the business of influencing government. For example, the amount of contributions to House and Senate campaigns has risen eightfold over the last two decades--from \$62.2 million in 1972<sup>78</sup> to \$518.37 million in 1994.<sup>79</sup> The number of registered lobbyists in Washington has also increased--from three thousand in 1965 to nearly twenty-five thousand in 1993.<sup>80</sup> Additionally, the number of major corporate offices in Washington increased from fifty in 1961 to nearly one thousand in 1993, probably to facilitate corporate lobbying.<sup>81</sup>

Washington is suffused with special-interest money.<sup>82</sup> Political action committees (PACs) have more money to spend than the campaign finance limits will allow, and some PACs exist simply to link up other PACs with promising candidates who need contributions.<sup>83</sup> In this atmosphere, officeholders \*158 s are certain to find willing contributors to their legal defense funds.

### C. The Increased Exposure of Corruption

More officeholders use legal defense funds because more are in legal trouble. Attitudes toward, and treatment of, corruption have changed markedly over the last twenty-five years.<sup>84</sup> Although there may have been no increase in

actual corruption,<sup>85</sup> the last twenty-five years have seen an unprecedented drumbeat of investigation and prosecution of official misfeasance.

More officials face the threat of criminal sanctions. For example, the number of state and local officials facing federal indictment increased tenfold **\*159** between 1970 and 1987--from 36 to 348.<sup>86</sup> Members of Congress, too, feel the sting of indictment. Often, there are several sitting representatives and senators under indictment at one time. In 1980, seven House members and one senator were indicted--seven in connection with the Abscam sting<sup>87</sup> and one on sex charges.<sup>88</sup> Late in 1994, four congressmen and one senator were under indictment.<sup>89</sup> Each had a legal defense fund.<sup>90</sup> As of July 1995, three congressmen were under indictment.<sup>91</sup>

However, criminal sanctions are not the only sanctions officials fear. Congressional investigations of misconduct in government have also proliferated since Watergate. Congress has increasingly investigated even its own members. The last fifteen years have produced a “bumper crop” of investigations of congressmen accused of financial misconduct.<sup>92</sup> The House and Senate Ethics Committees have investigated dozens of members, including current House Speaker Newt Gingrich and Senator Phil Gramm, for financial improprieties.<sup>93</sup> Some of these investigations have led to resignations, such as the resignations of House Speaker Jim Wright<sup>94</sup> and House Democratic Whip Tony Coelho in 1989.<sup>95</sup> Other investigations, sometimes paired with criminal investigations, have led to serious sanctioning of members. In 1980, for the first time, the House of Representatives **\*160** expelled one of its own members for corruption: Representative Michael Myers, who had been convicted for accepting bribes, conspiracy, and racketeering as a result of the Abscam sting.<sup>96</sup> The Senate, which until 1979 had only disciplined two members for corruption,<sup>97</sup> has recently disciplined Herman Talmadge,<sup>98</sup> David Durenberger,<sup>99</sup> and Alan Cranston.<sup>100</sup> Until 1976, the House had disciplined only six members for corruption.<sup>101</sup> Since 1976, ten representatives have been disciplined: Charles Diggs,<sup>102</sup> John McFall,<sup>103</sup> Edward Roybal,<sup>104</sup> Charles Wilson,<sup>105</sup> Robert Sikes,<sup>106</sup> George Hansen,<sup>107</sup> Austin Murphy,<sup>108</sup> Gerry Studds,<sup>109</sup> Daniel Crane,<sup>110</sup> and Barney Frank.<sup>111</sup>

**\*161** The increased exposure of corruption, through both criminal prosecutions and congressional investigations, can be traced to the declining trust in government usually blamed on Vietnam and Watergate.<sup>112</sup> In 1964, surveys showed that seventy-seven percent of Americans trusted government.<sup>113</sup> In 1994, public trust in government had dropped to a record-low nineteen percent.<sup>114</sup> Faced with declining support, government has continually tried to clean up its act. New prosecutorial zeal and new ethics laws have combined to make Washington less safe for corruption.

The ethics revolution predates Watergate. As early as 1952, Senator Douglas's Ethics in Government advocated financial disclosure for federal officials and a government code of ethics.<sup>115</sup> In 1958, Congress passed a Code of Ethics for Government Service, an aspirational, toothless Ten Commandments-style list of “dos” and “don'ts” for all government employees.<sup>116</sup> The Senate established an ethics committee--the Select Committee on Standards of Conduct--in 1964, in the wake of the Bobby Baker scandal.<sup>117</sup> The House of Representatives established its Select Committee of Standards and Conduct in 1967 as a reaction to the scandals involving Representative Adam Clayton Powell<sup>118</sup> and passed a Code of Conduct and financial disclosure requirement in 1968.<sup>119</sup>

Despite the reform efforts of the 1950s and 1960s, the seminal event in American ethics regulation was Watergate. The magnitude of our worst corruption scandal shook American politics to its knees, toppling a presidential administration and setting the stage for the ethics-oriented 1976 campaign of Jimmy Carter. Carter mixed simple slogans<sup>120</sup> with real proposals **\*162** for change,<sup>121</sup> putting together possibly the most comprehensive set of ethics proposals a

presidential candidate has ever advanced. The result was the enactment of the Ethics in Government Act of 1978.<sup>122</sup> This Act made financial disclosure mandatory for high-level officials, tightened conflict of interest rules, authorized the Office of the Special Prosecutor, and expanded the role of inspectors general, employees whose purpose is to ferret out corruption.<sup>123</sup> In the new climate, the FBI was emboldened to fight corruption, the most notable result being the Abscam sting.<sup>124</sup> The Public Integrity Section of the Department of Justice, established in 1976, also zealously pursued corruption.<sup>125</sup> The zeal and money committed to fighting corruption made possible a mammoth operation like the seven-year, \$46 million Iran-Contra independent counsel investigation.<sup>126</sup> Further reforms since the Carter administration have banned honoraria and restricted officials' employment after leaving government.<sup>127</sup>

A hypothetical will illustrate the changed political climate out of which the legal defense fund has arisen.

It is 1965. Senator Beauregard Claghorn<sup>128</sup> accepts a one thousand dollar contribution from the Beet Farmers of America, but neglects to tell anyone about the contribution. This act does not cause him any harm because (1) it is legal, (2) even if it were not legal, it is unlikely that anyone else in the government would pursue the case, and (3) even if Senator Claghorn were called on the carpet, his legal bills would not be very high.

But suppose it is 1995. Senator Claghorn accepts a one thousand dollar contribution from the Beet Farmers of America and does not disclose it. \*163 He has violated the financial disclosure laws. If the Justice Department gets wind of the violation, it will probably investigate, perhaps seeking an indictment and conviction of Senator Claghorn. The Senate Ethics Committee might launch its own investigation. Senator Claghorn will likely hire high-priced legal talent to defend him. He will want to avoid paying these lawyers out of his own pockets, and he will have no difficulty finding special interests willing to help him out. The Senator Claghorn Legal Defense Fund is born.

### III. The Law of Legal Defense Funds

Legal defense funds are funded by contributions of private individuals and entities. These contributions are like gifts; therefore, this analysis begins by looking at federal gift laws.

Congress passed the Ethics Reform Act of 1989<sup>129</sup> in an effort to make gift rules uniform across all branches of government.<sup>130</sup> The heart of its gift provisions is codified at title 5, section 7353(a) of the United States Code, which provides that

. . . no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person--

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.<sup>131</sup>

However, an individual covered by section 7353(a) may accept a gift pursuant to regulations promulgated by his “supervising ethics office,” provided that “[n]o gift may be accepted . . . in return for being influenced in the performance of any official act.”<sup>132</sup>

Title 5, section 7353(d) provides for four “supervising ethics offices”: the House of Representatives and its Committee on Standards of Official Conduct, the Senate and its Select Committee on Ethics, the Judicial Conference of the United States, and the Office of Government Ethics (OGE) for the executive branch.<sup>133</sup> Because the supervising ethics offices were given considerable free reign and because they have been unwilling to treat legal defense funds like other gifts, the law of legal defense funds varies \*164 widely among the executive branch, the House of Representatives, and the Senate.<sup>134</sup>

### A. The Executive Branch

The Office of Government Ethics has promulgated regulations implementing section 7353.<sup>135</sup> They proscribe a federal employee from accepting or soliciting a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.<sup>136</sup>

A “prohibited source” is a source that seeks official action from the employee's agency, is regulated by the agency, or has interests that may be “substantially affected” by the employee's performance of his duties.<sup>137</sup>

Several exceptions weaken the effect of these rules. For example, an employee can accept unsolicited noncash gifts valued at twenty dollars or less<sup>138</sup> or gifts motivated by personal friendship.<sup>139</sup> An executive branch employee can establish a legal defense fund, but it can be funded only by donations from personal friends or from nonprohibited sources and not given because of the employee's official position.<sup>140</sup>

As noted in Part I, President Clinton is facing expensive legal bills as a result of the Paula Jones sexual harassment suit and Whitewater allegations. He has become the first sitting president to establish a legal defense fund.<sup>141</sup> If he were subject to the same restrictions as other federal \*165 employees, President Clinton would not be able to raise funds for legal defense from lucrative sources such as lobbyists or executives of regulated corporations.

President Clinton has not been subjected to the same standard as other executive branch employees because the OGE orally advised him that, based on an exception to the gift rules, he could accept donations from any source.<sup>142</sup> The exception provides:

Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member . . . .<sup>143</sup>

This regulation was designed to allow the president to accept the homemade presents that constantly flow into the White House, as well as gifts from foreign leaders.<sup>144</sup> However, the phrase “including those of protocol and etiquette” is parenthetical, not restrictive, and the OGE decided that it had no basis upon which to interpret the regulation to allow any less than its literal meaning.<sup>145</sup>

Under the OGE's interpretation, there are only three restrictions on Clinton's legal defense fund: (1) Acceptance of a gift may not violate the general bribery statutes;<sup>146</sup> (2) Clinton may not “[a]ccept a gift in return for being influenced in the performance of an official act”;<sup>147</sup> and (3) Clinton may not “[s]olicit or coerce the offering of a gift.”<sup>148</sup>

It is the third restriction that has bedeviled the Clinton fund. The fund's trust indenture provided for solicitation.<sup>149</sup> Nevertheless, the executive director of the trust acknowledged the legal restriction on solicitation after establishment of the fund.<sup>150</sup> As a result, word of mouth has been relied on to attract donations. Except for the solicitation restriction, President Clinton's legal defense fund is largely unregulated under the OGE's interpretation of the gift statutes and regulations. \*166 However, the fund is self-regulated. Contributions are accepted only from natural persons, with a maximum of one thousand dollars accepted per person per year.<sup>151</sup> The trust indenture provides for semiannual disclosure of contributors.<sup>152</sup>

The Clinton fund has been most heavily criticized for accepting donations from lobbyists, especially because Clinton has been highly critical of the influence of lobbyists in Washington.<sup>153</sup> In his 1995 State of the Union address, Clinton admonished Congress to “[j]ust stop taking the lobbyists' perks.”<sup>154</sup> This provoked an immediate retort from Senate Majority Leader Bob Dole that Clinton “did not mention how many lobbyists contributed to his legal defense fund.”<sup>155</sup> In response, Clinton announced that his legal defense fund would no longer accept contributions from registered lobbyists.<sup>156</sup>

The Clinton legal defense fund survived a legal challenge in February 1995. A suit by two conservative public interest groups against the fund was dismissed from federal district court.<sup>157</sup>

## **B. The House of Representatives**

The House of Representatives does not allow members to accept gifts worth more than \$250 per year from a single person without a written waiver from the Committee on Standards of Official Conduct.<sup>158</sup> The Committee subjects legal defense funds to the House gift rules, but routinely grants waivers, provided that certain conditions are met.<sup>159</sup> The primary \*167 condition is that “[n]o individual or organization may contribute more than \$5,000 in a single year.”<sup>160</sup> Additionally, the fund must be set up as a trust, with no funds going to any purpose besides paying legal expenses, except for leftover funds, which must be returned to contributors or donated to charity.<sup>161</sup> Congressmen must disclose legal defense fund contributions of more than \$250 from a single source, unless the Committee on Standards of Official Conduct publicly grants a waiver.<sup>162</sup>

Generally, House members may not raise funds except for campaign contributions.<sup>163</sup> However, the Select Committee on Ethics, a temporary committee of the late 1970s, determined that this rule was designed to prohibit raising funds for personal use. Because the Committee deemed legal defense funds to be for official use if the legal expenses arose out of a member's “performance of official duties,” it did not subject the funds to the solicitation ban.<sup>164</sup> Therefore, congressmen may actively raise legal defense funds. The Committee on Standards of Official Conduct has never actually required that legal expenses arise out of a member's “performance of official duties” to permit fund solicitation. For



example, Representatives Barney Frank,<sup>165</sup> Mel Reynolds,<sup>166</sup> and Gerry Studds<sup>167</sup> have used funds to defend against allegations of sexual impropriety; Representative Walter Tucker has used a fund to defend against corruption charges stemming from his service as mayor of Compton, California;<sup>168</sup> and Representative Don Young has used a fund to pay a settlement in a libel case.<sup>169</sup>

### C. The Senate

Unlike the OGE and the House of Representatives, the Senate does not treat contributions to legal defense funds as gifts. In response to the plight of Senator Harrison Williams, who had been implicated in Abscam,<sup>170</sup> the Senate in 1980 passed a resolution exempting legal defense funds from the gift \*168 rules.<sup>171</sup> Unlike the House, the Senate Select Committee on Ethics has promulgated detailed regulations specifically governing legal expense trust funds.<sup>172</sup>

The Ethics Committee regulations provide that a senator may establish a legal defense fund to defray legal expenses “relating to or arising by virtue of his or her service in or to the United States Senate.”<sup>173</sup> This requirement, like the House’s “performance of official duties” standard, is not strictly construed. For example, Senator Packwood<sup>174</sup> and Senator Brock Adams<sup>175</sup> have used their funds to defend against allegations of sexual harassment; Senator Kay Bailey Hutchison has used her fund to defend against charges arising from her service as treasurer of Texas;<sup>176</sup> and a Senate Judiciary Committee aide has used a fund to assist her custody fight.<sup>177</sup>

The Ethics Committee regulations allow contributions of up to ten thousand dollars per year from an individual or organization.<sup>178</sup> Corporations, labor unions, foreign nationals, Senate officers and employees (and their spouses and dependents), senators’ principal campaign committees, and registered lobbyists cannot contribute to a senator’s legal defense fund.<sup>179</sup> The regulations require all legal defense fund expenditures to be related to administration of the fund or to legal defense,<sup>180</sup> and upon termination of the fund, leftover proceeds must be donated to charity or returned to contributors.<sup>181</sup> Senators’ legal defense funds must disclose contributions quarterly from contributors that donate over twenty-five dollars annually.<sup>182</sup>

## IV. The Law of Corruption

Most press coverage manifests unease with the idea of legal defense funds.<sup>183</sup> When officeholders accept large amounts of money from private \*169 sources, the suspicion of corruption is often raised. Yet, legal defense funds are anomalously underregulated, subjected neither to campaign finance laws nor, fully, to gift laws. To understand the nature of this anomaly, Part IV will examine the law of corruption. Subpart A will discuss the concept of corruption and the nature of bribery. Subpart B will examine the reasons for the prophylactic rules designed to deal with the problem of corruption. Subpart C will set forth the structure of that part of the law of corruption dealing with gifts and campaign finances.

### A. Corruption and Bribery

“Corruption” is not easily defined. Often the definitions merely state that corruption is the use of power in a way that society views as bad.<sup>184</sup> In modern America, corruption is often considered to be an act “contrary to the public interest”<sup>185</sup> or involving the “exchange of political power for economic wealth.”<sup>186</sup> An official behaves corruptly by acting in a way that subverts the democratic process—making decisions for personal gain, rather than in the public

interest.<sup>187</sup> The corrupt official is subject to a conflict of interest--his decisions as a trustee of the public interest are likely to have an effect on his self-interest<sup>188</sup>--and acts to promote his self-interest.<sup>189</sup>

The classic form of corruption is bribery, which was a common-law crime at the inception of the United States.<sup>190</sup> The law of bribery has been gradually codified and applied to more government officials in response to sensational scandals in American history.<sup>191</sup> A typical bribery statute, as described by Daniel H. Lowenstein, has five elements:

1. There must be a public official.
2. The defendant must have a corrupt intent.
- \*170 3. A benefit, anything of value, must accrue to the public official.
4. There must be a relationship between the thing of value and some official act.
5. The relationship must involve an intent to influence the public official (or to be influenced if the defendant is the official) in the carrying out of the official act.<sup>192</sup>

In other words, the concern of bribery statutes is that a public official should not be influenced to act by the receipt of a benefit from another.

When an official is criticized for accepting contributions from private individuals and entities, the criticism implies that the official could be unduly influenced by the money, that the money will lead him to make decisions based on self-interest rather than the public interest. If bribery laws were broad and effective, this criticism would be allayed, and gift and campaign finance laws would be largely unnecessary.<sup>193</sup> But if one presumes that officeholders tend to be corrupted upon receiving large gifts from special interests,<sup>194</sup> then it becomes clear that bribery statutes are inadequate \*171 to deal with the problem and that the new tools in the fight against corruption--gift and campaign finance laws-- are sorely needed.

## **B. Justifying the Prophylactic Rules**

When a person is paid money, it is usually in return for something that person has provided--labor, a good, or an investment. When an official is paid money by a special interest, there is the danger that the payment is for a good, of sorts-- public power. The ethics laws--gift and honoraria bans, outside income limits, campaign finance laws--act as prophylactic rules to prevent the selling of power. These prophylactic rules are necessary because the bribery statutes are ineffective in four ways.

1. Legal Corruption - Bribery statutes do not cover all possible types of corruption. The fourth and fifth elements of the typical bribery statute, as described by Lowenstein, weaken the bribery statutes so that they do not proscribe every type of corruption. The fourth element requires that the money provided be in exchange for "an official act."<sup>195</sup> It is often

offered as a justification for large contributions to officeholders that contributors are “just buying access.”<sup>196</sup> “Access” is not an “official act”; therefore, “buying access” is not illegal under the bribery statutes. But the distinction between buying (or selling) access and buying (or selling) votes is not meaningful. A member of Congress who sells access is still selling a piece of the public pie, using power for personal gain instead of the public interest. “[W]hile it is possible that in some situations lobbyists just buy time to plead their case, even this is a factor in corruption, a step removed and only somewhat attenuated. Those with the bucks still gain a privilege other citizens have a hard time getting.”<sup>197</sup>

The fifth element of the typical bribery statute requires that an accused official had intended to be influenced.<sup>198</sup> But an official plied with money may not even realize that he is being corrupted. Senator Thomas Eagleton has stated: “It just stands to common sense reason that if the backbone of political financing is the \$5,000 PACs and \$1,000 individuals, then a candidate, wittingly or unwittingly, tends to be more predisposed to those \*172 contributors.”<sup>199</sup> Contributors buy not only access but also a good will that may manifest itself in votes on the floor. Like access, good will is not reached by the bribery statutes.

2. Implicit Dealmaking - Deals between officials and contributors are probably rarely explicit. Instead, most accounts portray Washington as a place rife with implicit deals. Congressmen and lobbyists are sophisticated players. Each knows what is expected, but neither verbalizes the agreement. “Legalized corruption works routinely these days by deals, struck between a member of Congress and a representative of a private interest, that are implicit, rather than fully spelled out, but nevertheless specific, relating to clear outcomes.”<sup>200</sup> If this is bribery, which it probably often is, it is well-nigh impossible for prosecutors to catch.

3. The Speech or Debate Clause - Members of Congress are protected by Article I, Section 6 of the Constitution, which provides that “for any Speech or Debate in either House, [members of Congress] shall not be questioned in any other Place.”<sup>201</sup> Even if a member of Congress performs a specific quid pro quo for money, the Constitution might protect him from prosecutors if his end of the bargain involved an act occurring on the floor of the House or Senate.<sup>202</sup> The Supreme Court's case law interpreting the Speech or Debate Clause has been convoluted;<sup>203</sup> however, it is sufficient for purposes of this Note to observe that the Speech or Debate Clause has often blocked bribery convictions of members of Congress.<sup>204</sup>

4. The Appearance of Impropriety - Even if the interaction between an officeholder and contributor is perfectly innocent, it may sometimes take on \*173 the “appearance of impropriety.” Such an appearance may decrease confidence in the government and faith in the system.<sup>205</sup> Prophylactic gift and campaign finance rules are, in part, an effort to prevent the appearance of impropriety by prohibiting large contributions that would not violate the bribery statutes.<sup>206</sup>

### c. The Structure of Ethics Law

On the whole, modern ethics law is designed to prevent officeholders from having even the opportunity to sell their power. Therefore, there are complex rules regulating contributions to officeholders. These rules can be divided into two categories: gift rules and campaign finance rules.

1. Gift Rules - The first category of ethics law is designed to prevent absolutely any substantial benefit from accruing to an officeholder by virtue of his office. I will call these “gift rules,” as they are designed to prevent substantial gifts to officeholders. However, this category includes more than what are customarily referred to as “gift rules.” For example, the Ethics Reform Act of 1989 banned all federal officeholders and employees from accepting honoraria,<sup>207</sup> which were perceived as payments for influence, not for speeches, especially since they accrued to the most powerful congressmen, not the most eloquent.<sup>208</sup> Additionally, House and Senate rules allow members to accept only those travel expenses

earned by services rendered or incurred during a legitimate factfinding tour “related to official duties.”<sup>209</sup> Congressmen, as well as high-ranking executive branch officials, also may not accept outside earned income exceeding fifteen percent of their government income.<sup>210</sup> This restriction was imposed at least partly because “many citizens perceive outside earned income as providing Members with an opportunity to ‘cash in’ on their positions of influence.”<sup>211</sup> In conjunction with the gift limitation discussed \*174 in Part III, these rules reflect a “no tolerance” policy toward officeholders accepting benefits that would not accrue to a nonofficeholder.

2. Campaign Finance Rules In contrast to the first category of ethics rules, the second category allows officeholders to accept significant benefits simply because they are (or were) candidates. There is no “zero tolerance” policy for campaign funds. In fact, candidates for the House or Senate are allowed to accept contributions of up to one thousand dollars per election from individuals and five thousand dollars per election from PACs.<sup>212</sup>

3. A Reasoned Bifurcation The disparate treatment of campaign funds and gifts bifurcates federal ethics law. Why are officeholders more liberally allowed to accept campaign funds than gifts? Some argue that campaign funds pose less of a danger of corruption than gifts do.<sup>213</sup> Campaign contributors may not be seeking influence, but lobbyists probably do not give noncampaign gifts for any purpose other than seeking influence.<sup>214</sup> Additionally, unlike a cash gift, a campaign contribution is redeemable for only one purpose—to gather votes.<sup>215</sup> It is of limited utility to the recipient; therefore, it is conceivably less valuable.<sup>216</sup> However, campaign contributions are actually likely to be much more valued by officeholders than gifts.<sup>217</sup> The average 1994 Senate campaign cost \$3 million per candidate.<sup>218</sup> Few representatives and senators are in \*175 personal financial straits, but most are forced to raise campaign money constantly. Barry Goldwater has described the modern politician as “obsessed” with raising campaign money.<sup>219</sup> A private contributor seeking influence would therefore be well-advised to offer campaign donations instead of personal gifts.

Because the corruption dangers are equivalent (and maybe worse) with campaign funds, there must be a strong countervailing policy justifying treating them differently than gifts. This countervailing interest is rooted in the exigencies of our democratic process. Elections are a necessary part of the democratic process. They are a dialogue between office-seekers and voters. In today's technological world, this dialogue has to be funded. This dialogue could be publicly funded as presidential elections already partly are.<sup>220</sup> But the Supreme Court's Buckley decision acknowledged the importance of individual participation in the funding of elections.<sup>221</sup> And Congress has made the policy choice that private funding is preferable to public funding of congressional campaigns, that the dangers inherent in public funding are scarier than the dangers accompanying private funding.<sup>222</sup> As a result, there is a real public need for private campaign contributions. The current system, which reflects legitimate policy and constitutional considerations, could not function without campaign contributions. This is the solid justification for treating campaign contributions differently from personal gifts.

## V. The Place of Legal Defense Funds Within the Law of Corruption

As we have seen, legal defense funds are an anomaly within the law regulating corruption. For executive branch employees, except the president and vice president, legal defense fund contributions are regulated strictly as gifts.<sup>223</sup> For the president and vice president, legal defense fund \*176 contributions are treated as gifts, but an exception in the OGE regulations makes them practically unregulated.<sup>224</sup> For members of the House of Representatives, legal defense fund contributions are treated as gifts, but in fact are allowed a greater leeway than even campaign funds.<sup>225</sup> For senators, legal defense fund contributions are treated as neither fish nor fowl. They are regulated by committee, not by statute, and senators are allowed larger donations for these funds than for any other purpose.<sup>226</sup>

This Part asks why legal defense funds are anomalously underregulated. Subpart A examines the two prominent-- and invalid--justifications for treating legal defense funds differently from gifts. Subpart B then surveys the public problem--the use of the legal system as a political weapon--that justifies regulating legal defense funds outside the strict gift rules. Subpart C sets forth three models of regulation of legal defense funds. After concluding that the gift statutes are inadequate to the regulatory task and that legal defense funds should be allowed, it then proposes the adoption of a comprehensive regulatory statute governing legal defense funds.

### A. Justifications for Legal Defense Funds

Those who have sought to justify legal defense funds have relied primarily on two justifications. The first justification is a sort of “equal protection” argument that officeholders should be able to raise funds in the same way as other citizens. The second justification is that legal defense funds should be allowed because they pay for “officially related” expenses.

2. Legal Defense Funds and Equal Protection Anyone can have a legal defense fund.<sup>227</sup> Therefore, officeholders make a sort of equal protection argument that they should be able to have legal defense funds like everybody else.<sup>228</sup> For example, the foreword to the Senate Regulations Governing Legal Expense Trust Funds states that, without the funds, senatorsssss \*177 s would be “at a disadvantage in this regard relative to their fellow citizens, should the latter choose to raise funds to defray legal expenses which they incur.”<sup>229</sup>

The simple response to this argument is that the whole point of ethics rules is to regulate officeholders more strictly than their fellow citizens. Most citizens can accept almost any gift they want. Of course, the reality is that the average citizen is not offered thousands of dollars every month from representatives of corporations, labor unions, and other political interest groups. The reason is simple: the average citizen has no power to trade for the money. The Senate's argument would allow the power-poor as well as the power-rich to give fifteen-minute five-thousand-dollar speeches, accept factfinding junkets to tropical resorts, and eat at the finest Washington restaurants on General Motors's tab. It is the converse of Anatole France's observation that “the majestic equality of the law . . . forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”<sup>230</sup>

2. Legal Defense Funds and “Officially Related” Expenses It is often argued that officeholders should be able to collect legal defense funds because they are incurring legal expenses by virtue of their being officeholders. The House report authorizing the use of the funds called them “officially related.”<sup>231</sup> The first sentence of the Senate's regulations refers to the necessity of the funds for use “in proceedings which would not have arisen but for [the senators'] positions, or by virtue of their service in or to the United States Senate.”<sup>232</sup> Undoubtedly, senators could not be charged with corruption arising out of their service in the Senate unless they were senators. However, this does not justify allowing them to collect legal defense funds.

Officeholders incur many expenses because they are officeholders. Some of these expenses are publicly financed; for example, public monies pay for senatorial staffs. Some of these expenses we expect officeholders to pay for themselves; for example, senators must pay the cost of a second home in Washington out of their own pockets. But, in no case, except for campaign contributions, does the statutory ethics scheme allow officeholders to collect private money to pay these expenses.<sup>233</sup> The campaign contributions \*178 exception is based on a public need for the funding of campaigns that overrides the public interest in discouraging corruption. Analogously, legal defense fund donations should be treated like all other gifts unless a strong public policy overrides the concern with preventing corruption.

### B. Playing Politics with the Legal System

Almost every officeholder who has ever been investigated, indicted, or sued has claimed that his accuser was playing politics with the legal system. There are hints of a rival-party conspiracy to override the voters' will and change the results of an election.<sup>234</sup> Some of these claims are more \*179 credible than others. For example, few would contest the highly political nature of Joseph McCarthy's investigations of executive-branch communism. But it is harder to believe that the bribery charges brought against the ineffective and eccentric Representative Dan Flood were an attempt to silence Flood's opposition to the Panama Canal Treaty, as his supporters claimed.<sup>235</sup> It is sufficient for this Note to recognize that strong incentives exist to use the legal system as a political weapon.

For an officeholder, there is no surer road to political ruin than political scandal. Scandal has the capacity to drive politicians from office—even before their terms are finished. For example, the president and vice president can be impeached, but only for “Treason, Bribery, or other high Crimes and Misdemeanors,”<sup>236</sup> not for policy differences with Congress. The only president ever to resign, Richard Nixon, and the only vice president ever to resign, Spiro T. Agnew, left office on the heels of massive corruption scandals that put them under the shadow of near-certain impeachment and removal from office. Fifteen years after Watergate, the contemporaneous resignations of the Speaker of the House and the Majority Whip of the House demonstrated the continuing ability of scandal to force powerful officials from office.<sup>237</sup>

Even if scandal does not drive an official from office, it can destroy his effectiveness. The Iran-Contra scandal permanently damaged President Reagan's popularity ratings, causing a considerable “decline in [his] political clout.”<sup>238</sup> During its last two years, the Reagan administration operated with a bunker mentality, unable to gain the upper hand over Congress \*180 and advance a domestic policy agenda.<sup>239</sup> Even if a tarnished officeholder limps through his term without being forced from office, he is sure to face extreme difficulty if he attempts to be re-elected. The most prominent recent example was the 1994 defeat of the once-invincible Dan Rostenkowski by an unknown, unfunded Republican in a heavily Democratic district.<sup>240</sup>

It is beyond the scope of this Note to attempt to divine which criminal investigations of scandalized public officials are legitimate uses of the legal system and which are political uses of the legal system.<sup>241</sup> It is enough to note that strong incentives encourage prosecutors, members of Congress, and private parties to use the criminal justice system, the civil justice system, and congressional investigations to achieve political ends. The existence of these incentives sets legal defense funds apart from other gifts. There is no public policy justification for allowing most gifts to public officials. Campaign contributions are different: a significant public policy concern dictates that we allow more than minimal campaign contributions to candidates.<sup>242</sup> Similarly, there is a public policy justification for allowing legal defense funds: the need to give officeholders the tools to fight back against politically motivated legal wars.

### C. Three Models of Regulation

Legal defense funds are not sufficiently regulated to fulfill society's interest in preventing corruption. This subpart explores and evaluates three ways to end this underregulated status. Section one examines the consequences of regulating legal defense funds under the gift statutes. Section two surveys what a world without legal defense funds might look like and how officials might defend themselves against legal-system politics under such a regime. Section three sets forth a third model that allows significant legal defense fund donations—fulfilling the officials' interest in self-defense—but strongly regulates the funds—fulfilling the anticorruption interest.

\*181 **Regulating Under the Gift Statutes** Under current federal ethics law, legal defense funds would most logically be treated as gifts because the various gift rules cover all areas of unearned contributions to public officials, except campaign contributions. Regulating legal defense fund donations as gifts seems to advance the interest in preventing corruption. This regulatory model would require the end of the House of Representatives's policy of routinely waiving the restrictions of the gift rules for members building legal defense funds. It would also entail the repeal of the Senate's permissive

Regulations Governing Legal Expense Trust Funds. This model clamps down harshly on the high contribution limits set by the Senate and House.<sup>243</sup> However, gift rules do not provide for financial disclosure<sup>244</sup> or restrict the use of legal defense contributions. The gift regulations were not designed to fully regulate representatives' or senators' efforts to aggregate gifts into a fund for a specific purpose. Additionally, the OGE's gift statute interpretation that allows the existence of the Clinton Trust Fund is not based on an explicit waiver or disregard of the gift statutes. In the eyes of the OGE, contributions to President Clinton's legal defense fund are acceptable under a plain reading of the gift statute. Therefore, a regulatory model that seeks to follow the gift statute does not end the underregulation of the Clinton fund.<sup>245</sup>

2. A World Without Legal Defense Funds The most effective way to eliminate the corruption concerns associated with legal defense funds would be to prohibit legal defense funds. This approach entails none of the inconsistency and underregulation associated with gift-statute regulation.

The obvious drawback of prohibiting legal defense funds is the elimination of a major weapon for officeholders to defend against politically motivated legal harassment. Nevertheless, there remain options for officeholders **\*182** to pay their legal bills without using legal defense funds. To begin with, many officeholders are wealthy and can pay their legal expenses out of their own pockets.<sup>246</sup> Additionally, officeholders can, and often do, use campaign funds for legal defense.<sup>247</sup> However, the practice of using campaign funds for legal defense raises as many ethical questions as the direct raising of legal defense funds. Many view the practice as a misappropriation of funds that contributors intended to be spent on campaigning.<sup>248</sup> And, even if the use of campaign funds for legal defense were prohibited, the core problem of the public official who, because of the enormity of his legal expenses or his lack of assets, is unable to pay his legal bills would be unresolved. For example, President Clinton is incurring legal bills that, but for his legal defense fund, would bankrupt him.<sup>249</sup>

**\*183** One solution to bankrupting costs facing officials such as President Clinton would be public financing of officials' legal defenses. Public financing would not be entirely new. For example, federal law allows unindicted individuals who have been the subjects of an independent counsel investigation to recover attorneys' fees resulting from the investigation.<sup>250</sup> Additionally, presidents have occasionally put their lawyers on the government payroll. However, President Clinton does not have this option in the Paula Jones case because it did not arise from his conduct in office.<sup>251</sup> Although the public financing solution would enable officeholders to fend off politically motivated legal attacks, it is unlikely to be politically feasible. Taxpayers are unlikely to support the use of their tax money to pay for the defense of politicians under an ethical cloud.

Another method to protect officeholders in a world without legal defense funds would be the expansion of immunity doctrines. As previously discussed, representatives and senators have a constitutionally based immunity from prosecution for some official acts.<sup>252</sup> Additionally, the Constitution provides that representatives and senators are "privileged from Arrest during their Attendance at the Session of their respective Houses."<sup>253</sup> However, this clause has been eviscerated by Supreme Court case law, so that it now only prohibits civil arrests, a very rare phenomenon.<sup>254</sup> In contrast, there is no constitutional basis for presidential immunity, but "a specific textual basis has not been considered a prerequisite to the recognition of immunity."<sup>255</sup> The president is "absolute[ly] immun[e] from damages liability predicated on his official acts."<sup>256</sup> Whether any civil immunity should be extended to the president beyond this standard is a source of much debate.<sup>257</sup> A federal court in the **\*184** Paula Jones case recently refused absolute immunity to President Clinton, but allowed him temporary immunity until he leaves office.<sup>258</sup> This temporary immunity does not fully alleviate the President's financial burden of defending the lawsuit because Paula Jones is allowed to continue with discovery and depositions.<sup>259</sup>

Expanded immunity, like public financing, is an inappropriate measure to prevent politically motivated legal actions against public officials. The policy of preventing corruption could be significantly undermined if corrupt officials could not be prosecuted. In fact, immunity adds to the appearance of impropriety, rather than decreasing it, by putting public officials “above the law.”<sup>260</sup>

Because measures such as public financing and expanded immunity are inappropriate and infeasible means to stop political uses of the legal system, a prohibition on legal defense funds would leave officials unprotected from politically motivated legal attacks. Yet, current law regulates legal defense funds inadequately, no matter how it is interpreted by the various supervising ethics offices. Therefore, a reasonable solution is a new law regulating legal defense funds, allowing officials the wherewithal to fight legal battles but providing controls that prevent corruption.

3. A Legal Defense Fund Statute A legal defense fund statute should have strong provisions to prevent officeholders from trading public power for donations. This section suggests six anticorruption measures that a legal defense fund statute should contain.

a. Contribution limits Both the House and Senate limit the amount a single contributor can donate to a legal defense fund within one year—five thousand dollars for the House and ten thousand dollars for the Senate.<sup>261</sup> The OGE's interpretation of the gift rules would conceivably allow President Clinton to accept unlimited donations. The Clinton fund, however, has imposed a one thousand dollar per person per year contribution \*185 limit on itself.<sup>262</sup> Contribution limits are an integral part of any scheme to limit corruption. Smaller contributions are perceived to be less corrupting than larger contributions.

A legal defense fund statute should contain a contribution limit. The exact amount of this limit is, of course, arbitrary. Congress may want to analogize to campaign contribution limits and allow a one thousand dollar maximum contribution for individuals and five thousand dollars for PACs.<sup>263</sup> However, many have criticized the higher limit for PACs.<sup>264</sup> A more appropriate limit might be one thousand dollars for each contributor.

b. Donor restrictions Corporations, labor unions, and foreign nationals without permanent residence in the United States are prohibited from contributing to congressional candidates.<sup>265</sup> The Senate has incorporated these restrictions into its legal defense fund regulations.<sup>266</sup> Similarly, the Clinton fund only accepts contributions from natural persons.<sup>267</sup> However, there are no restrictions on who may donate to a legal defense fund of a representative.<sup>268</sup> A statute governing legal defense funds should adopt restrictions on contributions by corporations, labor unions, and foreign nationals, so that legal defense funds do not become a “back door” to circumvent the public policy against direct donations by these groups to officeholders. Additionally, a statute should include a ban on contributions by registered lobbyists, who are often suspected of corrupt motives when they donate to officeholders.<sup>269</sup>

c. Use restrictions and rules on disposition Contributors donate to legal defense funds with the understanding that their donations will be spent \*186 on legal defense. The Senate and House of Representatives require that fund expenditures be related to legal defense.<sup>270</sup> Such restrictions are necessary to maintain contributors' trust in legal defense funds and to prevent legal defense funds from being used as merely a cover for gifts to officials.

Additionally, a legal defense fund statute should regulate the disposition of the fund upon the termination of legal proceedings. This is an extension of the idea that legal defense funds should not be used as a cover to provide an official anything more than legal defense. Both the Senate and House of Representatives currently provide that leftover legal defense fund money must be returned to contributors or donated to charity.<sup>271</sup> President Clinton's trust indenture



provides that leftover funds shall transfer to President Clinton or his wife;<sup>272</sup> however, the Clintons have agreed to donate leftover funds to charity or the United States government.<sup>273</sup>

d. Restrictions on the use of funds in purely personal legal proceedings The House of Representatives ostensibly allows legal defense funds only when a legal matter arises out of a representative's "performance of official duties."<sup>274</sup> Similarly, the Senate ostensibly only allows funds to defray legal expenses "relating to or arising by virtue of [a senator's] service in or to the United States Senate."<sup>275</sup> As explained in Part II, neither of these standards has been enforced.<sup>276</sup> And neither should be enforced. A politically motivated legal action might focus on an official's personal finances or sexual activities, not falling within the ambit of the Senate or House standards. Yet, the establishment of a legal defense fund would still be appropriate to deter politically based legal harassment.

A more appropriate restriction would ban the use of legal defense funds in "purely personal" legal proceedings--such as child custody proceedings and probate--in which the likelihood of an opposing party being politically motivated is very low.

e. Full disclosure Full disclosure was Senator Douglas's principal ethics proposal.<sup>277</sup> "Publicity or disclosure is a powerful deterrent \*187 from improper conduct. Most men go wrong because they think they can commit shady acts in private which will not be found out."<sup>278</sup> Mandated disclosure of legal defense fund donations could be included in the annual financial reports already required from all high-ranking government officials.<sup>279</sup> "Sunlight," Justice Brandeis said, "is . . . the best of disinfectants . . ."<sup>280</sup>

f. Flexibility for supervising ethics offices Each supervising ethics office should have the discretion to regulate legal defense funds more strictly than the statutory scheme. Different ethical considerations attend to different positions within the government. There is generally a lower societal tolerance toward financial contributions to nonelected officials than to elected officials. Additionally, some officials, such as Supreme Court justices, may be so firmly entrenched in their positions that they face little danger of a politically motivated legal attack. A legal defense fund statute should establish the broad standards for the funds and allow the interstices to be filled in by each branch of the government.

## VI. Conclusion

"The basis of effective government is public confidence," wrote John F. Kennedy during his presidency.<sup>281</sup> Thirty years later, there is more money in government,<sup>282</sup> less public confidence,<sup>283</sup> and, many say, less effective government. There is a growing sense that money is eating away the core of our democratic politics. The possibilities for the restoration of our civic life lie, at least in part, in our ability to contain the opportunities for buying and selling of influence in Washington. The statutory regulation of legal defense funds would be a small, but significant, step toward seeking that restoration.

### Footnotes

<sup>d</sup> Many thanks go to Amy Brown, Michael Tigar, Kathleen Clark, Roger Bivans, and Lauren Laux for their helpful comments on earlier drafts of this Note. Also, I much appreciate the thoughtful editing of Heather Way, Diane Pearson, Asim Bhansali, and Harry Susman, as well as the hard work of the many Texas Law Review members who helped cite check and research this Note.

<sup>1</sup> The Bully Pulpit: Quotations from America's Presidents 46 (Elizabeth Frost ed., 1988).

<sup>2</sup> Paul H. Douglas, *Ethics in Government* (1952).

<sup>3</sup> “[T]he vast majority of the big donors want something in return for their money. Their gifts are in a sense investments. After election, if their candidates are victorious, they come around to collect.... Woe betide the office-holders and the party which ignore their claims!” *Id.* at 70.

<sup>4</sup> “[S]enators and congressmen certainly should not accept costly gifts and entertainment from private parties and should avoid being put under obligation to those who have an open or secret axe to grind.” *Id.* at 64.

<sup>5</sup> *Id.* at 97-102.

<sup>6</sup> “Power tends to corrupt ....” John Bartlett, *Familiar Quotations* 521 (Justin Kaplan ed., 16th ed. 1992) (quoting Lord Acton). Senator Douglas asserted that corruption is likely to occur when the government enters into contracts, taxes heavily, grants loans, fixes utility rates, regulates entrance into industry, allocates raw materials, or pays subsidies. Douglas, *supra* note 2, at 22-23. In these activities, “the men in private industry have frequently both the incentive and the wherewithal to corrupt and here the temptation for the government officials to succumb is great.” *Id.* at 23. Government today engages in all these activities to a great degree.

<sup>7</sup> Federal officials are not the only public officials to use legal defense funds. For example, Governor Parris N. Glendening of Maryland has recently been criticized for accepting a \$95,000 donation to his fund, which was set up to defend against a challenge to his election. John W. Frece & Marina Saris, *Glendening Under Fire: Unrattled and Pragmatic*, *Baltimore Sun*, Apr. 11, 1995, at 1A, available in LEXIS, News Library, CURNWS File (reporting that soon after Governor Glendening took office, a scandal erupted over the use of \$95,000 donated by a Baltimore businessman to help pay bills accrued in resisting a challenge to the governor's election). For other examples of legal defense funds in the state and local government context, see *Gates' Backers Raising Funds for Legal Bills*, *L.A. Times*, June 3, 1991, at A22 (“A group formed to support Los Angeles Police Chief Daryl F. Gates in the wake of calls for his resignation is raising money to pay the legal bills the chief has accumulated in his fight to keep his job.”); Paul Schatt, *Caught in the Beacon; By Definition*, *News Coverage Is Selective*, *Phoenix Gazette*, Feb. 5, 1993, at A14, available in WESTLAW, ARIZREPUB Database (editorial) (implying that Arizona Governor Fife Symington scrubbed his plan to establish a legal defense fund because of the extensive publicity the plan garnered); Mark Schwed, *UPI (Tennessee distribution)*, May 20, 1981, available in LEXIS, News Library, UPSTAT File (reporting that a legal defense fund was established in 1980 for former Tennessee governor Ray Blanton, on trial for influence-peddling); *Tucker Fund Organizers Must Register with State*, *Com. Appeal*, July 21, 1995, at 1B, available in WESTLAW, COMAPL Database (stating that a legal defense fund for Arkansas Governor Jim Guy Tucker, implicated in Whitewater, collected \$7,200 in its first few weeks of operation); Lori K. Weinraub, *Embattled Governor to Face Recall*, *UPI (Arizona-Nevada distribution)*, available in LEXIS, News Library, UPSTAT File (stating that Arizona governor Evan Mecham made “an unabashed plea for donations on his regular radio call-in show,” seeking to build a legal defense fund related to felony charges of concealing a \$350,000 campaign loan); Michael Weisskoff, *Mandel Told He Should Bare Legal Defense Contributors*, *Wash. Post*, Dec. 14, 1977, at B1 (discussing a legal defense blind trust established by Marvin Mandel, a governor of Maryland who had been convicted of mail fraud and racketeering); and Michael York & R.H. Melton, *Barry Perjury Charge to Be Sought Today*, *Wash. Post*, Feb. 15, 1990, at A1, A36 (noting Washington Mayor Marion Barry's plan to establish a legal defense fund).

Some states have considered legislation to deal with the legal defense fund phenomenon. See, e.g., Ill. H.B. 3822, 88th General Assembly, Reg. Sess. s 145 (1993), available in LEXIS, States Library, ILBILL File (proposing that legal defense funds may not be established by Illinois officials without the approval of a state agency, upon meeting certain requirements); Richard C. Paddock, *Senate OKs Legal Funds Loophole*, *L.A. Times*, Sept. 15, 1989, at 3 (reporting a unanimous vote by the California Senate to exempt legal defense funds from California's strict regulation of political fundraising). However, legal defense funds have drawn the most attention in the national context. Although this Note focuses on federal regulation of legal defense funds, much of the analysis could be applied in the state context.

<sup>8</sup> Peter Carlson, *The Life and Times of Boss Rosty: A Cautionary Tale*, *Wash. Post*, Oct. 17, 1993, Magazine, at 10, 14-15.

<sup>9</sup> *Id.* at 15.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 35.

- 12 Id. at 36.
- 13 Id. at 38.
- 14 Hanke Gratteau & Laurie Cohen, Republicans Seize Senate; Rostenkowski Out; Edgar Leads State Sweep; Flanagan Ousts a City Powerhouse, *Chi. Trib.*, Nov. 9, 1994, at 1.
- 15 Carlson, *supra* note 8, at 39.
- 16 For the text of the indictment, see *Indictment Paints Rosty Fraud Scheme*, *Legal Times*, June 6, 1994, at 14.
- 17 See *Rostenkowski Creates Legal Defense Fund*, UPI, Aug. 25, 1993, available in LEXIS, News Library, UPSTAT File.
- 18 For a list of \$5,000 contributors, see Lucy Shackelford, \$5,000 Contributors to Rostenkowski Legal Defense Fund, *Wash. Post*, July 18, 1994, at A17.
- 19 Ray Gibson, 5 Illinoisans in House May Be Millionaires, *Chi. Trib.*, June 15, 1995, s 2, at 1.
- 20 Gratteau & Cohen, *supra* note 14, at 1.
- 21 See Chuck Neubauer, Rosty's Legal Bills Quickly Eating Up Campaign Leftovers, *Chi. Sun Times*, Feb. 5, 1995, at 6, available in WESTLAW, CHISUN Database (“[Rostenkowski’s] legendary ability to raise funds ... has been seriously curtailed by his indictment and the subsequent loss of his chairmanship and congressional seat.”).
- 22 See, e.g., *United States v. Rostenkowski*, Nos. 94-3158 & 94-3160, 1995 WL 418070, at \*1 (D.C. Cir. July 18, 1995) (dismissing, remanding, and upholding various counts against Rostenkowski).
- 23 Katharine Q. Seelye, Packwood Resigns Senate Seat After Panel Details Evidence: End of Long Fight, *N.Y. Times*, Sept. 8, 1995, at A1.
- 24 Timothy Egan, Packwood Is Leaving As a Pariah in His State, *N.Y. Times*, Sept. 9, 1995, s 1, at 8.
- 25 See Florence Graves & Charles E. Shepard, Packwood Accused of Sexual Advances; Alleged Behavior Pattern Counters Image, *Wash. Post*, Nov. 22, 1992, at A1.
- 26 Viveca Novak, *Passing the Hat*, 25 *Nat'l J.* 2520, 2525 (1993).
- 27 See *Senate Panel Cites Packwood for Sexual Misconduct*, *Facts on File*, May 18, 1995, at 355-56 B3. Packwood incurred many of his legal expenses in an unsuccessful battle against a subpoena of his diaries. See *Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 23 (D.D.C. 1994) (granting the Ethics Committee’s application to enforce its subpoena), stay denied, 114 S. Ct. 1036, 1038 (1994).
- 28 See Novak, *supra* note 26, at 2520 (reporting Packwood’s hiring of James Fitzpatrick, a partner with Arnold & Porter in Washington, D.C.).
- 29 Katharine Q. Seelye, Packwood Legal Fund Lags in Donations, *N.Y. Times*, July 27, 1995, at A11 (reporting that Packwood had spent nearly \$600,000 out of his legal defense fund on legal fees).
- 30 Id. at A19.
- 31 Donna St. George, Companies Under Attack for Funding Packwood Defense, *Detroit Free Press*, Nov. 18, 1993, at 1A, available in WESTLAW, DET-FP Database.
- 32 Daniel Gross, PAC Journalism: Should CNN’s Parent Company Be Funding Politicians?, *Wash. Post*, Oct. 31, 1993, at C5.
- 33 Seelye, *supra* note 29, at A11.
- 34 Id.

- <sup>35</sup> Novak, *supra* note 26, at 2525.
- <sup>36</sup> *Id.*
- <sup>37</sup> Ruth Marcus, *Clintons Establish Fund to Meet Legal Expenses; Lobbyists Among Those Allowed to Contribute*, *Wash. Post*, June 29, 1994, at A1.
- <sup>38</sup> See, e.g., *Mr. Clinton's Defense Fund*, *Wash. Post*, June 29, 1994, at A22 (editorial) (criticizing the fund for accepting contributions from lobbyists and for rejecting a \$500 limit on contributions); Jerry Roberts, *The Panhandling President*, *S.F. Chron.*, July 2, 1994, at A22, available in LEXIS, News Library, SFCHRN File (editorial) (characterizing Clinton's simultaneous criticism of and acceptance of lobbyists contributions as a manifestation of a “watch-what-I-say-not-what-I-do” theme of his administration); *The President's Legal Bills*, *Wash. Post*, Dec. 26, 1994, at A28 (editorial) (describing the President's legal defense fund as “both embarrassing and ethically dangerous”).
- <sup>39</sup> Ruth Marcus, *Legal Fund Raises \$608,000; Clintons Still Owe \$981,000*, *Wash. Post*, Feb. 4, 1995, at A1.
- <sup>40</sup> Serge F. Kovaleski, *Wide Range of Donors Pitched in for Clinton; Many Say President Has Been Treated Unfairly*, *Wash. Post*, Feb. 4, 1995, at A8 (Table: The President's Fund).
- <sup>41</sup> Sharon LaFraniere, *GOP Leaders in House Ask Reno for Ruling on Clinton Legal Fund*, *Wash. Post*, July 23, 1994, at A4. Richard Nixon had a legal defense fund, but only after he left office. Paul Bedard, *Whitewater, Jones Suit May Spur Legal Defense Fund for Clintons*, *Wash. Post*, July 23, 1994, at A4; see also Rabbi Korff Quits as Head of Fund for Nixon Legal Bills, *Wash. Post*, Jan. 27, 1977, at A2 (reporting that the President Nixon Justice Fund had raised \$350,000 to assist Nixon's legal defense).
- <sup>42</sup> See Susan Schmidt, *For Indicted Members of Congress, Clout Keeps the Cash Coming*, *Wash. Post*, Nov. 6, 1994, at A33 (reporting that Senator Durenberger had raised \$440,000 to defend himself against criminal charges concerning allegedly false Senate expense reports).
- <sup>43</sup> See Steven Thomma, *Legal Defense Donations May Leave Lawmakers in Debt*, *Detroit Free Press*, June 5, 1994, at 1F, available in DIALOG, DET-FP Database (reporting that Senator Hatch had raised \$219,000 for legal expenses related to an Ethics Committee investigation of Hatch's connections with the BCCI bank).
- <sup>44</sup> Senator Hatfield has set up a legal defense fund at two different points in his career: once in 1987 to defend against an investigation of his ties to an oil developer and once in 1991 to defend against an investigation of his failure to disclose gifts. Novak, *supra* note 26, at 2525.
- <sup>45</sup> See Sara Fritz, *Cranston Seeks Funds for His Legal Defense*, *Chi. Trib.*, May 11, 1990, at A3 (reporting that Cranston was actually seeking contributions for his legal defense fund in the Keating Five Investigation).
- <sup>46</sup> See Novak, *supra* note 26, at 2521 (noting that Senator D'Amato had raised \$417,000 to defend against allegations “that he improperly used his office to steer federal money or contracts to friends, family members and campaign supporters”); see also Charles R. Babcock, *Sen. D'Amato Adds Ethics Defense to Fund-Raising Drive*, *Wash. Post*, May 23, 1993, at A17 (reporting that nearly half of the money in the legal defense fund of Senator D'Amato, a member of the Banking and Housing and Urban Affairs Committees, came from “executives in the financial or real estate industries”).
- <sup>47</sup> See Irwin B. Arief, *Senate to Let Members Seek Funds for Legal Defense*, *Cong. Q.*, Sept. 13, 1980, at 2701 (noting that the Senate's decision to allow its members to collect legal defense funds was triggered by the situation of Senator Williams, who was implicated in Abscam and eventually convicted).
- <sup>48</sup> See Novak, *supra* note 26, at 2525 (noting that Senator Harkin established a legal defense fund to defend against a libel suit).
- <sup>49</sup> See Glenn R. Simpson, *Brock Adams Raised Legal Defense Funds Before Ethics Panel Decided to Drop Case; Also, Leahy, Biden, and Their Aides Disclose Lawyers Services for Thomas Leak Probe*, *Roll Call*, July 20, 1992, at 5, available in LEXIS, News Library, ROLLCL File (reporting that Senator Adams “accepted \$3,775 in contributions from four individuals and a political action committee to defray legal expenses” associated with allegations of sexual impropriety).

- <sup>50</sup> See Glenn R. Simpson, *Leak Reporters Ask Rules Panel Hearing*, Roll Call, Mar. 23, 1992, at 1 (reporting that Senator Biden and a top aide had established a legal defense fund to pay for expenses related to a Senate investigation of leaks associated with the Clarence Thomas confirmation hearings).
- <sup>51</sup> See *Friends of Kay Bailey Hutchison Legal Defense Fund, Trustee's Final and Quarterly Report at v* (July 15, 1994) (reporting that Senator Hutchison's legal defense fund had collected over \$880,000); *Congressional Financial Reports*, Dallas Morning News, June 25, 1995, at 10J (noting that Senator Hutchison, after her acquittal, retained her legal defense fund as an asset valued at between \$250,000 and \$500,000).
- <sup>52</sup> Frank Hires *Ex-U.S. Attorney Sachs for Ethics Defense*, Wash. Post, Oct. 24, 1989, at A11 (reporting that Representative Frank's supporters had started a legal defense fund to fight charges that he allowed a prostitution ring to be run out of his home).
- <sup>53</sup> See Tom Kenworthy, *Wright Seeks Funds to Pay Legal Fees*, Wash. Post, May 17, 1989, at A14 (reporting that Speaker Wright had begun a fundraising effort to help pay the cost of his legal bills associated with defending against charges of House ethics violations).
- <sup>54</sup> See Jack Anderson & Michael Binstein, *There's More Than One Way to Try to Influence a Congressman*, Portland Oregonian, Feb. 14, 1994, at B7, available in WESTLAW, OREGONIAN Database (noting that Representative Mavroules accepted a \$5000 legal defense fund donation from a defense contractor when he was a ranking member of the House Armed Services Committee).
- <sup>55</sup> See Thomma, *supra* note 43, at 1F (“Rep. Floyd Flake ... raised \$199,000 to fight 1990 charges of tax evasion and diverting money from his church.”).
- <sup>56</sup> See Novak, *supra* note 26, at 2523 (reporting that Representative Ford, who had been indicted for bank, tax, and mail fraud, had a legal defense fund of over \$400,000).
- <sup>57</sup> See McDade *Peers Are Subpoenaed for Court Case*, Nat'l J. Congress Daily, June 20, 1995, available in LEXIS, News Library, CNGDLY File (stating that Representative McDade's legal defense fund had raised hundreds of thousands of dollars to defend against charges of “racketeering, conspiracy, and taking illegal gratuities”).
- <sup>58</sup> See *500 Attend Fund-Raiser for Oakar Legal Defense*, Plain Dealer (Cleveland), Apr. 4, 1995, at 1B, available in LEXIS, News Library, CLEVPD File (describing a legal defense fundraiser held by former Representative Oakar, who was indicted on seven felony corruption counts).
- <sup>59</sup> See Schmidt, *supra* note 42, at A33 (noting that Representative Reynolds had established a small legal defense fund after being indicted “on a string of charges including sexual assault, sexual abuse, child pornography and obstruction of justice”).
- <sup>60</sup> See Benjamin Sheffner et al., *Stock Flips Were Still Popular in 1994 ... And Other Financial Disclosure News*, Roll Call, June 15, 1995, available in LEXIS, News Library, ROLLCL File (stating that Representative Tucker had raised more than \$25,000 for his legal defense against corruption charges stemming from his service as mayor of Compton, California).
- <sup>61</sup> See Alex Heard, *Let Me Say This About That ... What a Congressman Should Do After the FBI Videotapes Him Soliciting a 10-Year-Old Sheik in the Tidal Basin*, Wash. Monthly, Apr. 1986, at 39, 42 (“Rep. Charles Diggs Jr., accused of padding his staff's salaries and then requiring them to pay his bills, netted \$26,000 from two [legal-defense] fundraisers in 1978.”).
- <sup>62</sup> See Alex Heard, *Squirm, Baby, Squirm: Anatomy of a Wiggle*, Wash. Post, Dec. 6, 1987, Magazine, at 13, 14 (ridiculing Representative Dan Flood's “[c] heesy” 1978 legal-defense fundraiser, featuring Lefty and the Polka Chaps, to raise funds to defend against bribery charges).
- <sup>63</sup> See Katie Hickox, *States News Service*, Feb. 15, 1990, available in LEXIS, News Library, SNS File (reporting donations made from several congressmen's campaign funds to the legal defense fund of Representative Garcia, who was convicted of bribery and extortion).
- <sup>64</sup> See Arieff, *supra* note 47, at 2701 (“Friends and associates of Rep. Frank Thompson Jr., D-N.J., who has been indicted in the Abscam probe, have set up a special fund for his legal defense ....”).

- <sup>65</sup> See UPI (Idaho Regional News), Oct. 21, 1983, available in LEXIS, News Library, UPSTAT File (reporting the establishment of a “Hansen Fight Fund” to defend the congressman against four charges of filing false financial disclosure reports).
- <sup>66</sup> See Novak, *supra* note 26, at 2523 (stating that Representative Young used a legal defense fund to pay a civil settlement in 1991); Glenn R. Simpson, Ethics Panel's Novel Ruling Lets Young Use Corporate Gifts to Legal Fund to Settle Suit, Roll Call, June 18, 1992, at 8, available in LEXIS, News Library, ROLLCL File (stating that Representative Young's fund garnered \$110,350, and reporting criticism of the use of a legal defense fund to pay a settlement).
- <sup>67</sup> See Gregory Gordon, UPI (Washington News), Jan. 14, 1981, available in LEXIS, News Library, UPSTAT File (reporting Representative Jenrette's explanation that \$25,000 found in his shoe by his estranged wife was not bribe money, but legal defense funds raised by his friends).
- <sup>68</sup> See UPI (Massachusetts Regional News), July 18, 1984, available in LEXIS, News Library, UPSTAT File (mentioning a legal defense fund established to pay legal bills resulting from a congressional investigation of Studds's sexual relationship with a teenage congressional page).
- <sup>69</sup> See, e.g., Gabriel Kahn, Senate Aide's Custody Fight Back to Court, Roll Call, Jan. 12, 1995, available in LEXIS, News Library, ROLLCL File (reporting that the Senate Ethics Committee approved a legal defense fund for Sharon Prost, a Senate Judiciary Committee lawyer involved in a child custody proceeding).
- <sup>70</sup> It is very difficult for executive branch employees to establish funds when they are employed by the government. See *infra* text accompanying notes 135-40. Once they leave government, they have little power; therefore contributors have little incentive to contribute to them. However, some former government officials have become causes cel'ebres whose fates can have political consequences. In those cases, legal defense fund donations have been forthcoming. Oliver North, the key figure in the Iran-Contra scandal and a conservative cult hero, may be the all-time legal defense fund champion, with donations reportedly totaling \$13 million. Richard Keil, Fired White House Travel Office Workers Getting Some Help, Associated Press, July 1, 1993, available in LEXIS, News Library, AP File; see also Defense Fund for North Deluged with Donations, Chi. Trib., July 24, 1987, s 1, at 4 (stating that \$250,000 a day flowed into the North legal defense fund during two days of his testimony in the Iran-Contra hearings). For other examples of former executive branch employees establishing legal funds, see Admirals Start Defence Fund for Poindexter, Reuters North European Service, July 15, 1987, available in LEXIS, News Library, ARCNEWS File (“Three retired admirals have started raising money for a legal defense fund for former National Security Adviser John Poindexter, a key figure in the Iran-Contra scandal ...”); Amy Bernstein, Travelgate, U.S. News & World Rep., July 5, 1993, at 12 (discussing the legal defense fund of seven fired White House travel office employees, whose dismissals had generated much Republican criticism of the Clinton administration); Neal B. Freeman, Justice; Lyn Nofziger's Conviction, Nat'l Rev., Aug. 5, 1988, at 30 (stating that 1500 people had donated to a legal defense fund for Lyn Nofziger, a former Reagan administration official convicted of influence-peddling); Lloyd Grove, The Parties Politic: Republicans Come to the Defense of Cap Weinberger, Wash. Post, Sept. 24, 1992, at C1, C2 (reporting a party attended by many Republican officials, intended to raise funds for the defense of the indicted former Secretary of Defense Caspar Weinberger); Howard Kurtz, Longtime Friends of Deaver Taking Up a Collection: Lawyers' Bills Could Top \$1 Million, Wash. Post, Mar. 7, 1987, at A4 (reporting the establishment of a legal defense fund for Michael Deaver, an indicted former aide to President Reagan).
- <sup>71</sup> Novak, *supra* note 26, at 2523.
- <sup>72</sup> See Glenn R. Simpson, Packwood, Others Rake It in (Again) for Legal Defense, Roll Call, Oct. 20, 1994, at 3, available in LEXIS, News Library, ROLLCL File (stating that Durenberger's legal bills were around two million dollars).
- <sup>73</sup> See Helen Dewar, Packwood Drops Appeal over Subpoena for Diaries, Wash. Post, Mar. 15, 1994, at A4 (reporting Packwood's statement he had already paid \$1 million in legal fees).
- <sup>74</sup> Ray Gibson, War Chests Used for Attorney Fees: Campaign Finances Revealed in State Filing, Chi. Trib., Aug. 1, 1995, s 1, at 7 (“Former U.S. Congressman Dan Rostenkowski has paid more than \$1.3 million in legal fees ...”).
- <sup>75</sup> Novak, *supra* note 26, at 2523.
- <sup>76</sup> John M. Broder, Clintons' Legal Bills Outpace Defense Fund, L.A. Times, Feb. 4, 1995, at A1, A16.

- <sup>77</sup> Id.
- <sup>78</sup> Amitai Etzioni, *Capital Corruption: The New Attack on American Democracy* 12 (1984).
- <sup>79</sup> Federal Election Commission, *Financial Activity of General Election Congressional Campaigns-1986-1994* (1994) (chart [hereinafter FEC Chart] (on file with the Texas Law Review)).
- <sup>80</sup> Tim Hames, *Washington's Would-Be Power Players*, *Fin. Times*, Nov. 30, 1993, at 13 (reviewing John Heinz et al., *The Hollow Core: Private Interests in National Policy Making* (1993)); see also Jeffrey H. Birnbaum, *The Lobbyists* 3 (1992) (“Corporate lobbyists have so suffused the culture of [Washington, D.C.] that at times they seem to be part of the government itself.”).
- <sup>81</sup> Hames, *supra* note 80, at 13.
- <sup>82</sup> See Senator William Proxmire, Foreword to Philip M. Stern, *Still the Best Congress Money Can Buy* at xi (rev. ed. Regnery Gateway 1992) (1988) (“Special interests are buying your national government. They're paying millions for it.”).
- <sup>83</sup> See Elizabeth Drew, *Politics and Money: The New Road to Corruption* 29-33 (1983) (describing a PAC that recommended candidates to other PACs and vehemently opposed campaign contribution limits).
- <sup>84</sup> This section will focus on the new vigor in ferreting out official corruption because most officeholders who use legal defense funds are defending against charges of corruption. Nevertheless, some officials are defending against charges that do not fit the usual conceptions of corruption. For example, Senator Packwood and President Clinton are defending against sexual harassment charges. Representative Mel Reynolds defended against various sex crime charges. See *supra* note 59. Like the corruption charges, these charges also probably result from increased scrutiny of and distrust of public officials.
- <sup>85</sup> It is impossible to determine whether there is actually more (or less) corruption today than in the past: “[T]here is no new thing under the sun,” *Ecclesiastes* 1:9 (King James), and “[c]orruption's not of modern date; It hath been tried in ev'ry state.” *The Quotable Lawyer* 62 (David Schrager & Elizabeth Frost eds., 1986) (quoting John Gay, *Fables* (1738)). America has a long history of official corruption, dating back to Samuel Argall, the deputy governor of Virginia from 1617 to 1619, who looted the colony dry. See Nathan Miller, *Stealing from America: A History of Corruption from Jamestown to Reagan* 9-13 (1992) (describing Argall's 80,000-pound plundering of Virginia). No less a statesman than Daniel Webster took hundreds of thousands of dollars of bribes in his career. See *id.* at 127-28 (“Webster's booming oratory, often warmed up with copious doses of brandy, was completely at the disposal of his clients.”); Douglas, *supra* note 2, at 15 (describing how the Second Bank of the United States kept Webster on retainer in return for his continued support on the Senate floor). Long before Watergate, the presidencies of Ulysses S. Grant and Warren G. Harding were notoriously corrupt. See Miller, *supra*, at 164 (“Grant left his name on what, until the Reagan years at least, has been regarded as the most corrupt presidential administration in American history.”); *id.* at 288 (describing how President Harding's Secretary of the Interior turned over Navy petroleum reserves, conservatively valued at \$200 million, in exchange for \$400,000 in bribes in the Teapot Dome scandal). Additionally, throughout American history until the modern era, bosses often controlled states and localities through ironclad control of their jurisdictions. See generally Bill Granger & Lori Granger, *Lords of the Last Machine: The Story of Politics in Chicago* (1987) (describing the boss rule of Mayor Richard J. Daley of Chicago); T. Harry Williams, *Huey Long* (1969) (detailing the rise of Huey Long to a position of virtual dictatorship of Louisiana); Harold Zink, *City Bosses in the United States: A Study of Twenty Municipal Bosses* (AMS Press, Inc. 1968) (1930) (analyzing the careers of 20 big city bosses, such as William Tweed of New York). Although blatant bossism is rare in modern America, there may be more corruption now, simply because there is more government and more private interest money dedicated to influencing government. See *supra* subpart II(B); see also Drew, *supra* note 83, at 1 (asserting that the unprecedented role of money in Washington is leading officeholders “to adjust their behavior in office to the need for money”). However, the difference between corruption now and corruption a hundred years ago is probably qualitative, not quantitative. See Drew, *supra* note 83, at 146 (asserting that candidates' need for money has fueled a new type of corruption based on an obsession with fundraising).
- <sup>86</sup> Elder Witt, *Is Government Full of Crooks, or Are We Just Better at Finding Them?*, *Governing*, Sept. 1989, at 33, 33.
- <sup>87</sup> Abscam was an FBI sting in which agents posed as wealthy Arabs and offered bribes to members of Congress. See *Congressional Quarterly*, *Congressional Ethics: History, Facts, and Controversy* 63-68 (John L. Moore ed., 1992) (discussing

the Abscam sting and the subsequent indictments of Representatives John Jenrette, Raymond Lederer, John Murphy, Michael Myers, Frank Thompson, and Richard Kelly and Senator Harrison Williams).

- <sup>88</sup> Katharine Q. Seelye, *In Trouble: Five Who Sit with Reason to Squirm*, N.Y. Times, Sept. 18, 1994, s 4, at 3.
- <sup>89</sup> *Id.* (listing Representatives McDade, Reynolds, Rostenkowski, and Tucker and Senator Durenberger as being under indictment).
- <sup>90</sup> See *supra* notes 18, 42, 57, 59, 60, and accompanying text.
- <sup>91</sup> Sheffner et al., *supra* note 60, at 1 (noting that Representatives Tucker, McDade, and Reynolds were under indictment). Representative Reynolds was subsequently convicted in September 1995 and sentenced to five years. *Congressman Gets Five Years*, Chi. Trib., Sept. 29, 1995, at 1.
- <sup>92</sup> *Congressional Quarterly*, *supra* note 87, at 73.
- <sup>93</sup> See *id.* at 73-83 (describing briefly 22 investigations between 1980 and 1992, including one of Newt Gingrich); Stephen Barr, *Sen. Gramm Defends His Dealings with Texas S&L Operator*, Wash. Post, Nov. 30, 1992, at A8 (discussing the Senate Ethics Committee's investigation of Gramm for allegedly interfering with federal regulators). The House Ethics Committee also investigated the massive check-kiting scandal associated with the House Bank, finding that more than 350 present and former members had bounced checks. See Guy Gugliotta & Kenneth J. Cooper, *String of House Scandals Saps Public Confidence*, Wash. Post, Mar. 11, 1992, at A1.
- <sup>94</sup> See *Congressional Quarterly*, *supra* note 87, at 20-23 (discussing the events leading up to Speaker Wright's resignation, under the cloud of charges that he had accepted improper gifts and evaded outside earned income limits).
- <sup>95</sup> See *id.* at 19-20 (noting Representative Coelho's decision to resign from Congress rather than submit to investigations into alleged financial improprieties).
- <sup>96</sup> Laura K. Ray, *Discipline Through Delegation: Solving the Problem of Congressional Housecleaning*, 55 U. Pitt. L. Rev. 389, 408-09 (1994). Previously, the only expulsions had been for reasons of treason--three representatives and fifteen senators, all but one of which occurred at the start of the Civil War. *Id.* at 408.
- <sup>97</sup> *Id.* at 410. Five senators have been censured for affronts to the Senate's dignity. *Id.*
- <sup>98</sup> See *Congressional Quarterly*, *supra* note 87, at 31-33 (noting the Senate's denouncement of Senator Talmadge for fraud and incomplete and improper financial disclosure).
- <sup>99</sup> See *id.* at 33-36 (describing the events leading to the Senate's denouncement of Senator Durenberger for evading honoraria limits and obtaining rent reimbursement for a condominium that he actually owned).
- <sup>100</sup> See *id.* at 44-45 (noting the reprimand of Senator Cranston for exerting improper influence on behalf of convicted banker Charles Keating).
- <sup>101</sup> Ray, *supra* note 96, at 413. Sixteen representatives were previously censured for affronts to the House for incidents such as using insulting language on the House floor or assaulting another member. *Id.* at 413-14.
- <sup>102</sup> See *Congressional Quarterly*, *supra* note 87, at 39, 38-39 (noting that Diggs became the first representative to be censured in 58 years after admitting to "padd[ing] his office payroll and accept[ing] kickbacks from [his] employees").
- <sup>103</sup> See *id.* at 41-42 (reporting that Representative McFall was reprimanded in 1978 for accepting gifts from a Korean businessman).
- <sup>104</sup> See *id.* (noting that Representative Roybal was reprimanded in 1978 for failing to report campaign contributions from a Korean businessman, although the Ethics Committee had recommended the more severe punishment of censure).



- 105 See *id.* at 39, 41-42 (stating that Representative Wilson was reprimanded in 1978 for accepting gifts from a Korean businessman and was censured in 1980 for “improperly converting almost \$25,000 in campaign funds to his personal use and accepting \$10,500 in gifts from an individual with a direct interest in legislation”).
- 106 See *id.* at 41 (discussing the 1976 ethics investigation and subsequent reprimand of Representative Sikes, the chairman of the Appropriations Subcommittee on Military Construction, for failing to disclose his investments in defense-related businesses and in land, whose value he attempted to increase through legislation).
- 107 See *id.* at 42 (“The House [on] July 31, 1984, reprimanded George V. Hansen, R-Idaho, for failing to disclose financial dealings as required under the 1978 Ethics in Government Act ....”).
- 108 See *id.* at 42-43 (reporting the 1987 reprimand of Representative Murphy for various financial improprieties).
- 109 See *id.* at 39-41 (noting the 1983 reprimand of Representative Studds for his sexual relationships with and sexual advances toward congressional pages).
- 110 See *id.* (describing the 1983 reprimand of Representative Crane for his sexual relationship with a congressional page).
- 111 See *id.* at 43-44 (describing the political controversies surrounding the 1990 reprimand of Representative Frank for his use of influence on behalf of a male prostitute).
- 112 Abigail Trafford, *A Collective Case of Compassion Fatigue?*, *Wash. Post*, Oct. 11, 1994, *Health*, at 6 (“Until the mid-’70s, more than 50 percent of Americans continued to have faith in the federal government. But after the Vietnam War, the Watergate scandal and the resignation of President Nixon, people who trusted Washington to do the right thing became a new minority.”).
- 113 *Id.*
- 114 *Id.*
- 115 See Douglas, *supra* note 2, at 97-102.
- 116 See Committee on Standards of Official Conduct, *Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives* 348 (1992) [hereinafter *Ethics Manual*]. Some of the Code’s provisions encouraged government employees to “[u]phold the Constitution ... [, g]ive a full day’s labor for a full day’s pay ... [, n]ever discriminate unfairly ... [, and be] ever conscious that public office is a public trust.” *Id.*
- 117 *Id.* at 6. Baker, secretary to majority leader Lyndon Johnson in the late 1950s, was accused of fraud and income-tax evasion. Shelley Ross, *Fall from Grace: Sex, Scandal, and Corruption in American Politics from 1702 to the Present* 213-14 (1988).
- 118 *Ethics Manual*, *supra* note 116, at 6-7. Powell was accused of travel expense fraud and diverting illegal payments to his wife. *Id.*
- 119 *Id.*
- 120 Carter promised, “I’ll never tell a lie.” Paul F. Boller, Jr., *Presidential Campaigns* 343 (1984). He believed that honesty was the solution to corruption: “There is a simple and effective way for public officials to regain public trust--be trustworthy!” Jimmy Carter, *Why Not the Best?* 146 (1975) (emphasis in original).
- 121 Carter advocated an absolute prohibition on gifts to public officials, complete financial disclosure by public officials, an absolute prohibition on conflicts of interest, strict regulation of the “revolving door” between industry and government, thorough disclosure by lobbyists of their activities, public financing of congressional campaigns, and “all-inclusive sunshine laws,” which would grant the public access to executive, regulatory, and congressional meetings. Carter, *supra* note 120, at 146.
- 122 Pub. L. No. 95-521, 92 Stat. 1824 (1978) (codified as amended in scattered sections of 2, 5, 18, 26, and 28 U.S.C.).
- 123 See Suzanne Garment, *Scandal: The Crisis of Mistrust in American Politics* 40-41, 112-13 (1991).
- 124 See *id.* at 111-12; *supra* note 87.

- <sup>125</sup> See *id.* at 114 (describing the rapidly increasing number of indictments brought by the Public Integrity Section each year).
- <sup>126</sup> George Archibald, *Walsh's Probe Is Over, But His Spending Isn't: Iran-Contra Tab Passes \$46 Million*, *Wash. Times*, June 8, 1995, available in LEXIS, News Library, WTIMES File.
- <sup>127</sup> *Ethics Manual*, *supra* note 116, at 8. The Supreme Court recently held that the honoraria ban was unconstitutional as applied to low-level officials. *United States v. National Treasury Employees Union*, 115 S. Ct. 1003 (1995).
- <sup>128</sup> Senator Claghorn, an unreconstructed southern senator on Fred Allen's radio show, drank only from Dixie cups. Tom Fox, *Remember Allen's Alley? A Fond Farewell to a Voice Out of the Past*, *Philadelphia Inquirer*, July 25, 1984, at A11.
- <sup>129</sup> Pub. L. No. 101-194, 103 Stat. 1716 (1989) (codified as amended in scattered sections of 2, 5, 10, 18, 22, 26, 28, 31, 41, 42, and 50 U.S.C.).
- <sup>130</sup> Mark A. Adams et al., *Ethics in Government*, 30 *Am. Crim. L. Rev.* 617, 629 (1993).
- <sup>131</sup> 5 U.S.C. s 7353(a) (1994).
- <sup>132</sup> 5 U.S.C. s 7353(b), (b)(2)(A)-(B) (1994).
- <sup>133</sup> 5 U.S.C. s 7353(d) (1994).
- <sup>134</sup> The ethics revolution has affected the judicial branch, too. See, e.g., Jack Brooks et al., *Justice for Judges*, and the 'National Inquest', *Legal Times*, May 6, 1991, at 28 ("Before 1986, there had not been an impeachment trial in the Senate for 50 years .... In the past four years, however, there have been three judicial impeachments ...."); *Once Again, Impeachment*, *Wash. Post*, July 9, 1993, at A20 ("Until 1983 not a single federal judge had ever been prosecuted and convicted of a crime committed while he was in office. Since then, five have been indicted and four convicted."). Nevertheless, the judicial branch has not seen the explosion of big-money legal defense funds that the legislative branch and, to an extent, the executive branch have seen. But see Robert Samek, *Businessman Campaigning to Help Hastings*, *St. Petersburg Times*, Mar. 22, 1989, at B3, available in LEXIS, News Library, STPETE File (noting the establishment of a legal defense fund to assist Alcee Hastings, a federal district judge facing impeachment proceedings for allegedly accepting a bribe). Because legal defense funds have not been prevalent in the judicial branch, this Note will not examine judicial branch regulation of legal defense funds.
- <sup>135</sup> 5 C.F.R. ss 2635.201-2635.205 (1995).
- <sup>136</sup> *Id.* s 2635.202.
- <sup>137</sup> *Id.* s 2635.203(d)(1)-(4).
- <sup>138</sup> *Id.* s 2635.204(a).
- <sup>139</sup> *Id.* s 2635.204(b).
- <sup>140</sup> "A senior official at the Department of the Interior has been put on administrative leave without pay after it was discovered that a legal defense fund established in his behalf had collected contributions from representatives of oil industry companies he regulated in his former job." Tom Kenworthy, *Interior Aide Put on Leave After Legal Difficulties*, *Wash. Post*, Nov. 30, 1994, at A18.
- <sup>141</sup> See *supra* note 41 and accompanying text.
- <sup>142</sup> LaFraniere, *supra* note 41, at A4.
- <sup>143</sup> 5 C.F.R. s 2635.204(j) (1995).
- <sup>144</sup> See *The President's Legal Bills*, *supra* note 38, at A28.
- <sup>145</sup> See LaFraniere, *supra* note 41, at A4 (stating that the OGE believes that the "regulation is broadly worded to cover more than the ties and picture frames that routinely pour into the White House, and should be interpreted literally").

- 146 5 C.F.R. s 2635.204(j) (1995). The statutes alluded to are 18 U.S.C. ss 201(b), 201(c)(3) (1994).
- 147 5 C.F.R. s 2635.204(j) (1995); id. s 2635.202(c)(1).
- 148 Id. s 2635.204(j) (1995); id. s 2635.202(c)(2).
- 149 See Presidential Legal Expense Trust, June 28, 1994, at 4 (on file with the Texas Law Review) [hereinafter Presidential Trust] (“Trustees are specifically authorized and empowered ... [t]o raise funds and solicit donations to the trust from the general public ....”).
- 150 See LaFraniere, supra note 41, at A4 (noting the executive director's statement that the trust is following the statutory prohibition on solicitation of gifts).
- 151 Presidential Trust, supra note 149, at 2-3.
- 152 See id. at 3.
- 153 See supra note 38.
- 154 Michael K. Frisby & Rick Wartzman, Clinton, Seeking Political Comeback, Uses Speech to Nation to Urge Renewed Faith in Government, Wall St. J., Jan. 25, 1995, at A18 (quoting President Clinton).
- 155 Douglas Jehl, On Morning After, the White House is Back on the Defensive, N.Y. Times, Jan. 26, 1995, at A19 (quoting Senator Dole). In reality, registered lobbyists are only a small percentage of total lobbyists and are not the most important players in the influence business. See Edward Zuckerman, President Clinton, In State of Union Speech, Asks Congress for Strong Lobby Registration, Campaign Reform Measures, Political Fin. & Lobby Rep., Feb. 10, 1995, available in LEXIS, News Library, CURNWS File (reporting President Clinton's assertion that there are 90,000 lobbyists in Washington, less than 10,000 of whom are registered). Clinton's fund accepted only \$13,000 in contributions from registered lobbyists during its first six months of operation.
- 156 A Gift-Free Congress, N.Y. Times, Jan. 28, 1995, at 18 (editorial).
- 157 Judicial Watch, Inc. v. Clinton, 880 F. Supp. 1 (D.D.C. 1995). Judicial Watch and the National Legal and Policy Center sued to shut down the fund pending its compliance with the restrictions of the Federal Advisory Committee Act. Id. at 4-5. The court held that the fund was not an advisory committee and dismissed the plaintiffs' suit. Id. at 7-8. The court also dismissed the plaintiffs' claims that were based on the federal gift, illegal gratuity, and standards of conduct statutes, holding that the statutes did not establish a private right of action. Id. at 5 n.3.
- 158 See Ethics Manual, supra note 116, at 26-27, 335 (detailing House Rule XLIII (4)).
- 159 Id. at 49. The main consequence of subjecting legal defense funds to the gift rules is that members must annually disclose all donations of \$250 or more. Id. at 50.
- 160 Id. at 49. In contrast, individuals may only contribute \$1000 per election to a political campaign. Political action committees may donate \$5000 per election to a candidate. Id. at 291.
- 161 Id. at 49.
- 162 Id. at 50.
- 163 See id. at 336 (reprinting House Rule XLIII (7), which declares that “[a] member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund raising events”).
- 164 Id. at 49; House Select Comm. on Ethics, Final Report of the Select Comm. on Ethics, H. Rep. No. 1837, 95th Cong., 2d Sess. 15 (1979) [hereinafter House Ethics Report].
- 165 See supra note 52.

- 166 See supra note 59.
- 167 See supra note 68.
- 168 See supra note 60.
- 169 See supra note 66.
- 170 See supra note 47.
- 171 Arieff, supra note 47, at 2701 (detailing Senator Williams's Abscam conviction).
- 172 See Senate Select Comm. on Ethics, 100th Cong., 2d Sess., Regulations Governing Trust Funds to Defray Legal Expenses Incurred by Members, Officers, and Employees of the United States Senate 3 [hereinafter Fund Regulations] (on file with the Texas Law Review).
- 173 Id. at 5.
- 174 See supra notes 27-34 and accompanying text.
- 175 See supra note 49.
- 176 See supra note 51.
- 177 See supra note 69.
- 178 Fund Regulations, supra note 172, at 9.
- 179 Id.; see Edwin Chen, Senate Invokes Limits on Lobbyists' Largesse, *Austin American- Statesman*, July 29, 1995, at A6 (mentioning the Senate's new rule banning contributions from lobbyists to senators' legal defense funds).
- 180 Fund Regulations, supra note 172, at 6.
- 181 Id. at 12.
- 182 Id. at 11.
- 183 See, e.g., supra note 38 and accompanying text.
- 184 See Webster's Ninth New Collegiate Dictionary 294 (Frederick C. Mish ed., 1984) (defining corruption as "impairment of integrity, virtue or moral principle: Depravity"); Daniel H. Lowenstein, Political Bribery and the Intermediate Theory of Politics, 32 *UCLA L. Rev.* 784, 800 n.52 (1985) (noting David H. Bayley's definition of corruption--"misuse of authority"--and H.A. Brasz's definition of corruption--"perversion of power").
- 185 Lowenstein, supra note 184, at 802.
- 186 George C.S. Benson et al., *Political Corruption in America* 212 (1978).
- 187 Lowenstein, supra note 184, at 804. See David H. Bayley, *The Effects of Corruption in a Developing Nation*, in *Political Corruption* 521, 522 (Arnold J. Heidenheimer ed., 1970) ("Corruption, ... while being tied to the act of bribery, is a general term covering misuse of authority as a result of considerations of personal gain, which need not be monetary.").
- 188 Some have suggested that ethical dilemmas in government could be resolved by regarding officials as trustees or fiduciaries. See Kathleen Clark, *Enough Already? A Fiduciary Standard for Evaluating Government Ethics Regulation*, 1996 *U. Ill. L. Rev.* (forthcoming 1996).
- 189 Daniel H. Lowenstein, On Campaign Finance Reform: The Root of All Evil Is Deeply Rooted, 18 *Hofstra L. Rev.* 301, 323 (1989).
- 190 John T. Noonan, Jr., *Bribes* 429 (1984).

- <sup>191</sup> See generally *id.* at 427-680 (giving a history of American bribery scandals and the codification of bribery laws in response to those scandals).
- <sup>192</sup> Lowenstein, *supra* note 184, at 796 (emphasis omitted).
- <sup>193</sup> One could argue, however, that campaign finance reform is still necessary to promote political equality. The Supreme Court rejected this argument as unconstitutional in Buckley v. Valeo, 424 U.S. 1, 48-49 (1976) (“[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment ...”). By equating excessive corporate electoral spending with corruption, the Court in Austin v. Michigan Chamber of Commerce appeared to be more receptive to using campaign finance reform to promote political equality. Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 660 (1990) (referring to “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas” as a “type of corruption”). However, current campaign finance laws have been drafted under the specter of Buckley, which sets forth the prevention of corruption--narrowly defined--as the permissible *raison d’être* for reform.
- <sup>194</sup> Some have challenged this presumption. For example, some argue that contributors donate to campaigns mainly to further the careers of individuals already ideologically predisposed to support their positions. See Frank J. Sorauf, *Money in American Elections* 310 (1988) (“Do the votes follow the money, or does the money follow the votes? While the votes in Congress may be influenced by the contributed money, it is more likely that the contributions result from the contributors’ approval of the values and/or voting record of the candidate.”). Yet, belying this argument are widespread examples of contributors giving to candidates sure to win (an economically irrational choice under this model), to candidates who do not support the contributor’s philosophy, to candidates who have already won the election (or are unopposed), or to both candidates in the same election. Lowenstein, *supra* note 189, at 309-11; Philip M. Stern, *The Best Congress Money Can Buy* 31 (1988). This phenomenon is best illustrated by the behavior of PACs: PACs’ pattern of political giving differs sharply from that of the ordinary citizen... [P]rivate citizens, especially small givers, typically make political contributions because they want to influence the outcome of the election. A PAC is less interested in the influence it has on an election outcome than in the influence it buys with the winner after the ballots have been counted. Stern, *supra*, at 34-35 (emphasis omitted). Therefore, most large contributors must think that their money affects legislative outcomes. This is probably good evidence that the money has an effect because the contributors are sophisticated players investing millions of dollars. If there were no legislative results, there would probably be much fewer contributions.
- <sup>195</sup> See *supra* text accompanying note 192.
- <sup>196</sup> Etzioni, *supra* note 78, at 69. It has been recognized for millennia that money can buy the ear of the powerful: “A man’s gift maketh room for him, and bringeth him before great men.” Proverbs 18:16 (King James).
- <sup>197</sup> Etzioni, *supra* note 78, at 70.
- <sup>198</sup> See *supra* text accompanying note 192.
- <sup>199</sup> Stern, *supra* note 82, at 139 (emphasis in original).
- <sup>200</sup> See Etzioni, *supra* note 78, at 57, 57-62 (emphasis in original).
- <sup>201</sup> U.S. Const. art. I, s 6.
- <sup>202</sup> Etzioni, *supra* note 78, at 64, 64-65.
- <sup>203</sup> For a general discussion of the history of the Speech or Debate Clause as interpreted by the Supreme Court, see *Congressional Quarterly*, *supra* note 87, at 109-15.
- <sup>204</sup> See, e.g., United States v. Helstoski, 442 U.S. 477, 487 (1979) (“[A] legislative act of a Member [of Congress] may not be introduced by the Government in a prosecution under [18 U.S.C.] s 201 [a bribery statute].”); United States v. Johnson, 383 U.S. 169, 184-85 (1966) (“We hold that a prosecution under a general [bribery] statute dependent on ... inquiries [into

a congressman's speech on the floor of the House] necessarily contravenes the Speech or Debate clause.”); United States v. Dowdy, 479 F.2d 213, 224, 224-25 (4th Cir.) (holding that a bribery conviction of a congressman violated the Speech or Debate Clause because the trial included “an examination of the defendant's actions as a congressman”), cert. denied, 414 U.S. 866 (1973). But see United States v. Brewster, 408 U.S. 501, 528 (1972) (holding that a conviction of a congressman did not violate the Speech or Debate Clause because the government could prove the elements of a bribe without producing evidence of a legislative act).

- 205 Some may argue that decreased confidence in government is not a bad thing. However, it is a thing that the government has a right to combat. In fact, the ethics reforms of the last 20 years can be characterized as an effort to bolster flagging confidence in government. See supra notes 113-14 and accompanying text.
- 206 See, e.g., Ethics Manual , supra note 116, at 24-25 (strongly advising members of Congress to avoid accepting gifts that create an appearance of impropriety).
- 207 5 U.S.C. app. s 501(b) (1994). But see supra note 127 (noting that the Supreme Court has determined the honoraria ban to be unconstitutional as applied to low-level officials).
- 208 See Etzioni , supra note 78, at 14-16 (cataloging some substantial honoraria received by powerful members of Congress). Senator William Proxmire has commented, “If you're chairman of the Banking Committee, you don't have to speak at all... You can read the phone book, and they'll be happy to pay your honoraria.” Id. at 14.
- 209 Ethics Manual , supra note 116, at 37-38; Standing Rules of the Senate, S. Doc. No. 25, 102d Cong., 2d Sess. 50-51 (1992) [hereinafter Senate Rules ].
- 210 5 U.S.C. app. s 501(a)(1) (1994).
- 211 House Comm'n on Administrative Review, Financial Ethics, H.R. Misc. Doc. No. 73, 95th Cong., 1st Sess. 10 (1977).
- 212 2 U.S.C. s 441a (1994). Obviously, campaign finance laws are irrelevant to all executive branch officials except the president. No other executive branch officials campaign for their offices except the vice president, who does not campaign with finances independent of the presidential campaign.
- 213 See Sorauf , supra note 194, at 326; Michael J. Malbin, Looking Back at the Future of Campaign Finance Reform, in Money and Politics in the United States 232, 267-68 (Michael J. Malbin ed., 1984).
- 214 See Stern , supra note 194, at 34 (“Most small donors contribute to candidates not because they expect anything for themselves in return for their money, but because they want to help them win.”).
- 215 David A. Strauss, Corruption, Equality, and Campaign Finance Reform, 94 Colum. L. Rev. 1369, 1372 (1994). Actually, although regulations bar the use of campaign contributions for nonpolitical purposes, these regulations are not absolute. For example, campaign funds may be used for legal expenses. See infra notes 247-48 and accompanying text. Until recently, senior members of Congress were allowed to retain campaign warchests for personal use upon retirement. See Craig Winneker, Rules on Converting War Chests Get a Fine-Tuning, Roll Call , May 9, 1991, available in LEXIS, News Library, ROLLCL File (“Under current federal election law, Members who were in office on Jan. 8, 1980, are allowed to take for themselves any leftover campaign funds once they retire from Congress.... This so-called ‘grandfather’ clause was repealed by the 1989 Ethics Reform Act, but the prohibition will not take effect until ... 1993.”).
- 216 Strauss, supra note 215, at 1372.
- 217 See Lowenstein, supra note 189, at 328 (“Campaign contributions, under current conditions, are more likely to be indispensable to an elected official than personal payments.”).
- 218 FEC Chart, supra note 79.
- 219 Barry Goldwater, Foreword to Stern , supra note 82, at xv.

- 220 See 26 U.S.C. ss 9001-9042 (1988 & Supp. V 1993) (establishing accounts to pay for the general election presidential campaigns of major candidates who do not accept private donations and to match the private donations received by presidential primary election candidates).
- 221 “The First Amendment requires the invalidation of the ... independent expenditure ceiling, ... limitation on a candidate's expenditures from his own personal funds, ... and ceilings on overall campaign expenditures” contained in the Federal Election Campaign Act of 1971. Buckley v. Valeo, 424 U.S. 1, 58 (1976).
- 222 See Lowenstein, *supra* note 189, at 340.  
One way to view the campaign finance debate is as a reflection of two competing visions of the government's rights and obligations regarding the political process. One of these visions emphasizes the individual's or group's right to be free from government interference with political participation....  
In the opposing vision, the right to political participation may be infringed not only by government suppression, but also by structural inequalities in access to the resources that are necessary for effective participation.  
Id.
- 223 See *supra* subpart III(A).
- 224 See *supra* subpart III(A).
- 225 See *supra* subpart III(B).
- 226 See *supra* subpart III(C).
- 227 See, e.g., Today: Interview: Discussion About O.J. Simpson's Upcoming Book (NBC television broadcast, Jan. 16, 1995), available in WESTLAW, ALLNEWS Database (noting the existence of an O.J. Simpson legal defense fund). Sometimes legal opponents of officeholders--for example, Paula Jones and the women suing Bob Packwood--have legal defense funds. See Paula Jones' Lawyer Tells of 11th-Hour Clinton Concession, L.A. Times, Oct. 2, 1994, at A16 (noting the existence of Paula Jones's legal defense fund); St. George, *supra* note 31, at 1A (noting that Senator Packwood's accusers were raising money to pay their legal expenses, but had raised less than a tenth of the amount Packwood had).
- 228 See 140 Cong. Rec. S5223 (daily ed. May 5, 1994) (statement of Sen. Cohen) (“I think it is imperative that we have legal defense funds for individuals who might find themselves to be the victims of overzealous prosecutors, just as any citizen would be allowed to do.”).
- 229 Fund Regulations, *supra* note 172, at 3.
- 230 The Oxford Dictionary of Quotations 292 (Angela Partington ed., 4th ed. 1992).
- 231 House Ethics Report, *supra* note 164, at 15.
- 232 Fund Regulations, *supra* note 172, at 3.
- 233 The president is allowed to collect private money for improvements to the White House, such as President Bush's horseshoe pit and President Clinton's jogging track. See Lloyd Grove, Bill Clinton's Outside Track: Jogging Area to Be Built with Private Funds, Wash. Post, Feb. 18, 1993, at C1. However, these improvements are considered gifts to the public, not the president, because the public is the permanent owner of the White House. Burt Solomon, A Question with No Good Answers: Who'll Pay Clinton's Legal Bills, 26 Nat'l J. 1202, 1202 (1994).
- 234 See, e.g., 140 Cong. Rec. S5220 (daily ed. May 5, 1994) (statement of Sen. Hutchison) (“Without the support of my many friends and the wonderful public-spirited strangers, the district attorney in Texas would have known that he probably could, indeed, would have changed the results of my election; that he could have wiped out the will of the people by using the legal system and hundreds of thousands of taxpayer dollars to persecute a person who could not possibly defend herself because she lacked the personal resources to fight the system.”); Ken Bode, Politicized Justice Department Must Change to Be Viable (CNN television broadcast, Apr. 12, 1993), available in LEXIS, News Library, CNN File (criticizing the politicization of the Justice Department during the Reagan and Bush administrations and reporting that “Democrats, and especially black mayors and congressmen, believe they were targets of Republicans [ sic] U.S. attorneys with political motives” and that

“Democrats came to believe this was a Justice Department political strategy--if you can't beat them at the polls, ruin them in court”); Freeman, *supra* note 70, at 30 (claiming that an all-black jury voted to convict a Reagan administration official solely because blacks tend to be Democrats); Heard, *supra* note 61, at 45 (noting the theory of a backer of Representative Dan Flood that Flood's indictment was spurred by “‘jealous’ members who disagreed with the congressman's views on the Panama Canal”); John Lichfield, *Barry Prosecution Founders with Mistrial*, *Independent* (London), Aug. 11, 1990, at 1, available in LEXIS, News Library, INDPNT File (“Mr. Barry's lawyer ... claimed that his client was the victim of a selective and politically motivated prosecution.”); McDade Pleads Not Guilty to Taking Gifts from Defense Contractors, *UPI*, May 18, 1992, available in LEXIS, News Library, UPSTAT File (reporting Representative McDade's assertion that he was the victim of a politically motivated prosecution); Selwyn Raab, *Judge Refuses Bid to Dismiss Donovan Case*, *N.Y. Times*, Mar. 16, 1985, s 1, at A1, A8 (reporting Secretary of Labor Raymond Donovan's assertion that his prosecution was politically motivated); Samek, *supra* note 134, at 3B (noting the comment of a supporter of Judge Alcee Hastings, who faced impeachment, that the judge was “being lynched by the conservative establishment interested in preserving the status quo”); Jerry Seper, *Bush Pardons 6 Walsh Targets; Counsel Talks of New Probe*, *Wash. Times*, Dec. 25, 1992, at A1, available in LEXIS, News Library, WTIMES File (reporting that President Bush, upon pardoning several former officials implicated in the Iran-Contra affair, criticized the independent counsel investigation as politically motivated, representing a “profoundly troubling development ... : the criminalization of policy differences”); Robert W. Stewart & Paul Feldman, *Fiedler Calls Self Victim of ‘Ridiculous’ Bribe Charge*, *L.A. Times*, Jan. 24, 1986, s 1, at 1 (reporting the assertion of the chief aide to Representative Bobbi Fiedler that her bribery indictment was a politically motivated “dirty trick”); *Treasurer's Widow to Seek Public Office*, *UPI*, Apr. 16, 1987, available in LEXIS, News Library, UPSTAT File (“Before shooting himself in the mouth with a high-caliber pistol at the news conference in his office, [convicted Pennsylvania state treasurer Budd] Dwyer said he was the innocent victim of a politically motivated prosecution and a flawed justice system.”); *UPI* (Idaho Regional News), Oct. 21, 1983, available in LEXIS, News Library, UPSTAT File (noting Representative George Hansen's assertion that his indictment was “aimed at silencing his opposition to federal tax laws”). Minority officeholders sometimes allege that the charges against them are racially motivated. This, too, is a form of political motivation, because the officeholders tend to allege that they are targets of racial animus as a result of their prominence in the community. See, e.g., Bode, *supra* (reporting Representative Floyd Flake's comment that his indictments were “either political or racial”); Heard, *supra* note 61, at 43 (noting Representative Charles Diggs's allegation that his indictment was a result of “racist scapegoating”); Gabriel Kahn, *Reynolds Makes 5 Indicted Members: Highest Total Since Abscam in 1980*, *Roll Call*, Sept. 5, 1994, at 1, available in LEXIS, News Library, ROLLCL File (“Both [Representative Mel] Reynolds and his lawyer insist the charges are racially motivated.”). The Whitewater investigation and the Paula Jones lawsuit have been particularly subject to charges of political motivation. See, e.g., Harvey Berkman, “Friends of Bill” Shell Out; Lawyers Contribute to Clinton Legal Fund for Paula Jones, *Whitewater Probes*, *Nat'l L.J.*, Feb. 27, 1995, at A6 (surveying some of President Clinton's legal defense fund contributors and concluding that “[t]he most common reason cited by donors for their gifts was the belief that the [Whitewater] investigation and [Paula Jones] suit are fundamentally politically motivated and that political opponents must not be allowed to abuse the legal system to hobble and bankrupt the president”).

<sup>235</sup> Heard, *supra* note 61, at 45.

<sup>236</sup> U.S. Const. art. II, s 4.

<sup>237</sup> *Congressional Quarterly*, *supra* note 87, at 19-23.

<sup>238</sup> See Jane Mayer & Doyle McManus, *Landslide: The Unmaking of the President*, 1984-1988, at 387, 386-87 (1988).

<sup>239</sup> See *id.*

<sup>240</sup> See Gratteau & Cohen, *supra* note 14, at 1 (“U.S. Rep. Dan Rostenkowski, once considered the second-most powerful man in Washington, was unseated Tuesday by a political neophyte who was underfunded, understaffed and unknown.”).

<sup>241</sup> A presumption of many debates involving government ethics is that corruption prosecutions should not be politically motivated. For example, the main justification of the independent-counsel law is that independent counsels seek a higher quality of justice because they are not subject to political manipulation. See Beth Nolan, Removing Conflicts from the Administration of Justice: Conflicts of Interest and Independent Counsels Under the Ethics in Government Act, 79 *Geo. L.J.* 1, 6 (1990) (“The independent counsel provisions seek to accomplish the neutral administration of the criminal laws ....”). Society's disapproval of political prosecution arises from the same source as society's disapproval of corruption: the idea that



“official decisions should be made in the interests of the common good, not in the narrow self-interests of the individuals in power.” *Id.* at 2.

242 See supra notes 220-22 and accompanying text.

243 If contributions to legal defense funds were regulated like other gifts, senators and representatives could not accept contributions from a single source totaling over \$250 a year. Ethics Manual , supra note 116, at 27, 335; Senate Rules , supra note 209, at 49.

244 See Ethics Manual , supra note 116, at 167 (noting that although congressmen may not accept gifts greater than \$250, they must only disclose gifts of \$250 or more).

245 House Republicans have suggested that the OGE's interpretation of the regulations to allow Clinton's legal defense fund is contrary to the gift statute and so can be struck down under *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843 n.9 (1984) (“The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent.”). Questions Henry Gonzalez Doesn't Want You to Hear, Wash. Times , July 28, 1994, at A19, available in LEXIS, News Library, WTIMES File. This may be true. In fact, the legal defense fund regulations of the House and Senate are also probably contrary to the proscriptions of the gift statutes. However, Chevron is the language of judicial review. Considerations of interbranch comity should discourage courts from reviewing regulations that uniquely affect executive and legislative branch officeholders. Congress and various presidents have led the fight for ethics reform. They should be responsible for ending the anomalous treatment of legal defense funds.

246 Twenty-eight percent of senators and 11.5% of representatives are millionaires, while less than 0.5% of all Americans are millionaires. Glenn R. Simpson, *Of the Rich, By the Rich, For the Rich: Are Congress's Millionaires Turning Our Democracy into Plutocracy?*, Wash. Post , Apr. 17, 1994, at C4 (editorial). Nevertheless, public officials often claim that they simply cannot afford their legal expenses. See Paddock, supra note 7, at 3 (“We are exposed to litigation as if we're billionaires but we have to defend [[[ourselves] on middle-income salaries ....” (quoting California Senate President Pro Tem David A. Roberti) (brackets in original)). Sometimes these claims are overstated or not credible. For example, Senator Kay Bailey Hutchison, who was indicted for misuse of state offices during her tenure as Texas state treasurer, claimed to be a “public official of normal circumstances” and asserted that without her legal defense fund she “could not possibly defend herself because she lacked the personal resources to fight the system.” 140 Cong. Rec. S5220, S5222, S5220 (daily ed. May 5, 1994) (statement of Sen. Hutchison). Senator Hutchison's net worth is between \$1 and \$2.5 million. United States Senate Public Financial Disclosure Report for Senator Kay Bailey Hutchison (May 12, 1994) (on file with the Texas Law Review). Her legal defense fund raised over \$880,000, only part of which was needed for her legal defense. See supra note 51.

247 See Novak, supra note 26, at 2522 (“In advisory opinions, the FEC [[[Federal Election Commission] has approved use of campaign funds for legal expenses.”). In fact, a 1990 Los Angeles Times survey counted 105 congressional candidates who spent \$1,213,644 of campaign money on legal fees in one 12-month period. Sara Fritz & Dwight Morris, *Campaign Cash Takes a Detour; House Incumbents Spend 65% of Their Election Funds on Items That Have Little Direct Link to Voters*, a Times Study Shows, L.A. Times , Oct. 28, 1990, at A20 (listing House incumbents who have diverted campaign funds for legal expenses). Harold Ford, Joseph McDade, and Dan Rostenkowski have each spent hundreds of thousands of dollars of campaign funds on their legal defenses. Novak, supra note 26, at 2522.

248 See, e.g., Fritz & Morris, supra note 247, at A20 (“Campaign funds should be used for campaign purposes ....” (quoting Senator John McCain of Arizona)); Terence Moran, *Lawmakers Pay Fees with Campaign Cash*, Legal Times , Feb. 15, 1988, at 1 (“If you polled the general public and told them about this, my guess is that most people would say, ‘We're supposed to be paying for his campaign, not his legal bills .... [’]” (quoting Ellen Miller, executive director of the Center for Responsive Politics)); Craig Winneker, *Members in Ethics Trouble Use Thousands from Campaign War Chests for Legal Fees*, Roll Call , Feb. 19, 1990, available in LEXIS, News Library, ROLLCL File (“I think it's improper for a Member of the House to spend campaign money on his personal legal expenses .... This is no different than using campaign money on his mortgage.” (quoting David Worley)).

249 President Clinton's family has assets valued at under \$1.8 million. *Clinton Assets Valued Under \$1.8 Million*, UPI , May 16, 1995, available in LEXIS, News Library, UPI File. As of early 1995, the President's legal bills had reached more than \$1.3 million and were growing at the rate of one to two million dollars a year. Broder, supra note 76, at A1.

- 250 28 U.S.C. s 593(f)(1) (1988).
- 251 Solomon, *supra* note 233, at 1202.
- 252 See *supra* section IV(B)(3).
- 253 U.S. Const. art. I, s 6, cl. 1.
- 254 Ray, *supra* note 96, at 401; see Long v. Ansell, 293 U.S. 76, 79 (1934) (holding that the Arrest Clause proscribes only civil arrest, not service of process); Williamson v. United States, 207 U.S. 425, 446 (1908) (concluding that the Constitution's exclusion of treason, felony, and breach of the peace from the privilege excludes all criminal offenses from the privilege).
- 255 Nixon v. Fitzgerald, 457 U.S. 731, 750 n.31 (1982).
- 256 *Id.* at 749.
- 257 See, e.g., Akhil R. Amar & Neal K. Katyal, *Executive Privileges and Immunities: The Nixon and Clinton Cases*, 108 *Harv. L. Rev.* 701, 702 (1995) (“[T]he Arrest Clause of Article I, Section 6 and the democratic structural principles underlying this Clause cast light on Article II, and provide a sturdy constitutional basis for temporary presidential immunity.”); Susan L. Bloch, *Should Bill Clinton Be Immune from Lawsuits on Allegations of Past Acts? Yes: Nation's Agenda More Important Than Speedy Trial*, *A.B.A. J.*, Aug. 1994, at 40 (arguing that the president should receive the protection of “limited temporal immunity” from suits based on acts occurring “prior to the presidency or otherwise outside its scope”); Stephen L. Carter, *The Political Aspects of Judicial Power: Some Notes on the Presidential Immunity Doctrine*, 131 *U. Pa. L. Rev.* 1341, 1367-68 (1983) (arguing that separation of powers doctrine mandates that courts not allow lawsuits based on the president's conduct in office); Laura K. Ray, *From Prerogative to Accountability: The Amenability of the President to Suit*, 80 *Ky. L.J.* 739, 812 (1992) (applauding the move of lower courts since Watergate toward more presidential amenity to suit); Steven R. Shapiro, *Should Bill Clinton Be Immune from Lawsuits on Allegations of Past Acts? No: All Citizens Must Answer to the Law of the Land*, *A.B.A. J.*, Aug. 1994, at 40, 41 (arguing that the president's immunity should not be extended to acts arising beyond his area of official responsibility).
- 258 Jones v. Clinton, 869 F. Supp. 690, 698-700 (E.D. Ark. 1994).
- 259 See *id.* at 699 (“There would seem to be no reason why the discovery and deposition process could not proceed as to all persons including the President himself.”). Discovery has been stayed pending Clinton's appeal of the order denying him absolute immunity. Jones v. Clinton, 879 F. Supp. 86, 88 (E.D. Ark. 1995).
- 260 See Shapiro, *supra* note 257, at 40.
- 261 See *supra* text accompanying notes 160, 178.
- 262 See *supra* text accompanying note 151.
- 263 See *supra* note 160.
- 264 See, e.g., Malcolm S. Forbes Jr., “With All Thy Getting Get Understanding,” *Forbes*, Nov. 12, 1990, at 19 (criticizing the higher limit on PACs as discriminatory to challengers, who do not have easy access to PAC funds); Leslie Phillips & Richard Wolf, *Chances “Better” for Election Reform*, *USA Today*, Mar. 12, 1990, at 4A, available in LEXIS, News Library, USATDY File (noting that a Senate bipartisan committee proposed “tighter curbs on PACs and higher limits on individual contributions”); Howard Schneider, *Md. Campaign Revision Advances; House Panel Approves Oft-Rejected Limits on Lobbyists, PACs*, *Wash. Post*, Mar. 13, 1991, at B5 (noting that Common Cause “has endorsed political fund-raising based more on individual giving, rather than PAC contributions”).
- 265 2 U.S.C. ss 441b, 441e (1994).
- 266 See *supra* note 179 and accompanying text.
- 267 See *supra* text accompanying note 151.

- 268 See, e.g., Shackelford, *supra* note 18, at A17 (listing direct corporate contributions to Representative Rostenkowski's legal defense fund).
- 269 See *supra* text accompanying notes 153-56 (describing the controversy surrounding President Clinton's acceptance of lobbyist contributions); *supra* text accompanying note 179 (mentioning the Senate's new ban on lobbyist contributions to legal defense funds).
- 270 See *supra* text accompanying notes 161, 180.
- 271 See *supra* text accompanying notes 161, 181.
- 272 Presidential Trust, *supra* note 149.
- 273 Letter from Bill Clinton and Hillary Rodham Clinton to the Trustees of the Presidential Legal Expense Trust (1994) (attached to the Presidential Trust, *supra* note 149, and on file with the Texas Law Review).
- 274 See *supra* text accompanying note 164.
- 275 Fund Regulations, *supra* note 172, at 5.
- 276 See *supra* text accompanying notes 165-69, 174-77.
- 277 See *supra* text accompanying note 5.
- 278 Douglas, *supra* note 2, at 98.
- 279 See Ethics in Government Act of 1978, 5 U.S.C. app. ss 101-102 (1994) (specifying which federal personnel are required to file financial disclosure reports and delineating the requisite contents of such reports).
- 280 Louis D. Brandeis, *Other People's Money and How the Bankers Use It* 92 (1914).
- 281 *The Bully Pulpit*, *supra* note 1, at 98.
- 282 See *supra* subpart II(B).
- 283 See *supra* text accompanying notes 113-14.

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# Exhibit J

# THE SPOKESMAN-REVIEW

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## NEWS

# Spokane-area native Michael Shiosaki embraces role as Seattle mayor's husband

Fri., Sept. 5, 2014, midnight



Mayor Ed Murray, right, and husband Michael Shiosaki join other city officials and supporters to celebrate the passing of Proposition 1 on Aug. 5 at The 5 Point Cafe in Seattle. Prop. 1 created the Seattle Park District, a metropolitan district with the same boundaries as the city. (Associated Press)

**By Jim Camden** 

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SEATTLE – Michael Shiosaki hadn't given much thought to titles before a reporter stuck a microphone in his face as the first election night results in this city's mayor's race showed his husband, Ed Murray, headed for victory.

What do we call you? the reporter asked.

Interesting question, and a unique one for Seattle and most of the nation's cities. What title does the same-sex spouse of the mayor-elect have?

"I think it's first gentleman or something like that," Shiosaki answered, half joking.

The title was as good as any, and it stuck. The Spokane Valley native, third-generation member of one of Spokane's most prominent Japanese-American families, a person who has been ringside for most of the fights over equality for sexual orientation, is Seattle's first gentleman.

"It has been an interesting transition," he said of the past nine months in that role.

It's a position that has offered incredible opportunities, such as meeting President Barack Obama both in Seattle and at the White House and riding in the Seahawks' Super Bowl victory parade. But it also comes with demands "to be everywhere, all the time" and the need for a security detail.

Shiosaki still works as planning and development director for Seattle Parks and Recreation, in a third-floor office in the International District with a view of CenturyLink Field, a position he's had for about three years. Technically, Murray is his boss. "But I remind people I've worked for the city a lot longer than Ed," he said.

## **Inland Northwest roots**

Michael Shiosaki, 53, grew up in the Spokane Valley. His grandfather Kisaburo Shiosaki came to the United States from Japan in 1904 to work on the railroads, went back to Japan after 11 years for his bride Tori, and the two settled in Hillyard. There they opened a laundry that is now on the Spokane Register of Historic Places. Michael's father, Fred, and uncles worked in the laundry growing up, and when World War II came along Fred enlisted in the 442nd Regimental Combat Team, the much-decorated Japanese-American Army unit. He was wounded in France, came home, earned a chemistry degree from Gonzaga and married Lily. They had two children, Nancy and Michael, moved to East Dean Avenue in the Valley in 1961 and lived there until recently.

Shiosaki learned the importance of civic involvement from his father, a former environmental manager for the old Washington Water Power Co. who served on the state Fish and Wildlife Commission for many years.

Growing up in mostly white Spokane Valley, Shiosaki recalls his University High School graduating class having three Asian-Americans, one African-American and about 370 Caucasians. "I had a great childhood in the 'burbs," he said. "In some ways, it made me feel I needed to fit in. It makes you adapt."

After graduating from the University of Washington with a degree in landscape architecture, he worked first for the city of Bellevue planning parks, and in 2001 he was hired by Seattle Parks and Recreation. It's a job that lets him design public spaces people will use for 100 years, he said.

## Fight for gay rights

Murray and Shiosaki, who have been together since shortly after meeting on a camping trip to Mount Rainier with mutual friends in August 1991, have long been in the public eye. They were “an out, gay couple” as Murray spent 17 years in the Legislature, first in the House and later in the Senate where he rose to be majority leader. During that time Murray helped push the ball forward on equality for sexual orientation, first with anti-discrimination laws, then domestic partnership and finally with a bill that legalized same-sex marriage in 2012.

George Bakan, senior editor and publisher of Seattle Gay News for the last 30 years, described Shiosaki and Murray as a power couple who worked together through what was known as the “small steps approach” to reach equal rights for gay, lesbian and transgender citizens.

“I’ve always admired that crusading sense both of them have,” Bakan said. “They were committed to each other and both were willing to make a commitment to the political point.”

Shiosaki recalls being in Murray’s office on the morning the same-sex marriage bill was scheduled for a vote. There were only 24 sure “yes” votes, so the outcome was in doubt until Sen. Mary Margaret Haugen, D-Camano Island, who had been undecided, came to say she’d vote for it. “It was a huge day,” said Shiosaki, who stood in the wings as the vote was taken and joined Murray on the floor after the results were announced.

The law survived a referendum challenge at the polls and went into effect that December. Shiosaki and Murray were among the state’s most prominent same-sex couples, but they weren’t among the first to get married, scheduling it instead for the anniversary of their meeting 22 years earlier, which fell on a Saturday last year. It also fell in the middle of the Seattle mayoral campaign, four days after the primary that had narrowed the field to Murray and incumbent Mike McGinn.



His parents walked him down the aisle. “They have always been wonderfully supportive,” he said. “After a little bump in the road (when he told them he was gay) they quickly got there.”

## ‘Quintessential Seattle couple’

Sandeep Kaushik, a Seattle political consultant who worked on the Murray campaign, called Shiosaki “our secret weapon” in the race. Whenever he could make it to a political event, people gathered around him.

“He’s quiet, a calming presence, but people connect with Michael,” Kaushik said. “The two of them together just seemed like a quintessential Seattle couple – gay, straight, it made no difference.”

Seattle is a progressive city that has long been supportive of gay rights, Bakan said, but that wasn’t the only factor in the race. As a longtime legislator from one of the city’s key districts, Murray was a politician also known for tackling tough issues like transportation and budgets. But having a mayor with a same-sex spouse elected in a major American city was “icing on the cake,” he said.

Seattle and Houston are the only two U.S. cities with a mayor married to a same-sex spouse.

With his parents aging, Shiosaki said he was back in the Spokane area about every other month during the last couple of years until just recently, when they relocated to a senior living facility in Seattle. He still has a handful of high school friends he sees there, but “for the most part, I’m pretty incognito.”

The first year of Murray’s term has been marked with some big political stories: selecting a new police chief and pushing for police reform; a compromise over a \$15-an-hour minimum wage; and the fight between taxi companies and Internet-based

driving services like Uber. Murray was able to use skills like building coalitions he developed from years in the Legislature, but Shiosaki believes city politics are more personal than legislative politics.

“The local stuff is what people touch and feel,” he said, adding he and Murray don’t always agree on issues. “Growing up in Spokane, I do have a more conservative streak than Ed.”

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PUBLISHED: SEPT. 5, 2014, MIDNIGHT

Tags: Ed Murray, Hillyard, Michael Shiosaki, Seattle, Seattle politics, Spokane Valley, University High School

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There are 63 comments on this story »

# Exhibit K

# Capitol Hill Times

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## Update: Mayor's attorney says no mole, no case Sulkin says sex-abuse accuser should drop case after doctor finds no bump on mayor's scrotum



Photo by Brandon Macz: Mayor Ed Murray speaks before the 2016 Bat 'n' Rouge softball game in Cal Anderson Park last summer.

Brandon Macz & Daniel Nash  
4/7/2017 6:43 PM

### Updated 4/11/17

#### Statement by Seattle City Council president Bruce Harrell

"My Council colleagues and I have no intention of commenting on matters of pending or potential litigation. We believe that it is critically important that, together, we remain committed to the business of governing.

"All City employees and City departments are focused on our core responsibilities of customer service, affordable housing, homelessness, public safety, transportation, education, and ensuring equality for all in a great, but rapidly growing city. The work before us is too critical for the future of Seattle and its

Ed Murray's attorney Bob Sulkin during a Tuesday evening press conference revealed what he considers to be a "game-changing" detail of the Seattle mayor's anatomy that should result in the dropping of a civil lawsuit that alleges Murray solicited sex from an underage teen in the '80s.

The Seattle Times reported last Thursday, April 6, that a 46-year-old Kent man, referred to as "D.H." in court documents, had filed suit against Murray to seek damages for rape and molestation that allegedly began in 1986, when the plaintiff was 15, and continued for four years.

In the lawsuit, D.H. said he met Murray, then 32, on the No. 7 bus in Capitol Hill. D.H. had recently dropped out of high school and become homeless and addicted to crack cocaine, he said. After striking up a friendship, Murray allegedly invited him to his

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residents. We intend to continue working with unwavering dedication to serving the people who put their faith in us.

"Our city cannot afford to be distracted. There is a judicial process that will address the serious allegations that this situation has presented, and we will respect that process and the rights of all parties involved. All accusations of abuse require a thorough investigation. It is in our human nature to immediately want answers, but I ask we not cast aspersions to the parties involved before we have all the facts through the legal process. I am confident that through this process, truth and justice will prevail.

"It is worth repeating we are steadfast and focused on serving the people of Seattle. Council has a strong committee structure that works with the city's 40 departments in upholding our City Charter 'of protecting and enhancing the health, safety, environment, and general welfare of the people; to enable municipal government to provide services and meet the needs of the people efficiently; to allow fair and equitable participation of all persons in the affairs of the City; to provide for transparency, accountability, and ethics in governance and civil service; to foster fiscal responsibility; to promote prosperity and to meet the broad needs for a healthy, growing City.'"

Capitol Hill apartment, where he demanded D.H. perform sexual acts for payments of \$10 to \$20.

D.H. provided authorities a description of the mayor's apartment, his phone number and distinctive details about his genitals, particularly "a unique mole on his scrotum."

Sulkin told the media around 5:30 p.m. Tuesday that the mayor had that morning submitted to a physical examination at the Polyclinic with his own physician, Craig Pepin.

"There was found to be no mole or bump on his private anatomy as alleged by the accuser," Sulkin said.

Murray's attorney provided reporters with redacted copies of what he considered the relevant findings of the mayor's physical exam.

Pepin notes no testicular masses or lumps, as well as no "evidence of prior surgery or dermatologic procedures."

Sulkin said Tuesday that no "abnormalities" were found in this area of the mayor back in 2015.

"This is game-changing, this is the heart of the allegations," Sulkin said, "and they are false."

Murray's attorney accused the Seattle Times of rushing to publish the story without giving the mayor the opportunity to debunk it. He said the accuser, D.H., lied to his lawyers to get a lawsuit filed.

"He has absolutely no credibility, and the case should be dropped," Sulkin said, "and I've asked his lawyers, now that they know, to drop the complaint."

Seattle Times reporter Jim Brunner reports D.H.'s attorney issued a statement following Sulkin's press conference, stating the lawsuit will continue to move forward.

"What does he have left?" Sulkin said after allegedly debunking the complainant's case. "That this accuser has his telephone number?"

Sulkin said that the accuser knows the mayor's phone number from when the alleged sexual abuse occurred, as well as the layout of his Capitol Hill apartment at the time, provides no evidence Murray engaged in any illicit activities with D.H.

"This was the fingerprint, OK," he said. "This is why it was put in (the complaint), and it's false."

Sulkin said Murray would allow himself to be examined by a doctor that is not his personal physician, if a judge were to order it.

The Seattle Times in its report last week wrote that two other men, Jeff Simpson and Lloyd Anderson, said they were paid by the mayor for sex when he lived in Portland.

The mayor's attorney said during the press conference that past allegations against Murray have been "completely debunked."

"To be on the receiving end of such untrue allegations is very painful for me," Murray said in a brief April 7 press conference. "It is painful for my husband and for those who are close to us. I understand the individual making these accusations is troubled, and that makes me sad as well.

"But let me be clear: These allegations, dating back to a period of more than 30 years, are simply not true."

Murray said he would not "back down" from the accusations, and is continuing his bid for reelection.

### Reading deposition

In its original report, the Seattle Times printed this statement from Murray's personal spokesman Jeff Reading: "These false accusations are intended to damage a prominent elected official who has been a defender of vulnerable populations for decades. It is not a coincidence that this shakedown effort comes within weeks of the campaign filing deadline. These unsubstantiated assertions, dating back three decades, are categorically false. Mayor Murray has never engaged in an inappropriate relationship with any minor. ... Mayor Murray will vigorously fight these allegations in court."

Attorney Lincoln C. Beauregard, whose Connelly Law Offices is representing Murray's accuser, filed a subpoena and notice of deposition to Reading on Monday, April 10, commanding him to appear at Connelly's Seattle office on Thursday, April 20. Reading has been commanded to produce any information and/or documents related to his public statements that D.H. is politically motivated, as well as any and all communications with the mayor since learning about the allegations.



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Beauregard sent a letter to Murray's attorney, Robert Sulkin, on April 9, which asks whether Sulkin's office also represents Reading.

"As you are aware, Mr. Reading concluded, and publicly asserted,

that my client's allegations are politically motivated within about one (1) hour of the Complaint filing on Thursday, April 6, 2017 at 1:30 p.m.," part of the letter states. "Mr. Reading must have coordinated with Mayor

Murray in this regard. We would like to explore Mr. Reading's communications with Mayor Murray and the basis for this expeditious conclusion. Obviously, the Mayor's campaign should not be disseminating information to the public about these allegations without proof and/or foundation."

**Original Story 4/7/2017**

One day after the Seattle Times broke the story, Seattle Mayor Ed Murray has responded to a civil lawsuit over solicitation of sex from an underage teen in the '80s, calling the allegations "simply not true."

Murray did not respond to a question posed at Friday's press conference asking if he would take leave or resign to focus on the lawsuit, though he did say in his statement that he would continue his reelection bid.

Thursday afternoon, the Times reported that a 46-year-old Kent man, referred to as "D.H." in court documents, had filed suit against Murray to seek damages for rape and molestation that allegedly began in 1986, when the plaintiff was 15, and continued for four years.

In the lawsuit, D.H. said he met Murray, then 32, on the No. 7 bus in Capitol Hill. D.H. had recently dropped out of high school and become homeless and addicted to crack cocaine, he said. After striking up a friendship, Murray allegedly invited him to his Capitol Hill apartment, where he demanded D.H. perform sexual acts for payments of \$10 to \$20.

D.H. provided authorities a description of the mayor's apartment, his phone number and distinctive details about his genitals.

Murray spokesman Jeff Reading told the Times the allegations were a "shakedown" that had conspicuously surfaced weeks from the campaign filing deadline for reelection.

At his press conference Friday, Murray's response was brief.

"To be on the receiving end of such untrue allegations is very painful for me," Murray said. "It is painful for my husband and for those who are close to us. I understand the individual making these accusations is troubled, and that makes me sad as well.

"But let me be clear: These allegations, dating back to a period of more than 30 years, are simply not true."

Murray said he would not "back down" from the accusations, and that he planned to continue on as mayor and run for reelection.

The mayor declined to answer further questions, as the issue had become a legal matter.

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# Exhibit L

# Legal Defense Funds Work Group Report



A Joint Research Project of Staff of the  
Washington State Public Disclosure Commission,  
Washington State Legislative Ethics Board,  
Washington State Executive Ethics Board, and  
Washington State Commission on Judicial Conduct

August 18, 2011



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*Work Group Report Compiled by  
Nancy Krier, General Counsel, Washington State Public Disclosure Commission*

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## Executive Summary

A “legal defense fund” is often described as a separate account established by a candidate or public official to defray attorney’s fees and other legal costs incurred by the candidate or official’s legal defense if the candidate or official becomes subject to civil, criminal or administrative proceedings during a campaign, in an electoral context or in the performance of a public official’s duties. These accounts are separate from campaign accounts, surplus campaign fund accounts, accounts within a public agency for officeholder expenses, or other accounts.

The federal government and several states adopted laws or rules governing such funds. Provisions often include disclosure requirements, restrictions on who can contribute, restrictions on uses for excess funds, and limits on what types of litigation may result in the creation of the fund. In December 2008, the Center for Governmental Studies issued a *Model Law on Payments Influencing Candidates and Elected Officials*. The Model Law provided examples of statutory language that could govern legal defense funds.

Washington has a long history of providing transparency about candidates and public officials, and in avoiding conflicts of interest by decision-makers. In Washington, candidates are subject to the campaign finance and disclosure provisions of RCW 42.17. State public officials are subject to the ethics provisions in RCW 42.52 and/or the Code of Judicial Conduct (for judges). Persons conducting quasi-judicial proceedings are subject to the appearance of fairness doctrine. However, in contrast to provisions in other jurisdictions, the Washington statutes currently do not use the phrase or otherwise specifically identify legal defense funds. The same is true with the Code of Judicial Conduct. (It is possible that such funds could be considered a “gift” as discussed below.)

In August 2010, the Washington State Public Disclosure Commission invited representatives of the Washington State Legislative Ethics Board, the Washington State Executive Ethics Board and the Washington State Commission on Judicial Conduct to participate in a roundtable discussion on legal defense funds. As a result, a Legal Defense Funds Work Group of those agencies’ staff was created. The Work Group met during 2011 to research the subject of legal defense funds and possibly to provide some recommendations. The Work Group’s work is summarized in this *Legal Defense Funds Work Group Report*. This report will be presented to each board and commission participating in this research effort. This report reflects staff’s work only. This report does not represent the views or positions of any member of the PDC, LEB, EEB or CJC, or a collective position of any of those commissions or boards, unless the report is formally adopted in whole or in part respectively by those boards or commissions.

### **Preliminary Staff Recommendations:**

- The Work Group determined that the public would be interested in requiring disclosure of the identity and contribution amount of persons donating to a public official’s or candidate’s separate legal defense fund, if such funds are created.
- The Work Group concluded that depending upon the facts, under current law a donation to a separate legal defense fund of a state official subject to RCW 42.52 could be considered a “gift.”

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## Work Group Participants

Nancy Krier, General Counsel, Washington State Public Disclosure Commission  
Reiko Callner, Executive Director, Washington State Commission on Judicial Conduct  
Mike O'Connell, Executive Director, Washington State Legislative Ethics Board  
Melanie deLeon, Executive Director, Washington State Executive Ethics Board

### Staff Assistance:

Lori Anderson, Communications and Training Officer, Washington State Public Disclosure Commission  
Jana Greer, Confidential Secretary, Washington State Public Disclosure Commission

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## Work Group Meetings

The Work Group met in 2011 on January 31, February 28, May 9, June 13, and July 26.

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## Research Materials

The Work Group reviewed materials from the federal government, other states and jurisdictions, judicial organizations, Washington State, and from other publications.

Those research materials are listed in Appendix A.

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## Summary of Research

This research summary first addresses other jurisdictions (including the judiciary) and the Model Law, followed by a summary of current Washington laws governing candidates and state officials. The Work Group's research concerned legal defense funds that may be established by or on behalf of state public officials or candidates. There may also be local ordinances or other ethics provisions governing local officials that may be appropriate for future review or study.

### Federal Government

The federal government has legal defense funds for officeholders, and has provided guidance for federal candidates. Congress and federal agencies have recognized that creation of a legal defense fund implicates both campaign laws for candidates and ethics rules.

Thus, the Federal Election Commission and the U.S. House and U.S. Senate ethics rules allow for the creation and funding of separate legal defense funds if several steps are taken.

- **FEC:** Legal expenses are reviewed on a case-by-case basis to determine if they are for prohibited personal use. Under federal provisions surplus campaign funds can be used for office-holder expenses or "any other lawful

purpose.” Because a legal defense fund is separate from a candidate’s campaign committee fund, contributors who have given the maximum amount to a campaign can still contribute to a legal defense fund. Political committees that make donations to a legal defense fund trust must disclose them on the reports they file with FEC. See *generally*, 2 U.S.C. §§ 431(9) and 439a; 11 C.F.R. § 113, FEC Advisory Opinions.

- **Congress:** Congressional ethics rules require disclosure of legal defense funds, appointment of a trustee, limits on amounts contributed (\$5,000 per year for the U.S. House; \$10,000 per year for the U.S. Senate), and other provisions. The fund must be approved by the respective body’s ethics committee. All the funds must be used to pay only for investigative, civil, criminal or other legal proceedings relating to an officeholder’s election to office, official duties while in office and administrative or fundraising expenses of the trust. Both houses prohibit contributions from lobbyists and foreign nationals. See, *generally*, Office of the Clerk of the U.S. House of Representatives website at [http://clerk.house.gov/public\\_disc/legal.aspx](http://clerk.house.gov/public_disc/legal.aspx) and Public Citizen website at [http://www.cleanupwashington.org/lobbying/page.cfm?pageid=45#\\_edn1](http://www.cleanupwashington.org/lobbying/page.cfm?pageid=45#_edn1).<sup>1</sup>
- **Executive Branch:** The Office of Government Ethics has addressed the issue of legal defense funds for federal officeholders through an informal advisory letter. Each executive agency is authorized to develop their own policies regarding such funds, though the agencies usually defer to OGE guidelines. See, *generally*, Public Citizen website at [www.cleanupwashington.org](http://www.cleanupwashington.org).

### Other Jurisdictions - Examples

Several states enacted legislation governing legal defense funds of candidates and officeholders. Examples include New Jersey, Michigan, California, and North Carolina. San Diego is an example of a local jurisdiction that has addressed legal defense funds.

Elements of those provisions in these jurisdictions include, for example:

- **New Jersey:** New Jersey permits campaign contributions to be used for “reasonable fees and expenses of legal representation, the need for which arises directly from and is related to the campaign for public office or the ordinary and necessary duties of holding public office.” Examples include defense of defamation action against the candidate or officeholder, and defense of a civil action or administrative proceeding alleging a violation of the campaign finance act or ethics law. Funds cannot be used for defense of a candidate or officeholder who is the subject of a criminal investigation or is a criminal defendant, or for “personal use.” The rules are implemented by the New Jersey Election Law Commission. N.J. Admin. Code §§ 19:25-6.10.
- **Michigan:** Michigan’s “Legal Defense Fund Act” adopted in 2008 requires disclosure of contributions and expenditures made to assist elected and appointed officials in defending themselves against a criminal, civil or administrative action arising directly out of the conduct of the elected official’s governmental duties. It also requires registration and disclosure forms to be filed

with the Bureau of Elections (see form at Appendix B), prohibits anonymous contributions, and provides other requirements. Mich. Pub. Act 288 of 2008.

- **California:** In California, state candidates and officeholders may establish a legal defense fund to defray attorneys' fees and other related legal costs incurred for the candidate or officeholder's legal defense if the candidate or officeholder is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder's governmental activities and duties. A separate bank account and committee must be established, and registration and disclosure forms must be filed with the Fair Political Practices Commission. Contributions to the funds are not subject to campaign contribution limits. However, funds may be only raised in an amount reasonably calculated to pay attorneys' fees and other legal costs related to the defense of the candidate or officeholder. Similar provisions govern local candidates and officers. Cal. Code Regs. Title 2, §§ 18530.45 and 18530.4.
- **North Carolina:** North Carolina law provides that candidates and elected officers are entitled to establish a separate fund for the purpose of funding an existing or potential legal action taken by or against the elected officer in the elected officer's capacity. The fund is defined as any collection of money for the purpose of funding a legal action, or potential legal action, taken by or against an elected officer in that elected officer's official capacity, including resulting from a campaign. The fund must be registered and is subject to disclosure unless the fund receives money only from the candidate or the candidate's relatives. Additionally, a treasurer must be appointed, detailed accounts must be filed, and other requirements apply. N.C. Gen. Stat. Chap. 163 Article 22M § 163-278.300 *et seq.*
- **San Diego:** San Diego adopted a local ordinance that permits every elected city official and every candidate for elective city office to establish and maintain a legal defense fund. The fund may only be used to defray professional fees and costs associated with an audit conducted by the ethics or campaign finance agencies, or for fees and costs for civil, criminal or administrative proceedings arising out of the conduct of a campaign, the electoral process, or the performance of a city official's governmental duties. The fund cannot be used to pay fines, sanctions or penalties. The fund must be maintained through a committee. Registration and disclosure requirements apply. Contributions are limited to \$250 per calendar year for each audit or legal proceeding. Other requirements apply. San Diego Municipal Code §§ 27.2965 – 27.2969.

Attached at Appendix C are examples of situations or cases in other jurisdictions that have involved legal defense funds.

### **Judiciary – Examples from Other Jurisdictions**

Judges are subject to codes of conduct adopted by the courts in their jurisdictions. Those codes typically address conflicts of interest and provide rules for other matters that may call into question the impartiality of the judge, including the receipt of gifts.

Sometimes, the judicial ethics advisory bodies analyzing those judicial codes have been asked to provide formal advisory opinions explaining the application of their codes to the creation of legal defense funds for or by judges. Examples include the following.

- **Florida:** The Florida Judicial Ethics Advisory Committee determined in 1998 that a judge may maintain and establish a fund to defend against charges of unethical behavior by the Judicial Qualifications Commission, so long as certain conditions and limitations were adhered to. Florida Judicial Ethics Advisory Committee Opinion No. 98011 (July 7, 1998).
- **Illinois:** The Illinois Judges Association determined in 1997 that among other things, contributions to a judicial defense fund established for a judge charged with a criminal offense constitute gifts to the judge, and therefore were subject to the judicial conduct rules governing gifts. Illinois Judges Association Advisory Opinion No. 97-14 (July 9, 1997).
- **Federal Courts:** A third example is an opinion apparently issued to a federal judge on the Ninth Circuit Court of Appeals concerning his legal defense fund. The fund was created to finance his defense concerning any claims against him as a judge or that may arise out of his former employment. The judge's legal defense fund website states that the fund is "formed in compliance with applicable law," and describes "It has been structured and the Trustees are required to operate it in compliance with all applicable laws, regulations and codes of ethics, including the Code of Conduct for United States Judges, as interpreted by an opinion dated May 8, 2009 from the Committee on Codes of Conduct of the Judicial Conference of the United States." However, the Work Group was unable to obtain a copy of the opinion for further study. Website at [www.bybee.org](http://www.bybee.org).

## **Model Law**

A 2008 Model Law by the Center for Governmental Studies (*Model Law on Payments Influencing Candidates and Elected Officials*) also provides language for states to consider if they wish to address legal defense funds in statute. Among many other provisions, it offers findings indicating concerns about raising funds outside the campaign finance disclosure system, an intent section providing that such funds that will potentially benefit candidates or officeholders should be disclosed, definitions, and other provisions governing legal defense funds including when and how they can be created, and how they are disclosed. Model Law available at <http://www.cgs.org>.

## **Washington State**

In Washington, candidates are subject to the campaign finance and disclosure provisions of RCW 42.17. State public officials and employees are subject to the ethics provisions in RCW 42.52 and/or the Code of Judicial Conduct (for judges). These Washington statutes and the Code currently do not use the phrase "legal defense fund."

However, these Washington laws and the Code of Judicial Conduct contain strong statements expressing the public interest in maintaining the integrity of public officials and provide for disclosure of the financial affairs of candidates and state public officials. The

statutes and Code describe the public interest in avoiding conflicts of interest by these persons due to their receipt of gifts or financial entanglements with those they serve, govern or regulate. Similar conflict of interest concerns are acknowledged in the state's "appearance of fairness doctrine" that applies to persons in administrative agencies who conduct quasi-judicial proceedings.

In addition, Washington has a long and strong interest in disclosure of information that may reveal potential conflicts of interest. The State has also enacted restrictions on financial support of and gifts to state public officials when the sources of such funding are not their public employer.

- **RCW 42.17**

RCW 42.17 is the "Disclosure – Campaign Finance – Lobbying Act." RCW 42.17 is enforced by the PDC. RCW 42.17.010 provides in part that:

It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) 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.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

...

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, 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.

Under RCW 42.17, campaign contributions and expenditures are disclosed to the public on reports regularly filed with the PDC. Contributions to a campaign are to be used for campaign purposes only and not for the personal use of a candidate, with limited exceptions. RCW 42.17.125. A candidate is authorized to have only one campaign committee that raises and spends money on the campaign for the purpose of supporting the candidate. RCW 42.17.050(3).

A campaign "contribution" is defined at RCW 42.17.020(15)(a) in part as:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents; ...

RCW 42.17.020(15)(b) provides a list of what is not considered a contribution.<sup>2</sup> Under this statute, certain legal services provided to a candidate's campaign are not considered contributions. RCW 42.17.095 lists the permissible uses for surplus campaign funds and "legal defense funds" is not on the list; "non-reimbursed public office expenses" is listed. WAC 390-24-032 defines a non-reimbursed public office expense as "an expenditure incurred by an elected or appointed official, or a member of his or her family, solely because of being an official."

RCW 42.17 also requires candidates, elected officials, and executive state officers to file a personal financial affairs disclosure report (F-1 form) disclosing certain income, asset and gift information. RCW 42.17.240, RCW 42.17.241, RCW 42.17.2401.<sup>3</sup>

The phrase "legal defense funds" is not used in RCW 42.17. However, somewhat related inquiries or situations have been addressed by the PDC or its staff on a case-by-case basis, considering the statutes in effect at that time and under the specific facts presented. For example:

- **1979:** Under a former statute governing uses of office-related funds, a settlement was reached with a county official and through the Attorney General's Office where the names of contributors to the official's legal defense fund would be disclosed. The official was being sued after he refused to release certain tax information under the Public Records Act.
- **1992:** The PDC determined that a former state senator could not use his surplus campaign funds to help settle a sexual harassment lawsuit brought by a former aide because the settlement costs were not "non-reimbursed public office-related expenses."
- **1999:** PDC staff advised a city councilman that donations to his legal defense fund were not reportable to the PDC. He had established the fund to pay legal costs associated with a slander accusation from a former city councilmember. However, he was also informed by PDC staff that the funds would be reportable if they were intended to be used for, or are used for, an election campaign, or under any of the purposes triggering reporting a personal financial affairs report (F-1).

Currently, and pending further direction from the Commission or a change in law, PDC staff will advise state public officials and candidates subject to RCW 42.17 that they can create a separate legal defense fund (separate from their campaign fund) that is not reportable to the



PDC if it is not used to support or oppose a campaign, however: (1) they cannot use campaign contributions or surplus campaign contributions for the fund; (2) legal defense funds are not subject to contribution limits and are not reportable on campaign finance disclosure reports, but will need to be disclosed on the F-1 if reported as income to the Internal Revenue Service and if the reporting threshold is met; and (3) they may be subject to gift restrictions in RCW 42.52 and the person inquiring should check with the relevant board or commission enforcing that law.

- **RCW 42.52**

RCW 42.52 is the Ethics in Public Service Act. It is enforced by the LEB, EEB and to a more limited extent, the CJC (see discussion of Code of Judicial Conduct, next section). The Ethics Act applies to state officials. The intent section at RCW 42.52.020 provides:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

The Ethics Act also restricts receipt of gifts by state officials. For example, RCW 42.52.140 provides:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

"Gift" is defined at RCW 42.52.010(10) as "anything of economic value for which no consideration is given." The exceptions from what is considered a "gift" are further described in RCW 42.52.010(10).<sup>4</sup>

The phrase "legal defense funds" is not used in RCW 42.52. Legal defense funds have economic value presumably for which no consideration is given, but they are not specifically listed in RCW 42.52 as an exception to what constitutes a "gift." Therefore, under current law, it appears that in order to be lawfully received, donations to such funds would need to satisfy one of the statutory exceptions from what is a gift, when the recipients are persons subject to RCW 42.52. However, the LEB, EEB and CJC have not been formally asked to determine, in an enforcement setting or otherwise, whether donations to a legal defense fund would constitute a "gift" under RCW 42.52.

- **Code of Judicial Conduct**

The Code of Judicial Conduct governs judicial officers. It is enforced by the CJC when there are allegations of judicial misconduct. The preamble to the Code of Judicial Conduct provides:

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary,

composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Washington State Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through the Commission on Judicial Conduct.

The Code of Judicial Conduct contains canons and rules that govern the judiciary. With respect to receipt of gifts or other things of value, Rule 3.13(A) provides:

A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

However, Rule 3.13(B) provides that unless otherwise prohibited by law, or by paragraph (A), a judge may accept certain gifts that are listed in the rule.<sup>5</sup>

The Code does not use the phrase "legal defense fund." The CJC has not had an enforcement action concerning whether a judge's "legal defense fund" is permissible under the Code. The CJC does not issue advisory opinions interpreting the Code. A committee established by the Supreme Court, the Ethics Advisory Committee, gives advice with respect to the application of the Code to judicial officers. At this time, the Work Group did not locate any Ethics Advisory Committee opinions concerning legal defense funds.

### • **The Appearance of Fairness Doctrine**

Just as judges who conduct judicial proceedings are subject to requirements designed to ensure their impartiality and fairness, so, too, are persons in administrative agencies that conduct quasi-judicial proceedings. As described by the Municipal Research and Services Center, the "appearance of fairness doctrine" is a "rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact." Municipal Research and Services Center, *The Appearance of Fairness Doctrine in Washington State*, Report No. 32 (Revised) (April 2011) at 1.

Judicially established in Washington State in 1969, the doctrine requires public hearings that are adjudicatory or quasi-judicial in nature meet two requirements:

hearings must be procedurally fair, and must appear to be conducted by impartial decision-makers.

In 1982, the Washington State Legislature codified the portion of the appearance of fairness doctrine that applies to land use proceedings [RCW 42.56].

*Id.*

MRSC further describes that:

From the earliest Washington cases, our courts have demanded that decision-makers who determine rights between specific parties must act and make decisions in a manner that is free of the suspicion of unfairness. The courts have been concerned with “entangling influences” and “personal interest” which demonstrate bias, and have invalidated local land use decisions because either the hearings appeared unfair or public officials with apparently improper motives failed to disqualify themselves from the decision-making process.

*Id.* at 3.

The MRSC report does not reference any cases or situations specifically concerning “legal defense funds” of a decision-maker who is also participating in a quasi-judicial proceeding. However, to the extent a person participates as a decision-maker in a quasi-judicial proceeding, donations to his or her legal defense fund may raise issues under this doctrine if the contributor to the fund subsequently appears before the officeholder in such a proceeding.

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## Points of Discussion

The Work Group reviewed the research materials referenced herein. The Work Group also discussed the following points:

- Many high-profile situations in various jurisdictions have led to the need for the creation of procedures governing legal defense funds, including but not limited to the need for the disclosure of such funds. Candidates and officeholders in those jurisdictions have created such funds to defend themselves in a variety of legal settings including civil, criminal and administrative.
- In Washington, it appears that few questions have been posed in the past concerning the creation of legal defense funds under current laws or rules, and those have been handled on a case-by-case basis. However, the Work Group recognized (1) the increasingly litigious reality of campaigns and public office service, and that (2) a pro-active approach to providing guidance on legal defense funds is well worth considering.
- The Work Group recognized that in Washington, there are times when a current state official's request for legal defense at public expense in a civil or administrative matter can be denied. While the analysis in each case is fact-specific, examples can include a denial of defense at public expense in a tort claim matter, or in an ethics board or commission administrative matter.

- The Work Group recognized that under RCW 42.52, donations to a public official's legal expense could be considered a gift depending upon all of the information presented. There could be additional concerns if such donations were proposed to be given, for example, by a lobbyist to a state legislator's legal defense fund.
- The Work Group discussed that in Washington, situations that could prompt a request to the PDC, EEB, LEB or CJC by a state official or candidate concerning his or her interest in creating a separate legal defense fund could include, for example:
  - A current officeholder is administratively charged with an ethics violation, and the State declines to defend him or her at public expense under the ethics procedures.
  - A candidate is sued for sexual harassment, defamation or in some other civil action.
  - A current officeholder is sued for sexual harassment, defamation, or in some other civil matter, and the State declines to defend him or her at public expense under the tort claims procedures.
  - A candidate or current officeholder is criminally charged.
- The Work Group discussed that there are confidentiality provisions governing the judiciary for CJC administrative enforcement proceedings under the Code of Judicial Conduct. Therefore, if a judge sought donations to a legal defense fund that he or she created in order to defend against an ethics charge brought by the CJC, and donations to that fund were required to be public, the confidentiality provisions governing the proceedings overall would need to be considered.
- The Work Group discussed that several policy issues may need to be addressed if legislation or other efforts move forward to specifically govern legal defense funds. For example, should there be provisions for what types of litigation can be funded by a candidate or officeholder having a separate legal defense fund (should criminal matters be included)?
- The Work Group discussed its preliminary recommendations. See next section. The Work Group confirmed that the staff views do not represent the views of any board or commission member, individually or collectively. The Work Group confirmed that the summary of its work would be provided to each board and commission involved in this research project, and each agency would determine any of its next steps. Options could include seeking agency request legislation (for those boards or commissions that engage in that process), or providing other guidance.

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## Preliminary Recommendations

Based upon its research and discussions, the Work Group makes the following recommendations:

- The Work Group determined that the public would be interested in requiring disclosure of the identity and contribution amount of persons donating to a public official's or candidate's separate legal defense fund, if such funds are created.
- The Work Group concluded that depending upon the facts, under current law a donation to a separate legal defense fund of a public official subject to RCW 42.52 could be considered a "gift."

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## Opportunities for Further Study

Attached at Appendix D are questions that appear to have been examined in jurisdictions considering proposals regarding legal defense funds and other questions that may be useful for policymakers to examine in Washington if a legal defense funds provision is being considered to be enacted, or if future guidance is to be provided by the PDC, EEB, LEB or CJC. They include, for example:

- Whether there should be disclosure of separate legal defense funds and if so how and when;
- Whether or when donations to such funds are considered campaign contributions or gifts;
- What types of litigation involving candidates or officeholders can be funded through an authorized separate legal defense fund; and,
- Other questions.

In addition, ethics laws, rules, policies or ordinances concerning local officials may also be an opportunity for future study.

# Endnotes

<sup>1</sup> Public Citizen also cites to the following authorities describing Congressional legal defense fund provisions: House Committee on Standards of Official Conduct, Memorandum to All Members, Officers, and Employees, "Legal Expense Fund Regulations," House Rule 26 (June 10, 1996). The House Rule on Legal Expense Funds has since been renumbered to Rule XXV(5)(c)(3). U.S. Senate Select Committee on Ethics, "Regulations of Trust Funds to Defray legal Expenses Incurred by Members, Officers, and Employers of the United States Senate, Senate Ethics Manual (Aug. 10, 1988). Office of Government Ethics, Letter to an Alternate Designated Agency Ethics Official (Aug. 30, 1993).

<sup>2</sup> RCW 42.17.020(15)(b) provides that a campaign contribution does not include:

- (i) Standard interest on money deposited in a political committee's account;
  - (ii) Ordinary home hospitality;
  - (iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;
  - (iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;
  - (v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;
  - (vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;
  - (vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;
  - (viii) Legal or accounting services rendered to or on behalf of:
    - (A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or
    - (B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or
  - (ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:
    - (A) The person performs solely ministerial functions;
    - (B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17.040; and
    - (C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.
- A person who performs ministerial functions under this subsection (15)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

<sup>3</sup> The items to be disclosed on an F-1 personal financial affairs reporting form include, for example, bank or savings accounts in which such person owned a direct financial interest that exceed the reporting threshold; sources of compensation; certain items under RCW 42.52 (payments connected with a speech, presentation, appearance, or trade mission and payment of enrollment, course fees and travel expenses attributable to attending certain seminars); items of value given to spouses, domestic partner and family members; and, other items.

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<sup>4</sup>RCW 42.52.010(1) provides that a "gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

<sup>5</sup> Under Rule 3.13, the gifts a judge may accept under (B) are:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

# Exhibit M





State of Washington  
**PUBLIC DISCLOSURE COMMISSION**

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TO: Members, Public Disclosure Commission  
FROM: Nancy Krier, General Counsel  
DATE: August 18, 2011  
SUBJECT: *Legal Defense Funds Work Group Report* – August 25, 2011 Meeting

**Background**

In 2009, the Commission had preliminary discussions concerning “legal defense funds.” These funds are often described as a separate account established by a candidate or public official to defray attorney’s fees and other legal costs incurred by the candidate or official’s legal defense if the candidate or official becomes subject to civil, criminal or administrative proceedings during a campaign, in an electoral context or in the performance of a public official’s duties. These funds are typically separate from campaign accounts, surplus campaign fund accounts, accounts within a public agency for officeholder expenses, or other accounts.

You may recall that many states, some local jurisdictions, and the federal government have specific laws and rules governing legal defense funds, including disclosure requirements. Washington does not have comparable specific statutory provisions. However, in Washington, a discussion concerning legal defense funds involves consideration of campaign finance laws, ethics laws (particularly provisions concerning receipt of gifts), and other sources.

In May 2010, the Commission again discussed the topic. In August 2010, the Commission held a roundtable discussion with representatives from the Executive Ethics Board, the Legislative Ethics Board and the Commission on Judicial Conduct. Subsequently, staff from these boards and commissions met in 2011 to further research the subject, including but not limited to reviewing experiences, laws and rules in other jurisdictions, as well as current Washington laws and rules.

The staff work group prepared a summary of its research and preliminary staff recommendations in a report titled *Legal Defense Funds Work Group Report*. The report will be provided to each board/commission that had staff participating in the research project. Each board/commission can then decide steps to moving the discussion forward, if any, after it reviews the report.

**Agenda Item**

For the PDC, the report is scheduled to be discussed at the August 25, 2011 Commission meeting as part of the 2012 possible agency request legislation agenda item. The report’s Executive Summary is attached to this memorandum, and a copy of the full report is also enclosed.

Enclosures: *Legal Defense Funds Work Group Report* Executive Summary (attached)  
*Legal Defense Funds Work Group Report* (enclosed)

# Exhibit N

**RCW 42.17A.005****Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW [29A.04.091](#), or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW [29A.04.086](#), that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(8) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) "Commission" means the agency established under RCW [42.17A.100](#).

(11) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW [42.17A.710](#), "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(13)(a) "Contribution" includes:

- (i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;
  - (ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;
  - (iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;
  - (iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.
- (b) "Contribution" does not include:
- (i) Standard interest on money deposited in a political committee's account;
  - (ii) Ordinary home hospitality;
  - (iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;
  - (iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;
  - (v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;
  - (vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;
  - (vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;
  - (viii) Legal or accounting services rendered to or on behalf of:
    - (A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or
    - (B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or
  - (ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:
    - (A) The person performs solely ministerial functions;
    - (B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under [RCW 42.17A.205](#); and
    - (C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or

expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (13)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(14) "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

(b) "Electioneering communication" does not include:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(A) Of primary interest to the general public;

(B) In a news medium controlled by a person whose business is that news medium; and

(C) Not a medium controlled by a candidate or a political committee;

(iv) Slate cards and sample ballots;

(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(20) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(21) "Final report" means the report described as a final report in RCW 42.17A.235(2).

(22) "General election" for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

(23) "Gift" has the definition in RCW 42.52.010.

(24) "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

(25) "Incumbent" means a person who is in present possession of an elected office.

(26) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of \*eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

(27)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(28) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(29) "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(30) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(31) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(32) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(33) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

(34) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(36) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(37) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(38) "Primary" for the purposes of RCW **42.17A.405** means the procedure for nominating a candidate to state or local office under chapter **29A.52** RCW or any other primary for an election that uses, in large measure, the procedures established in chapter **29A.52** RCW.

(39) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(40) "Public record" has the definition in RCW **42.56.010**.

(41) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW **29A.56.120** and ending thirty days after the recall election.

(42)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(43) "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

(44) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(45) "State official" means a person who holds a state office.

(46) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW **42.17A.255**.

(47) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW **42.17A.210**, to perform the duties specified in that section.

[ **2011 c 145 § 2**; **2011 c 60 § 19**. Prior: **2010 c 204 § 101**; **2008 c 6 § 201**; prior: **2007 c 358 § 1**; **2007 c 180 § 1**; **2005 c 445 § 6**; **2002 c 75 § 1**; **1995 c 397 § 1**; **1992 c 139 § 1**; **1991 sp.s. c 18 § 1**; **1990 c 139 § 2**; prior: **1989 c 280 § 1**; **1989 c 175 § 89**; **1984 c 34 § 5**; **1979 ex.s. c 50 § 1**; **1977 ex.s. c 313 § 1**; **1975 1st ex.s. c 294 § 2**; **1973 c 1 § 2** (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.020**.]

## NOTES:

**Reviser's note:** \*(1) The dollar amounts in this section may have been adjusted for inflation by rule of the commission adopted under the authority of RCW **42.17A.125**. For current dollar amounts, see WAC 390-05-400.

(2) This section was amended by 2011 c 60 § 19 and by 2011 c 145 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025(2)**. For rule of construction, see RCW **1.12.025(1)**.



**Findings—Intent—2011 c 145:** "The legislature finds that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy in which Washington's voters can judge for themselves what is appropriate based on ideologies, programs, and policies. Long-term voter engagement and confidence depends on the public knowing who is funding the multiple and targeted messages distributed during election campaigns.

The legislature also finds that recent events have revealed the need for refining certain elements of our state's election campaign finance laws that have proven inadequate in preventing efforts to hide information from voters. The legislature intends, therefore, to promote greater transparency for the public by enhancing penalties for violations; regulating the formation of, and contributions between, political committees; and reducing the expenditure thresholds for purposes of mandatory electronic filing and disclosure." [ [2011 c 145 § 1.](#)]

**Effective date—2011 c 145:** "This act takes effect January 1, 2012." [ [2011 c 145 § 8.](#)]

**Part headings not law—Severability—2008 c 6:** See RCW [26.60.900](#) and [26.60.901](#).

**Effective date—2007 c 358:** "This act takes effect January 1, 2008." [ [2007 c 358 § 4.](#)]

**Legislative intent—1990 c 139:** "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW [42.17.020](#) as it existed prior to the enactment of chapter 423, Laws of 1987." [ [1990 c 139 § 1.](#)]

**Effective date—1989 c 280:** "This act shall take effect January 1, 1990." [ [1989 c 280 § 14.](#)]

**Effective date—1989 c 175:** See note following RCW [34.05.010](#).

**Effective date—1977 ex.s. c 313:** "This 1977 amendatory act shall take effect on January 1, 1978." [ [1977 ex.s. c 313 § 9.](#)]

**Severability—1977 ex.s. c 313:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [ [1977 ex.s. c 313 § 8.](#)]

**RCW 42.17A.200****Application of chapter—Exceptions.**

The provisions of this chapter relating to the financing of election campaigns shall apply in all election campaigns other than (1) for precinct committee officer; (2) for a federal elective office; and (3) for an office of a political subdivision of the state that does not encompass a whole county and that contains fewer than five thousand registered voters as of the date of the most recent general election in the subdivision, unless required by RCW [42.17A.135](#) (2) through (5) and (7).

[ [2010 c 204 § 401](#); [2006 c 240 § 1](#); [1987 c 295 § 18](#); [1986 c 12 § 1](#); [1985 c 367 § 2](#); [1977 ex.s. c 313 § 2](#); [1973 c 1 § 3](#) (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW [42.17.030](#).]

**NOTES:**

**Effective date—Severability—1977 ex.s. c 313:** See notes following RCW [42.17A.005](#).

*Cemetery district commissioners exempt from chapter:* RCW [68.52.140](#), [68.52.220](#).

**RCW 42.17A.205****Statement of organization by political committees.**

(1) Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

(a) The name and address of the committee;

(b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;

(d) The name and address of its treasurer and depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made, in accordance with RCW **42.17A.430**, in the event of dissolution;

(i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW **42.17A.235**;

(j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter;

(k) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and

(l) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees.

(3) No two political committees may have the same name.

(4) Any material change in information previously submitted in a statement of organization shall be reported to the commission within the ten days following the change.

(5) As used in this section, the "name" of a sponsored committee must include the name of the person that is the sponsor of the committee. If more than one person meets the definition of sponsor, the name of the committee must include the name of at least one sponsor, but may include the names of other sponsors. A person may sponsor only one political committee for the same elected office or same ballot measure per election cycle.

[ **2011 c 145 § 3**. Prior: **2010 c 205 § 1**; **2010 c 204 § 402**; **2007 c 358 § 2**; **1989 c 280 § 2**; **1982 c 147 § 1**; **1977 ex.s. c 336 § 1**; **1975 1st ex.s. c 294 § 3**; 1973 c 1 § 4 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.040**.]

**NOTES:**

**Findings—Intent—Effective date—2011 c 145:** See notes following RCW [42.17A.005](#).

**Effective date—2007 c 358:** See note following RCW [42.17A.005](#).

**Effective date—1989 c 280:** See note following RCW [42.17A.005](#).

**Severability—1977 ex.s. c 336:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [ [1977 ex.s. c 336 § 8](#).]

**Effective date—1973 c 1:** See RCW [42.17A.900](#).

**RCW 42.17A.405****Limits specified—Exemptions.**

(1) The contribution limits in this section apply to:

- (a) Candidates for legislative office;
- (b) Candidates for state office other than legislative office;
- (c) Candidates for county office;
- (d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;
- (e) Candidates for city council office;
- (f) Candidates for mayoral office;
- (g) Candidates for school board office;
- (h) Candidates for public hospital district board of commissioners in districts with a population over one hundred fifty thousand;

(i) Persons holding an office in (a) through (h) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;

- (j) Caucus political committees;
- (k) Bona fide political parties.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a legislative office, county office, city council office, mayoral office, school board office, or public hospital district board of commissioners that in the aggregate exceed \*eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a legislative office that in the aggregate exceed \*one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions to candidates subject to the limits in this section made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions to candidates subject to the limits in this section made with respect to a general election may not be made after the final day of the applicable election cycle.

(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, a school board member, a public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, school board member, public hospital district commissioner, or public official in a special purpose district during a recall campaign that in the aggregate exceed \*eight hundred dollars if for a legislative office, county office, school board office, public hospital district office, or city office, or \*one thousand six hundred dollars if for a special purpose district office or a state office other than a legislative office.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(5)(a) Notwithstanding subsection (3) of this section, no bona fide political party or caucus political committee may make contributions to a state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district during a recall campaign that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No official holding an office specified in subsection (1) of this section against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of the official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(6) For purposes of determining contribution limits under subsections (4) and (5) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed \*eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed \*four thousand dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(8) For the purposes of RCW [42.17A.125](#), [42.17A.405](#) through [42.17A.415](#), [42.17A.450](#) through [42.17A.495](#), [42.17A.500](#), [42.17A.560](#), and [42.17A.565](#), a contribution to the authorized political committee of a candidate or of an official specified in subsection (1) of this section against whom recall charges have been filed is considered to be a contribution to the candidate or official.

(9) A contribution received within the twelve-month period after a recall election concerning an office specified in subsection (1) of this section is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(10) The contributions allowed by subsection (3) of this section are in addition to those allowed by subsection (2) of this section, and the contributions allowed by subsection (5) of this section are in addition to those allowed by subsection (4) of this section.

(11) RCW [42.17A.125](#), [42.17A.405](#) through [42.17A.415](#), [42.17A.450](#) through [42.17A.495](#), [42.17A.500](#), [42.17A.560](#), and [42.17A.565](#) apply to a special election conducted to fill a vacancy in an office specified in subsection (1) of this section. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of \*ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions

reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(13) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate specified in subsection (1) of this section, or an official specified in subsection (1) of this section against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of an official specified in subsection (1) of this section if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the official.

(14) No person may accept contributions that exceed the contribution limitations provided in this section.

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(b) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or

(c) An expenditure or contribution for independent expenditures as defined in RCW **42.17A.005** or electioneering communications as defined in RCW **42.17A.005**.

[ **2013 c 311 § 1**; **2012 c 202 § 1**. Prior: **2010 c 206 § 1**; **2010 c 204 § 602**; **2006 c 348 § 1**; **2005 c 445 § 11**; prior: **2001 c 208 § 1**; **1995 c 397 § 20**; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW **42.17.640**.]

#### NOTES:

**\*Reviser's note:** The dollar amounts in this section may have been adjusted for inflation by rule of the commission adopted under the authority of RCW **42.17A.125**. For current dollar amounts, see WAC 390-05-400.

**RCW 42.17A.445****Personal use of contributions—When permitted.**

Contributions received and reported in accordance with RCW **42.17A.220** through **42.17A.240** and **42.17A.425** may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record shall be maintained by the candidate or the candidate's authorized committee in accordance with RCW **42.17A.235**.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW **42.17A.240**.

(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW **42.17A.240**. However, contributions may not be used to reimburse a candidate for loans totaling more than \*four thousand seven hundred dollars made by the candidate to the candidate's own authorized committee.

[ **2010 c 204 § 608**; **1995 c 397 § 29**; 1993 c 2 § 21 (Initiative Measure No. 134, approved November 3, 1992); **1989 c 280 § 12**; **1985 c 367 § 7**; **1977 ex.s. c 336 § 6**. Formerly RCW **42.17.125**.]

**NOTES:**

**\*Reviser's note:** The dollar amounts in this section may have been adjusted for inflation by rule of the commission adopted under the authority of RCW **42.17A.125**. For current dollar amounts, see WAC 390-05-400.

**Effective date—1989 c 280:** See note following RCW **42.17A.005**.

**Severability—1977 ex.s. c 336:** See note following RCW **42.17A.205**.



**RCW 42.23.070****Prohibited acts.**

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

[ **1994 c 154 § 121.**]

**NOTES:**

**Effective date—1994 c 154:** See RCW **42.52.904**.

**RCW 42.52.010****Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(3) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(5) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(6) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(7) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(8) "Family" has the same meaning as "immediate family" in RCW [42.17A.005](#).

(9) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter [42.17A](#) RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(10) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(19) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(20) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(21)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

- (i) Is, or will be, the subject of state action; or
- (ii) Is one to which the state is or will be a party; or
- (iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

(22) "University" includes "state universities" and "regional universities" as defined in RCW **28B.10.016** and also includes any research or technology institute affiliated with a university, including without limitation, the \*Spokane intercollegiate research and technology institute and the \*Washington technology center.

(23) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

[ **2011 c 60 § 28; 2005 c 106 § 1; 1998 c 7 § 1; 1996 c 213 § 1; 1994 c 154 § 101.**]

#### NOTES:

**Reviser's note:** \*(1) The Spokane intercollegiate research and technology institute and the Washington technology center were abolished by **2011 1st sp.s. c 14 § 17**.

(2) The definitions in this section have been alphabetized pursuant to RCW **1.08.015(2)(k)**.

**Effective date—2011 c 60:** See RCW **42.17A.919**.

**RCW 42.52.120****Compensation for outside activities.**

(1) No state officer or state employee may receive any thing of economic value under any contract or grant outside of his or her official duties. The prohibition in this subsection does not apply where the state officer or state employee has complied with \*RCW 42.52.030(2) or each of the following conditions are met:

- (a) The contract or grant is bona fide and actually performed;
- (b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;
- (c) The performance of the contract or grant is not prohibited by RCW 42.52.040 or by applicable laws or rules governing outside employment for the officer or employee;
- (d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by RCW 42.52.150(4) from receiving a gift;
- (e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity;
- (f) The contract or grant would not require unauthorized disclosure of confidential information.

(2) In addition to satisfying the requirements of subsection (1) of this section, a state officer or state employee may have a beneficial interest in a grant or contract or a series of substantially identical contracts or grants with a state agency only if:

- (a) The contract or grant is awarded or issued as a result of an open and competitive bidding process in which more than one bid or grant application was received; or
- (b) The contract or grant is awarded or issued as a result of an open and competitive bidding or selection process in which the officer's or employee's bid or proposal was the only bid or proposal received and the officer or employee has been advised by the appropriate ethics board, before execution of the contract or grant, that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties; or
- (c) The process for awarding the contract or issuing the grant is not open and competitive, but the officer or employee has been advised by the appropriate ethics board that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties.

(3) A state officer or state employee awarded a contract or issued a grant in compliance with subsection (2) of this section shall file the contract or grant with the appropriate ethics board within thirty days after the date of execution; however, if proprietary formulae, designs, drawings, or research are included in the contract or grant, the proprietary formulae, designs, drawings, or research may be deleted from the contract or grant filed with the appropriate ethics board.

(4) This section does not prevent a state officer or state employee from receiving compensation contributed from the treasury of the United States, another state, county, or municipality if the compensation is received pursuant to arrangements entered into between such state, county, municipality, or the United States and the officer's or employee's agency. This section does not prohibit a state officer or state employee from serving or performing any duties under an employment contract with a governmental entity.

(5) As used in this section, "officer" and "employee" do not include officers and employees who, in accordance with the terms of their employment or appointment, are serving without compensation from the state of Washington or are receiving from the state only reimbursement of expenses incurred or a predetermined allowance for such expenses.

[ 1997 c 318 § 1; 1996 c 213 § 6; 1994 c 154 § 112.]

**NOTES:**

**\*Reviser's note:** RCW **42.52.030** was amended by 2005 c 106 § 2, deleting subsection (2).

**RCW 42.52.140****Gifts.**

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

[ 1994 c 154 § 114.]

**RCW 42.52.150****Limitations on gifts.**

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW **42.52.010**, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW **42.52.010**. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW **42.52.140**, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;
- (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;
- (g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW **43.15.050**;
- (h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in \*RCW **43.330.090**;
- (i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, the annual conference of the national association of state treasurers[,] or host committee for the purpose of hosting an official conference under the circumstances specified in RCW **42.52.820**, section 2, chapter 5, Laws of 2006, or RCW **42.52.821**. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;
- (j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
- (k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature; and
- (l) Gifts, grants, donations, sponsorships, or contributions from any agency or federal or local government agency or program or private source for the purposes of chapter **28B.156** RCW.



(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW **42.52.010** except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter **42.17A** RCW.

[ **2015 3rd sp.s. c 20 § 7**; **2015 c 45 § 2**; **2011 c 60 § 29**; **2006 c 5 § 3**; **2003 1st sp.s. c 23 § 2**. Prior: **2003 c 265 § 3**; **2003 c 153 § 6**; **1998 c 7 § 2**; **1994 c 154 § 115**.]

#### NOTES:

**Reviser's note:** \*(1) RCW **43.330.090** was amended by 2007 c 228 § 201, deleting subsection (2) which directly related to "expansion of tourism."

(2) This section was amended by 2015 c 45 § 2 and by 2015 3rd sp.s. c 20 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025**(2). For rule of construction, see RCW **1.12.025**(1).

**Finding—Intent—Short title—2015 3rd sp.s. c 20:** See RCW **28B.156.005** and **28B.156.900**.

**Effective date—2011 c 60:** See RCW **42.17A.919**.

**Findings—2006 c 5:** "The legislature finds that due to the massive devastation inflicted on the city of New Orleans by hurricane Katrina on August 29, 2005, the city of New Orleans will not be able to meet its obligation to host the national lieutenant governors' association's annual conference scheduled for July 17 through July 19, 2006. As a result of this unfortunate situation, the members of the national lieutenant

governors' association officially pressed to have Washington state host the next annual conference in Seattle, Washington, and lieutenant governor Brad Owen has agreed to do so. The legislature further finds, in recognition of the unprecedented situation created by this natural disaster, the high national visibility of this important event, and due to the limited amount of time remaining for planning and fund-raising, it is necessary to initiate fund-raising activities for this national conference as soon as possible." [ **2006 c 5 § 1.**]

**Effective date—2006 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2006]." [ **2006 c 5 § 4.**]

**Findings—2003 c 153:** See note following RCW **43.330.090.**

# Exhibit O

## 2.04.010 - Definitions.

"Administrative Code" means the Administrative Code of the City, [Chapter 3.02](#), as amended.

"Agency" means all offices, boards, departments, divisions, commissions and similar subdivisions of the City.

"Applicable period" means the following periods: (a) for a candidate or a candidate's authorized political committee, the election cycle; (b) for a ballot proposition political committee, from the time the campaign activity begins until the end of the period covered by the final report; and (c) for a continuing political committee, a single calendar year.

"Ballot proposition" means any measure, question, initiative, referendum, recall, or Charter amendment submitted to, or proposed for submission to, the voters of the City.

"Campaign depository" means a bank designated by a candidate or political committee pursuant to [Section 2.04.170](#).

"Campaign treasurer" and "deputy campaign treasurer" mean the individuals appointed by a candidate or political committee, pursuant to [Section 2.04.170](#) to perform the duties specified in this chapter.

"Candidate" means any individual who seeks election to the office of Mayor, member of the City Council, or City Attorney of the City, whether or not successfully. An individual is deemed to seek election when he or she first:

1.

Solicits or receives contributions; or

2.

Makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office; or

3.

Announces publicly or files for office; or

4.

Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

5.

Makes expenditures or solicits or receives contributions to explore the possibility of seeking election to City office; or

6.

Gives his or her consent to another person to take on behalf of the individual any of the actions in subsections 1, 2, 4 or 5 of this section.

"Charter" means the Charter of The City of Seattle.

"City" means The City of Seattle.

"Commercial advertiser" means any person who sells the service of communicating messages or producing political advertising.

"Commission" means the Seattle Ethics and Elections Commission established by [Section 3.70.010](#).

"Continuing political committee" means a political committee which is an organization of continuing existence not established in anticipation of any particular election.

"Contribution" means a loan, loan guarantee, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services, for less than full consideration, but does not include (a) interest on moneys deposited in a political committee's account; (b) ordinary home hospitality; (c) the rendering of legal or accounting services on behalf of a candidate or an authorized political committee but only to the extent that the services are for the purpose of ensuring compliance with City, county or state election or public disclosure laws; (d) the rendering of personal services of the sort commonly performed by volunteer campaign workers; (e) incidental expenses personally incurred by campaign workers not in excess of \$25, in the aggregate, during the applicable period, personally paid for by a volunteer campaign worker; or (f) an internal political communication primarily limited to the members of a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization. For purposes of this definition, members are those who (i) regularly pay dues in exchange for benefits from the organization, or (ii) are able to vote, directly or indirectly, for at least one (1) member of the organization's governing board, or (iii) adhere to a code of conduct, the violation of which may subject the members to sanctions that could adversely affect their livelihood, or (iv) participate in the organization's policy-formulating committees. For the purposes of this chapter, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fundraising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this chapter by the actual cost of consumables furnished in connection with the purchase of such tickets, and only the excess over actual cost of such consumables shall be deemed a contribution. Without limiting the foregoing, the financing by a person of the dissemination, distribution, or publication, in whole or in part, of broadcast, written graphic, or other form of political advertising prepared or approved by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

"Elected Official" means any person elected at a general or special election to the office of Mayor, member of the City Council, or City Attorney of the City and any person appointed to fill a vacancy in any such office.

"Election" includes any primary, general, or special election for public office by the City or any election in which a ballot proposition is submitted to the voters of the City; provided, that an election in which the qualifications for voting include requirements other than those set forth in Article VI, Section 1 (Amendment [63](#)) of the Constitution of the state shall not be considered an election for purposes of this chapter,

"Election campaign" means any campaign in support of or in opposition to a candidate for election to public office of the City and any campaign in support of or in opposition to a ballot proposition.

"Election cycle" means (a) in the case of a City general election, except as provided in subsection (b) below, that period that begins on the first day of January in the year prior to the general election for the office the candidate is seeking and ends on the thirtieth day of April of the year following the general election for the office the candidate is seeking; or (b) in the case of an election to fill an unexpired term, "election cycle" means the period beginning on the earlier of the day the vacancy or the day the impending vacancy is publicly announced and ending five months after the election.

"Executive Director" means the Executive Director of the Ethics and Elections Commission of the City.

"Expenditure" means a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay; and a payment or transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For purposes of this chapter, expenditures other than money or its equivalent shall be deemed to have a monetary value equal to the fair market value of the expenditure. "Expenditure" shall not include: (a) the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported, or (b) the value of in-kind labor, or (c) fines or any amounts returned to the election campaign account as a result of any penalties imposed on a candidate for violating this chapter.

"Final report" means the report described as a final report in [Section 2.04.375](#).

"In-kind labor" means services provided by a person who volunteers all, or a portion, of his/her time to a candidate's election campaign, and who is not paid by any person for such services.

"Independent expenditure" means an expenditure on behalf of, or opposing any election campaign, when such expenditure is made independently of the candidate, his/her political committee, or agent, or of any ballot proposition committee or its officers or agents, and when such expenditure is made without the prior consent, or the collusion, or the cooperation, of the candidate or his/her agent or political committee, or the ballot proposition committee or its officers or agents, and when such expenditure is not a contribution as defined in [Section 2.04.010](#). An independent expenditure is made by a person on the earliest of the following events: (a) the person agrees with a vendor or provider of services to make an independent expenditure; or (b) the person incurs the obligation to make an independent expenditure; or (c) the person pays for an independent expenditure.

"Knowledge" A person knows or acts knowingly or with knowledge when:

1.  
the person is aware of a fact, facts, or circumstances or result described by an offense in this title; or
2.  
he or she has information that would lead a reasonable person to believe that facts exist, which facts are described by an ordinance defining offense violation of this title.

"Officer of a political committee" means the following persons: the treasurer, any person designated by the committee as an officer on the statement of organization filed with the City Clerk, and any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee.

"Person" means an individual, partnership, joint venture, public or private corporation, association, federal, state or local government entity or agency however constituted, candidate, committee, political committee, continuing political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

"Political advertising" means any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

"Political committee" means any person (except a candidate or an individual dealing with his own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

"Public Disclosure Commission (PDC)" means the Public Disclosure Commission established by RCW 42.17.350.

"Public office" means any elective office of the City.

"Sponsor" means the candidate, political committee or person paying for the political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the agent's principal or the source of the reimbursement is the sponsor.

As used in this chapter, the singular shall include the plural and conversely, and any gender, any other, as the context requires.

(Ord. [124694](#), § 1, 2015; Ord. 124018, § 1, 2012; Ord. 123070, § 1, 2009; Ord. 123011, § 3, 2009; Ord. 120831 § 1, 2002; Ord. 120145 § 1, 2000; Ord. 118569 §§ 1, 2, 1997; Ord. 117308 §§ 1-4, 1994; Ord. 116005 § 3, 1991; Ord. 111223 § 1, 1983; Ord. [107978](#), § 2, 1979; Ord. [107772](#), § 2, 1979; Ord. [106653](#), § 2, 1977.)

## 2.04.165 - Reports of personal financial affairs.

### A.

The following shall file statement of financial affairs:

#### 1.

Every candidate shall within two weeks of becoming a candidate file with the City Clerk a statement of financial affairs for the preceding twelve months.

#### 2.

Every elected official and every candidate for a future election shall after January 1st and before April 15th of each year file with the City Clerk a statement of financial affairs for the preceding calendar year, unless a statement for that same twelve month period has already been filed with the City Clerk. Any elected official whose term of office expires immediately after December 31st shall file the statement required to be filed by this section for the year that ended on that December 31st.

#### 3.

Every person appointed to a vacancy in an elective office shall within two weeks of being so appointed file with the City Clerk a statement of financial affairs for the preceding twelve months.

#### 4.

A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

#### 5.

No individual may be required to file more than once in any calendar year.

#### 6.

Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

### B.

The statement of financial affairs report shall contain the following:

#### 1.

The statement of financial affairs required by this chapter shall disclose for the reporting individual and each member of his or her immediate family:

##### a.

Occupation, name of employer, and business address; and



b.

Each bank or savings account or insurance policy in which any such person or persons owned a direct financial interest that exceeded \$5,000 at any time during the reporting period; each other item of intangible personal property in which any such person or persons owned a direct financial interest, the value of which exceeded \$500 during the reporting period; the name, address, and nature of the entity; and the nature and highest value of each such direct financial interest during the reporting period; and

c.

The name and address of each creditor to whom the value of \$500 or more was owed; the original amount of each debt to each such creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each such debt; and the security given, if any, for each such debt; provided, that debts arising out of a "retail installment transaction" as defined in Chapter 63.14 RCW (Retail Installment Sales Act) need not be reported; and

d.

Every public or private office, directorship, and position held as trustee; and

e.

All persons for whom any legislation, rule, rate, or standard has been prepared, promoted, or opposed for current or deferred compensation; provided, that for the purposes of this subsection, "compensation" does not include payments made to the person reporting by the governmental entity for which such person serves as an elected official for his or her service in office; the description of such actual or proposed legislation, rules, rates, or standards; and the amount of current or deferred compensation paid or promised to be paid; and

f.

The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of \$500 or more; the value of the compensation; and the consideration given or performed in exchange for the compensation; and

g.

The name of any corporation, partnership, joint venture, association, union, or other entity in which is held any office, directorship, or any general partnership interest, or an ownership interest of ten (10) percent or more; the name or title of that office, directorship, or partnership; the nature of ownership interest; and with respect to each such entity: (i) with respect to a governmental unit in which the official seeks or holds any office or position, if the entity has received compensation in any form during the preceding twelve months from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; (ii) the name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in any form in the amount of \$2,500 or more during the preceding twelve months and the consideration given or performed in exchange for the compensation; provided, that the term "compensation" for purposes of this subsection B1gii does not include payment for water and other utility services at rates approved by the Washington State Utilities and Transportation Commission or the legislative authority of the public entity providing the service; provided, further, that with respect to any bank or commercial lending institution in which is held any office, directorship, partnership interest, or ownership interest, it shall only be necessary to report either the name, address, and occupation of every director and officer of the bank or

commercial lending institution and the average monthly balance of each account held during the preceding twelve months by the bank or commercial lending institution from the government entity for which the individual is an official or candidate or professional staff member, or all interest paid by a borrower on loans from and all interest paid to a depositor by the bank or commercial lending institution if the interest exceeds \$600; and

h.

A list, including legal or other sufficient descriptions as prescribed by the Commission of all real property in The State of Washington, the assessed valuation of which exceeds \$2,500 in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for that interest; and

i.

A list, including legal or other sufficient descriptions as prescribed by the Commission, of all real property in The State Of Washington, the assessed valuation of which exceeds \$2,500 in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for that interest, and the name and address of the person furnishing the consideration; and

j.

A list, including legal or other sufficient descriptions as prescribed by the Commission, of all real property in The State of Washington, the assessed valuation of which exceeds \$2,500 in which a direct financial interest was held; provided, that if a description of the property has been included in a report previously filed, the property may be listed, for purposes of this provision, by reference to the previously filed report; and

k.

A list, including legal or other sufficient descriptions as prescribed by the Commission, of all real property in The State of Washington, the assessed valuation of which exceeds \$5,000, in which a corporation, partnership, firm, enterprise, or other entity had a direct financial interest, in which corporation, partnership, firm, or enterprise a ten (10) percent or greater ownership interest was held; and

l.

A list of each occasion, specifying date, donor, and amount, at which food and beverage in excess of \$50 was accepted from a source other than the City provided all or portion; and

m.

A list of each occasion, specifying date, donor, and amount, at a source other than the City paid for or otherwise provided all or a portion of the travel or seminars, educational programs or other training; and

n.

Such other information as the Commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the Commission shall prescribe by rule.

2.

Where an amount is required to be reported under subsections B1a through m of this section, it shall be sufficient to comply with the requirement to report whether the amount is less than \$1,000, at least \$1,000 but less than \$5,000, at least \$5,000 but less than \$10,000, at least \$10,000 but less than \$25,000, at least \$25,000 but less than \$100,000, at least \$100,000 but less than \$200,000, at least \$200,000 but less than \$1,000,000, at least \$1,000,000 but less than \$5,000,000, or \$5,000,000 or more. An amount of stock shall be reported by market value at the time of reporting. Each person reporting shall also report his or her reasonably estimated net worth. No provision of this subsection may be interpreted to prevent any person from filing more information or more detailed information than required.

3.

Items of value given to an official's or employee's spouse or family member are attributable to the official or employee, except the item is not attributable if an independent business, family, or social relationship exists between the donor and the spouse or family member.

C.

Concealing Identity of Source of Payment is Prohibited—Exception. No payment shall be made to any person required to report under this chapter and no payment shall be accepted by any such person, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the payment or in any other manner so as to effect concealment except that the Commission may issue categorical and specific exemptions to the reporting of the actual source when there is an undisclosed principal for recognized legitimate business purposes.

(Initiative [122](#), § 4, 2015; Ord. 123070, § 8, 2009; Ord. 120145, § 4, 2000; Ord. 119442, § 1, 1999.)

#### 2.04.340 - Personal use of contributions—when permitted.

Contributions received and reported under this chapter may be transferred to the personal account of a candidate, or, in the case of a ballot proposition political committee, to the personal account of a treasurer or other individual, or expended for such candidate's, treasurer's or individual's personal use only under one or more of the following circumstances:

A.

As reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individual's political committee. The political committee shall maintain such information in the campaign records;

B.

As reimbursement for direct out-of-pocket election campaign and post-election campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall maintain such information in the campaign records;

C.

As repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to [Section 2.04.250](#). Contributions may not be used, however, to reimburse a candidate for loans made by the candidate to the candidate's own political committee or campaign in an amount totaling more than the amount provided in RCW 42.17A.445(3) and WAC 390-05-400;

D.

As payment of salary, wages and benefits or any other payment for services rendered by an individual to a campaign, but not in payment for services rendered by a candidate to that candidate's campaign.

(Ord. [124694](#), § 8, 2015; Ord. 118569 § 17, 1997.)

2.04.350 - Findings of fact—Limitations to be imposed.

A.

The City finds that, in the interest of the public health, safety and welfare, the municipal election process and municipal government should be protected from undue influence by individuals and groups making large contributions to the election campaigns of candidates for Mayor, City Council and City Attorney.

B.

The City finds that, in the interest of the public health, safety and welfare, the municipal election process and municipal government should be protected from even the appearance of undue influence by individuals or groups contributing to candidates for Mayor, City Council and City Attorney.

C.

The City therefore finds that limitations on contributions of money, services and materials by individuals or groups to municipal election campaigns should be imposed by law to protect the public health, safety and welfare. These limitations, however, should be reasonable, so as not to discourage personal expression.

(Ord. 116368 § 20, 1992; Ord. 110909 § 2(part), 1982; Ord. [107772](#) § 1(part), 1979; Ord. [106653](#) § 13-A, 1977.)

## 4.16.070 - Prohibited conduct

A covered individual may not:

A.

## Disqualification from acting on City business

1.

Participate in a matter in which any of the following has a financial interest, except as permitted by [Section 4.16.071](#)

a.

the covered individual;

b.

an immediate family member of the covered individual;

c.

an individual residing with the covered individual;

d.

a person the covered individual serves as an officer, director, trustee, partner or employee;

e.

a person with which the covered individual is seeking or has an arrangement concerning future employment.

2.

Participate in a matter in which a person that employed the covered individual in the preceding 12 months, or retained the covered individual or his or her firm or partnership in the preceding 12 months, has a financial interest; provided, however, that the Executive Director shall waive this section when:

a.

the covered individual's appointing authority or the authority's designee makes a written determination that there is a compelling City need for the covered individual to participate in a matter involving a prior employer or client, and submits that determination with a written plan showing how the authority will safeguard the City's interests, and

b.

the Executive Director determines that the authority's plan is satisfactory.

3.

Perform any official duties when it could appear to a reasonable person, having knowledge of the relevant circumstances, that the covered individual's judgment is impaired because of either (1) a personal or business

relationship not covered under subsection 1 or 2 above, or (2) a transaction or activity engaged in by the covered individual. It is an affirmative defense to a violation of this subsection 3 if the covered individual, before performing the official act, discloses the relationship, transaction or activity in writing to the Executive Director and the covered individual's appointing authority, and the appointing authority or the authority's designee either approves or does not within one week of the disclosure disqualify the covered individual from acting. For an elected official to receive the same protection, the official must file a disclosure with the Executive Director and the City Clerk. If a covered individual is charged with a violation of this subsection, and asserts as an affirmative defense that a disclosure was made, the burden of proof is on the covered individual to show that a proper disclosure was made and that the covered individual was not notified that he or she was disqualified from acting.

4.

Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply if the prohibited financial interest is shared with a substantial segment of the City's population.

B.

Improper use of official position

1.

Use or attempt to use his or her official position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of the covered individual or any other person, rather than primarily for the benefit of the City, except as permitted by [Section 4.16.071](#);

2.

Use or attempt to use, or permit the use of any City funds, property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose, except as permitted by [Section 4.16.071](#); provided, that nothing shall prevent the private use of City property which is available on equal terms to the public generally (such as the use of library books or tennis courts), the use of City property in accordance with municipal policy for the conduct of official City business (such as the use of a City automobile), if in fact the property is used appropriately; or the use of City property for participation of the City or its officials in activities of associations that include other governments or governmental officials;

3.

Except in the course of official duties, assist any person in any matter involving the covered individual's department; provided, further, that except in the course of official duties, a covered individual in the Mayor's office or the legislative department may not assist any person in any matter. This subsection c does not apply to any covered individual appearing on his or her own behalf on any matter, or on behalf of any business entity solely owned by the covered individual, if not otherwise prohibited by ordinance;

4.

Influence or attempt to influence a City decision to contract with, or the conduct of City business with, a person in which any of the following has a financial interest:

a.

the covered individual;

b.  
an immediate family member of the covered individual;

c.  
an individual residing with the covered individual;

d.  
a person the covered individual serves as an officer, director, trustee, partner or employee;

e.  
a person with which the covered individual is seeking or has an arrangement concerning future employment,

However, it is not a violation of this section for a City contractor to attempt to obtain other contracts with the City.

C.

#### Acceptance of things of value

1.

Solicit or receive any retainer, gift, loan, entertainment, favor, or other thing of monetary value from any person or entity where the retainer, gift, loan, entertainment, favor, or other thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the covered individual in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law.

D.

#### Disclosure of confidential information

1.

Disclose or use any confidential information gained by reason of his or her official position for other than a City purpose.

E.

#### Interest in City contracts

1.

Hold or acquire a financial or beneficial interest, direct or indirect, personally or through a member of his or her immediate family, in any contract which, in whole or in part, is made by, through, or under the supervision of the covered individual, or which is made by or through a person supervised, directly or indirectly, by the covered individual, except as permitted by [Section 4.16.071](#); or accept, directly or indirectly, any compensation, gratuity, or reward in connection with such contract from any other person or entity beneficially interested in the contract. This



subsection does not apply to the furnishing of electrical, water, other utility services or other services by the City at the same rates and on the same terms as are available to the public generally.

2.

Unless prohibited by subsection 1, have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in any contract to which the City or any City agency may be a party, and fail to disclose such interest to the City contracting authority before the formation of the contract or the time the City or City agency enters into the contract; provided, that this subsection 2 does not apply to any contract awarded through the public bid process in accordance with applicable law.

F.

Retaliate against a City Employee as prohibited under [Section 4.20.810](#) of the Whistleblower Protection Code; or directly or indirectly threaten or intimidate a City employee for the purposes of interfering with that employee's right to communicate with the Commission, its employees, or its agents; or directly or indirectly threaten or intimidate an employee for the purposes of interfering with or influencing an employee's cooperation in an inquiry or investigation, or interfering or influencing testimony in any investigation or proceeding arising from a report; or knowingly take or direct others to take any action for the purpose of:

1.

influencing an employee's cooperation in an inquiry or investigation based on a report of improper governmental action; or

2.

interfering or influencing testimony in any investigation or proceeding arising from a report.

G.

#### Application to Certain Members of Advisory Committees

1.

Subsections 4.16.070.A.1 and 4.16.070.A.2 apply to employee members of advisory committees. Subsections 4.16.070.A.1 and 4.16.070.A.2 do not apply to other members of advisory committees. This subsection G instead applies to all other members of advisory committees. No member of an advisory committee to whom this subsection applies shall:

a.

Have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in any matter upon which the member would otherwise act or participate in the discharge of his or her official duties, and fail to disqualify himself or herself from acting or participating in the matter.

b.

Engage or have engaged in any transaction or activity which would to a reasonable person appear to be in conflict with or incompatible with the proper discharge of official duties, or which would to a reasonable person appear to impair the member's independence of judgment or action in the performance of official duties, without fully disclosing on the

public record of the advisory committee the circumstances of the transaction or activity giving rise to such an appearance before engaging in the performance of such official duties. Such a member shall also file with the Commission a full written disclosure of the circumstances giving rise to such an appearance before engaging in such official duties. If such prior written filing is impractical, the member shall file such a disclosure as soon as practical.

( [Ord. 124362](#), § 13, 2013; Ord. 123010, § 3, 2009; Ord. 122242, § 2, 2006; Ord. 121859 § 1, 2005; Ord. 116377 § 5, 1992; Ord. 115548 § 2, 1991; Ord. 109950 § 1(part), 1981; Ord. 108882 § 14.16.070, 1980.)

# Exhibit P



**State of Washington**  
**PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112

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October 2, 2012

Rob Maguire  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101

Re: Legal Services for Election-Related Litigation, and RCW 42.17A

Dear Mr. Maguire:

This letter follows up on your questions concerning RCW 42.17A as it applies to legal services, and the Commission's discussion on September 27, 2012.

The draft answers proposed by staff have been finalized, following that discussion. See enclosed.

Thank you.

Sincerely,

Nancy Krier  
General Counsel

Enclosure

**Questions and Answers by PDC Staff to Attorney Rob Maguire  
Regarding Legal Services and RCW 42.17A  
Final – Following Commission Discussion September 27, 2012**

**1. RCW 42.17A.005(13) excludes certain legal services from what is considered a contribution.**

- a. What does the phrase “regular employer” of the person/individual rendering the services mean in RCW 42.17A.005(13)(b)(viii)? For example, how does it apply to your situation (you are a partner in a law firm)?**

Background

RCW 42.17A.005(13)(b)(viii) excludes certain legal services from the definition of “contribution.” The provision was enacted in Initiative 134 in 1992. Initiative 134 established campaign contribution limits in RCW 42.17 (now codified at RCW 42.17A), and enacted other provisions. The statute states that “contribution” does not include:

(viii) Legal or accounting services rendered to or on behalf of:

(A) A *political party* or *caucus political committee* if the person paying for the services is the regular employer of the person rendering such services; or

(B) A *candidate* or an *authorized committee*<sup>1</sup> if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; ... (Emphasis added).

The statute also states that “contribution” does not include:

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. “Volunteer services,” for the purposes of this subsection, means services or labor for which the individual is not compensated by any person; ... (Emphasis added).

The Commission adopted WAC 390-17-405 (volunteer services) which, among other things, addresses this statute. The relevant part of the rule states:

(2) An attorney or accountant may donate his or her professional services to a *candidate, a candidate’s authorized committee, a political party or a caucus political committee*, without making a contribution in accordance with RCW 42.17A.005 (13)(b)(viii), if the attorney or accountant is:

- (a) Employed and his or her employer is paying for the services rendered;
- (b) Self-employed; or

<sup>1</sup> An “authorized committee” is a candidate’s authorized committee. See RCW 42.17A.005(3).

(c) Performing services for which no compensation is paid by any person. However, neither RCW 42.17A.005 (13)(b)(viii) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a *candidate's authorized committee, political party or caucus political committee* and the conditions of RCW 42.17A.005 (13)(b)(viii) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered. (Emphasis added).

At this time we cannot find that staff has previously been asked to review an attorney's employment status with his/her firm with respect to who is the "regular employer" under this statute or rule (such as when an attorney is a partner). Staff would likely have to examine the relevant facts to determine if a firm was a "regular employer" of an attorney. The facts could include, for example, whether the attorney is considered an employee of the firm under employment law, the firm's website and marketing materials describing the attorney's status with the firm, and/or other resources.

However, in the past, staff have advised that the phrase "regular employer of the person rendering such services" means that if someone other than the attorney's firm pays for the legal services to or on behalf of a candidate, a candidate's authorized committee, a political party, or a caucus political committee<sup>2</sup> then those services are a reportable in-kind contribution of the payer subject to limits (that is, they are a contribution by the "third party").

Answer:

Therefore, in response to your question, at this time staff concludes that:

- In determining if a law firm is the "regular employer" of an attorney, staff will examine the facts surrounding the employment. At this time, staff will presume a partner, associate, or salaried attorney of a firm is "regularly employed" by the firm, unless the facts show otherwise. The same is true for in house counsel of an entity.
- Assuming an attorney is regularly employed by a firm and the attorney "donates" legal services to the entities described in the statute (*candidate, a candidate's authorized committee, a political party, or a caucus political committee*), and the attorney is paid or not paid for those services by the firm (and the firm is not paid by any other person), then a contribution does not result. All payments by a candidate or political committee for legal services are required to be disclosed as expenditures.
- If such an attorney is paid by a third party (not by the candidate, candidate's authorized committee, political party, or caucus political committee) for the legal

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<sup>2</sup> While your questions did not concern legal services related to ballot measure committees or continuing political committees, we note that PDC Interpretation 91-02 and PDC Declaratory Order No. 3 address some of those circumstances.

services, then an in-kind contribution (subject to limits) results from that third party.

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**b. How does this statute [RCW 42.17A.005(13)] apply to legal services provided with respect to a recount, or potential recount, or other election-related litigation?**

Answer:

At this time, staff concludes that under RCW 42.17A.005(13)(b)(viii) these legal services:

- Are not a contribution when they are provided to or on behalf of a *political party or caucus political committee* for any reason (including any litigation). That would include recount-related litigation. Staff reaches that conclusion because the statute provides no limitation on what types of laws or litigation attorneys may render services to these entities.
- Are not a contribution when provided to or on behalf of a *candidate or a candidate's authorized committee*, only when they are provided "solely for the purpose of ensuring compliance with state election or public disclosure laws."
  - "**State election laws**" are codified in Title 29A RCW. Recount procedures are codified at RCW 29A.64. Therefore, staff concludes that compliance with "state election laws" includes litigation involving compliance with recount election laws. Other possible litigation related to compliance with "election laws" (such as the other ballot-related litigation examples you provided<sup>3</sup>) would have to be reviewed on a case-by-case basis to determine the underlying claims and related statutes.
  - Staff believes "**public disclosure laws**" refers to RCW 42.17A in this context.<sup>4</sup> Therefore, compliance with "public disclosure laws" includes legal services for litigation initiating, concerning or responding to citizen action complaints filed under RCW 42.17A. It would also include legal services

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<sup>3</sup> Examples you gave include election-related litigation such as a lawsuit brought by the Libertarian Party challenging the Washington State Republican Party's status as a major political party under state law; litigation concerning candidates' description of their party preference; and citizen action complaints leading to candidates' depositions prior to Election Day. Other possible examples you described could include, lawsuits over mailing of military ballots; alleged inconsistent standards applied to discerning voter intent (during initial tabulation and recounts); challenges to the accuracy of voting machines (in advance and after election day); alleged inconsistent standards in allowing voters to remedy deficiencies in their mail ballots (curing signature defects, for example); ballot security issues; observer access; accessible voting; voter intimidation, etc.

<sup>4</sup> The Public Records Act provisions have been recodified to RCW 42.56. The PDC does not enforce RCW 42.56.

provided to respond to other actions proceeding or filed under RCW 42.17A seeking compliance with RCW 42.17A, such as Commission investigations and enforcement actions for complaints filed directly with the Commission, and any subsequent court actions.

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**2. In 2004, funds were provided from various organizations/entities to assist in the recount litigation in the gubernatorial race. You are interested in knowing what sources of funds can be used for a possible recount in 2012, and how they are to be reported (if reporting is required). For example:**

**a. What were those sources of funds in 2004?**

There were various sources. See next question at # 2.c.i.

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**i. Did they include political party exempt funds (see former RCW 42.17A.640(15), now codified at RCW 42.17A.405(15))? Did they include other funds?**

Answer:

- In 2004, gubernatorial election recounts occurred and lawsuits challenging the recounts resulted. As a consequence, there were costs related to the recounts, and related to that litigation. Various groups and entities donated funds to the political parties to help finance the recounts, and to finance the litigation. The litigation funds were contributed to the parties' exempt accounts. Those groups and entities included, for example, the national Republican Governors Association, the Democratic Governors Association, unions, trial lawyers, federal and state political committees, corporations, and others. (Some of the funds are reported to have been used for the recount itself, some funds to pay for the litigation).
- In 2004, one gubernatorial candidate had been advised by PDC staff that he should file a new political committee registration form after the November general election, in order to raise and disclose separate funding for recount litigation. (The election cycle at that time ended November 30). However, the Commission later dismissed a complaint concerning that candidate, determining that those funds were not campaign contributions subject to RCW 42.17.

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**ii. How were those funds reported to the PDC, if they were required to be reported?**

Answer:

- The funds contributed to the state political parties' exempt accounts were disclosed on contribution and expenditure reports (C-3 reports and Schedule A to C-4 reports) filed with the PDC by the state political parties. Amounts owed to law firms were reported as obligations and debts.



- The gubernatorial candidate's recount-related funds and expenditures were disclosed in reports filed with the PDC by the individual, although those funds were later determined to not be subject to those filing requirements.

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**b. In 2012, can a state political party receive funds from a national political party for recount litigation? How about for other election-related litigation?**

Background

**Definitions.** "Candidate" means "any individual who seeks nomination for election or election to public office." RCW 42.17A.005(7). In the past, staff have described that the definition is "out of effect" after the date of the relevant election (except for receiving contributions subject to limit through December 31.<sup>5</sup> See below). A "contribution" is made "for the purpose of assisting any candidate or political committee." WAC 390-05-210.

**Exempt Funds ("Soft Money").** RCW 42.17A.405(15) authorizes certain contributions that are exempt from contribution limits ("exempt funds" or "soft money") to be earmarked and used for "ballot counting" so long as there is no promotion of or political advertising for individual candidates. Therefore, state political parties often create "exempt accounts" separate from the accounts receiving funds subject to limit ("hard money" accounts).

In particular, RCW 42.17A.405(15) lists authorized uses for exempt funds. They are:

- |  |
|--|
| <p>An expenditure or contribution earmarked for →</p> <ul style="list-style-type: none"><li>▪ voter registration</li><li>▪ absentee ballot information</li><li>▪ precinct caucuses</li><li>▪ get-out-the-vote campaigns</li><li>▪ precinct judges or inspectors</li><li>▪ sample ballots</li><li>▪ ballot counting</li></ul> <p>all without promotion of or political advertising for individual candidates.</p> <p><i>(continued)</i></p> |
|--|

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<sup>5</sup> "Election" includes "any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters." RCW 42.17A.005(16). "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition. RCW 42.17A.005(17). "Election cycle" begins the first day of January after the date of the last previous general election for the office that the candidate seeks and ends December 31 after the next election for the office. RCW 42.17A.005(18). For limits purposes, contributions to candidates subject to limits that are made with respect to a general election may not be made after the final day of the applicable election cycle. RCW 42.17A.405(2); RCW 42.17A.410(2). That is, contributions to a candidate's campaign and for a general election must be made by December 31.

Also a candidate who is a state official or state legislator would also be subject to the legislative session freeze, which is a timing provision limiting receipt of contributions, beginning the 30 days before the regular legislative session, and on the date a special session convenes. RCW 42.17A.560.

An expenditure by a political committee for →

- its own internal organization or
- fund-raising

without direct association with individual candidates.

An expenditure or contribution for →

- independent expenditures as defined in RCW 42.17A.005
- electioneering communications as defined in RCW 42.17A.005

Campaign contributions are not included in the list of authorized uses for exempt funds. Thus, in staff's view, under this law exempt funds cannot be used for campaign contributions.

In staff's view, national political parties (and others for that matter) can contribute unlimited funds to the state political parties' exempt accounts and earmark those funds for "ballot counting."<sup>6</sup> Expenditures from this account are not subject to dollar limits.

In staff's view, "ballot counting" includes recounts, as well as litigation regarding ballot counting and recounts. In staff's view, "ballot counting" activities are not "promotion of or political advertising" for individual candidates. In staff's view, recount activities concern ballot tallies and *for most of RCW 42.17A's purposes*, the candidate's "election" is over once the general election day ends. For limits purposes, however, the "election cycle" continues until December 31.<sup>7</sup> That means until December 31, the contributions a candidate receives are still subject to limit.

***Non-Exempt Funds ("Hard Money")***. The national political parties can also make unlimited contributions to the state parties' non-exempt account. Expenditures from this account by the state parties are typically used to make contributions to candidates that are subject to limit under RCW 42.17A.405, although staff have informally advised that the parties can use non-exempt funds for any other purpose.

Individuals can also contribute unlimited funds to the state parties' non-exempt account. All other persons are limited to contributing \$4,500/year to the non-exempt account.

Finally, a state political party can also transfer non-exempt funds to its exempt funds account, but then those funds are subject to the limited uses listed in RCW 42.17A.405(15).

Answer:

- A state political party can use its exempt funds to finance recount litigation. Those funds would include unlimited funds the national political party contributes to the state political party's exempt funds account that are earmarked for "ballot counting."

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<sup>6</sup> Except in the 21-days preceding a general election, at which point they are subject to a \$5,000 maximum. RCW 42.17A.420.

<sup>7</sup> See question # 1.c. for further discussion regarding whether a candidate can use these active campaign funds received through December 31 for recount litigation, as "postelection campaign expenses."

- With respect to using exempt funds to finance other election-related litigation (see your litigation examples in footnote 3), staff's answer is, "it depends." Staff will need to examine the litigation to determine if the use fits within one of the permissible categories listed in RCW 42.17A.405(15).
- With respect to using non-exempt funds to finance recount or other election-related litigation, a state political party could use those funds to:
  - Transfer them to the exempt account, for uses described above.
  - Through December 31, make contributions directly to a candidate, subject to the candidate's limit. The candidate *potentially* could use the money for recounts/recount litigation *if* the Commission determines a candidate's recount expenses (and recount litigation expenses) are "postelection campaign expenses." See next question at # 1.c.<sup>8</sup>
  - Assuming the state political party is also a party to the recount litigation, use the funds for direct expenditures for its legal services.
- With respect to funding recount or other election-related litigation from other sources, see next question at # 1.c below.

**c. In 2012, are there other funds that can be used for recount litigation? How about other election-related litigation?**

Background

**Candidate's Campaign Funds.** A candidate can use campaign funds for his/her campaign expenditures, but cannot expend those funds for personal use. RCW 42.17A.445.<sup>9</sup> WAC 390-16-238 states that: "Except as specifically allowed by chapter 42.17A RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17A.445." The rule also provides that, "An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign."

**Candidate's Surplus Funds.** "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the

<sup>8</sup> To date, staff has been concerned that such a use could be viewed as a candidate's prohibited personal use of campaign funds under RCW 42.17A.445. Therefore, to date staff has not advised candidates to use those active campaign funds to finance recounts or recount litigation.

<sup>9</sup> Campaign contributions may be paid to a candidate, treasurer, or for other individual's personal use only to pay for (1) lost earning resulting from the campaign, (2) "direct out-of-pocket election campaign and postelection campaign related expenses made by the individual", and (3) loans up to a limit. RCW 42.17A.445. Staff will review with the Commission whether "postelection campaign related expenses" could include recount litigation, therefore permitting active campaign funds to be used for such litigation.

contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. RCW 42.17A.005(46). A candidate can expend surplus campaign funds only for the purposes listed in RCW 42.17A.430.<sup>10</sup> A candidate's recount litigation is not listed as a permissible use; however, the statute permits a candidate to give those surplus funds to a political party. *Id.*

**“Legal Defense Funds.”** RCW 42.17A currently does not include specific requirements for “legal defense funds,” aside from potential disclosures on the personal financial affairs reporting form (F-1).

Answer:

- To date, in staff's view, under RCW 42.17A, the following can be used to pay for recount litigation:
  - A state political party can use its exempt funds (“soft money”).
  - A state political party can use its non-exempt funds (“hard money”) by transferring the funds to the exempt account or otherwise use them for activities listed in RCW 42.17A.405(15).
  - A candidate can establish a separate “legal defense fund” for the litigation, which is generally not subject to regulation under RCW 42.17A.<sup>11</sup>
- In addition, as discussed at the September 27, 2012 Commission meeting, a candidate's active campaign funds can be used to pay for recount litigation.
- To date, staff has advised that under RCW 42.17A, the following cannot be used to pay for recount litigation:
  - A candidate's surplus campaign funds (except a candidate can transfer them to a state political party).

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<sup>10</sup> Surplus funds can be used for “non-reimbursed public office related expenses.” RCW 42.17A.430(7). At this time, staff does not consider recount litigation as a “public office related” expense.

<sup>11</sup> Under current law, donations to and payments from a candidate's separate “legal defense fund” would not be required to be reported to the PDC unless the fund constitutes the type of account or income/compensation to the candidate that would be required to be disclosed on a personal financial affairs form (F-1 report). See RCW 42.17A.710. In the absence of any facts describing a particular fund's creation, donations, or payouts, staff cannot respond further about possible F-1 reporting requirements for a possible separate “legal defense fund.” Also, while contributions to a separate legal defense fund are not generally otherwise governed by RCW 42.17A at this time, an official may be subject to other laws that would impact the creation or acceptance of such funds, such as state or local ethics or gifts laws/rules. Staff does not comment on those other laws and you or your clients should contact the relevant agencies implementing those laws.

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#### d. How should the funds be reported?

##### Answer:

The funds should be reported as follows, based on the account they are contributed to and expended from:

- Funds contributed to and expenses from a state political party's exempt account must be reported to the PDC on the party's exempt account C-3s, C-4s, etc.
- Funds contributed to and expenses from a state political party's non-exempt account must be reported on the party's non-exempt account C-3s, C-4s, etc.
- A candidate's contributions and expenditures must be reported on the candidate's and committee's C-3s, C-4s, etc.
- A candidate's surplus funds transfers must be reported on a candidate's Schedule A expenditures, and if the transfer is to a state political party, it must be reported on the party's C-3 report as a contribution received.
- A candidate's "separate legal defense fund" may need to be disclosed on the candidate's F-1 report, depending upon the facts regarding its creation, funding and distribution. Otherwise, these separate funds are not currently required to be reported to the PDC.

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#### e. Can those funds be used for pre-election anticipatory legal services provided to prepare for a potential recount, as well as any post-election legal services related to a recount and recount litigation?

##### Answer:

- See # 1.b.

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### 3. As noted, the entities that may have resources to pay for recount-related litigation are often national entities, for example, governors associations. If they provide funds or make expenditures to assist a candidate in recount-related litigation, is there a possible "coordination" issue?

##### Background

**Contributions, Expenditures & Coordination.** A candidate can accept contributions subject to limit for a general election, up to December 31 (the end of the "election cycle"). RCW 42.17A.405(2); RCW 42.17A.410(2). A "contribution" is made "for the purpose of assisting any candidate or political committee." WAC 390-05-210(1).

A contribution also includes "expenditures." RCW 42.17A.005 (13)(ii). "Expenditures" includes "anything of value for the purpose of assisting, benefiting, or honoring any

public official or candidate<sup>12</sup> or assisting in furthering or opposing any election campaign.” (Emphasis added.)

A “contribution” also includes an “expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents ...” RCW 42.17A.005(13)(ii). This concept is often referred to as “coordination.”

The Commission adopted a rule on coordination. WAC 390-05-210. The rule describes when certain activities/expenditures are presumed to be coordinated with a candidate and therefore constitute a “contribution.” For example, it includes certain consulting with candidates, and consulting with a bona fide political party, on expenditures. This rule helps inform contributors and campaigns that they if coordinate campaign expenditures, a contribution can result.

**Other Funds.** Except for the “election cycle” wind-down period for accepting contributions subject to limit (through December 31), RCW 42.17A does not generally otherwise regulate use or disclosure of a candidate’s funds that are unrelated to a campaign unless they are in an account or obtained through income/compensation that must be disclosed on an F-1.<sup>13</sup>

Answer:

- In staff’s view, *prior to the general election and until December 31*, a person such as a national organization you describe typically cannot coordinate with a candidate for expenditures to be made on the candidate’s behalf, based upon a candidate’s plans, projects or needs, or with respect to the other criteria in WAC 390-05-210, without a *presumptive* contribution being made to the candidate.
- However, such an organization can give the funds to the exempt account of a state political party, and the party can then “coordinate” with the candidate on the recount litigation and report the value of a party’s expenditures. That is because use of exempt funds are not subject to limit (and thus not subject to the coordination restrictions that may result in a limit being reached).
- Also, a “presumptive contribution” does not occur, and coordination does not result, when legal services are provided at any time to or on behalf of a candidate or a political party, by the regular employer of an attorney, with respect to compliance with election laws (including recount litigation). That is because those legal services are excluded from what is a “contribution.” See question # 1a.

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<sup>12</sup> Staff views the phrase “assisting, benefiting or honoring any public official or candidate...” to explain what items are to be disclosed on campaign expenditure reports by reporting entities (political parties, candidates, political committees, etc.). At this time, it is not staff’s view that that any item of value that may somehow “benefit” or “honor” a public official or candidate, automatically qualifies as a contribution. Staff would need to review the relevant facts related to a particular question.

<sup>13</sup> A candidate can have only one campaign account. RCW 42.17A.440.

- In addition, persons may also present facts that could cause the Commission to find the presumption of a contribution being made to a candidate is rebutted for other alleged “coordinated” activities.

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**a. What if a “citizen action letter” (45-day letter) under RCW 42.17A.765 results in litigation for a candidate, or other election-related litigation occurs, and the candidate does not have funds on hand to pay for legal services to respond?**

Answer:

- See # 1.b (regarding legal services) and # 1.c. (regarding a separate legal defense fund).

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**b. What funds could the candidate/former candidate use to pay for those legal services?**

Answer:

- See # 1.b (regarding legal services) and # 1.c. (regarding a separate legal defense fund).

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**c. Could a state political party help pay for those legal services?**

Answer:

- If the state political party is the regular employer of an attorney (in house counsel) and the attorney is providing legal services on behalf of a candidate, yes. See # 1.a.

# Exhibit Q



## Advisory Opinion 05-02

### **Question**

May the Director of the Mayor's Film and Music Office participate in fundraising activities for the Vera Project, a non-profit music-arts center located in Seattle?

### **Answer**

Yes, provided that the Director (i) does not use City resources or his City position in connection with his fundraising activities, (ii) does not solicit anything of value from people or entities who may wish to receive special consideration from the Director in the performance of his official duties, and (iii) continues to disqualify himself from participating in official actions affecting the Vera Project.

### **Facts**

According to its web site, the Mayor's Film and Music Office (the "Office") "works to maintain Seattle's reputation as a professional, efficient and hospitable location in which to record, produce and perform" music. The Director has no regulatory authority over music industry participants. Instead, he works with the City's special events committee to help coordinate all the City's music festivals, ensures that the music industry's interests are heard by members of the City's Economic Opportunity Task Force, sits on the City's public safety team developing strategies to encourage a healthy music nightlife, and markets and promotes Seattle as a live music capital to the rest of the world.

The Vera Project ("Vera") is a non-profit music-arts center run by and for youth. Vera hosts weekly concerts as well as educational programming. It maintains a safe, alcohol- and smoke-free environment for people of all ages to experience music.

The Director accepted his City position in March 2005. Prior to accepting a position with the City, the Director was Executive Director of Vera. The Director disqualifies himself from official actions in which Vera has an interest.

Vera conducts an annual fundraiser, "A Drink for the Kids," each May. When club patrons buy tickets to performances, or restaurant or bar patrons buy drinks, a portion of the proceeds goes to Vera. The Director has been asked to serve on the fundraising committee organizing the event. The committee will enlist venues, musicians and sponsors to participate in the fundraising event.

## **Discussion**

### **1. The Director may not use City resources or his City position to support Vera's fundraising efforts.**

Pursuant to SMC 4.16.070.2, a City officer or employee may not:

- a. Use his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the officer or employee, rather than primarily for the benefit of the City; or to achieve a private gain or an exemption from duty or responsibility for the officer or employee or any other person;
- b. Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any City funds or City property, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose.

While assisting music industry participants is one mission of the Office, and therefore will be in most cases a "City purpose," the Director would be serving on the fundraising committee not as a City employee but in his personal capacity. (As discussed below, he cannot assist Vera in his official capacity without violating SMC 4.16.070.1.a and c.) Therefore, the Director's assistance to Vera would not be "primarily for the benefit of the City." Accordingly, in conducting his work as a member of the fundraising committee, the Director may not use City resources, such as his City telephone, fax machine, or stationery. The Director must also avoid conducting fundraising activities on City time.

The Director must also avoid using his City position in connection with his fundraising activities. In oral or written communications on Vera's behalf, the Director may not invoke or refer to his City position. If the Director has reason to believe that a person he is dealing with on Vera's behalf is operating under the misimpression that the Director is acting in his official capacity, the Director must make clear that he is acting as a private citizen, and not as City official.

### **2. The Director may not solicit anything of value from people or entities he deals with in his official capacity.**

Pursuant to SMC 4.16.070.3, a City employee may not "[s]olicit or receive any retainer, gift, loan, entertainment, favor, or other thing of monetary value from any person or entity where the retainer, gift, loan, entertainment, favor, or other thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by such officer or employee in his or her official capacity."

In order to comply with this section, the Director must not personally solicit participation in the Vera fundraiser from musicians, club owners, or others who may wish to receive special consideration from the Director in the performance of his official duties. Musicians, for example, may feel that declining to participate in the Vera fundraiser will jeopardize their chances to perform at a City music festival, or conversely that agreeing to help will enhance their chances of appearing at a City festival. Club owners may make similar calculations regarding the Director's role in the public safety team exploring ways to encourage a healthy music night life.

SMC 4.16.070.3 will *not*, however, prevent the Director from serving on the fundraising committee that decides which musicians will be asked to perform, and which clubs and restaurants will be asked to participate. So long as the Director does not personally solicit the participation, and so long as his name is not invoked by those who do solicit that participation, his status as a member of the fundraising committee will not violate the Code. Furthermore, the Code will not prevent the Director from soliciting participation or donations from those who do not have an interest in the Director's performance of his official duties, i.e., clubs located outside Seattle.

**3. Helping raise funds for Vera will extend the amount of time in which the Director may not participate in official matters involving Vera.**

Pursuant to SMC 4.16.070.1, a City officer or employee may not:

- c. Engage in any transaction or activity, which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of official duties, or which impairs, or would to a reasonable person appear to impair, the officer's or employee's independence of judgment or action in the performance of official duties and fail to disqualify him or herself from official action in those instances where the conflict occurs;
- ...
- d. Fail to disqualify himself or herself from acting on any transaction which involves the City and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership

In the past, the Commission has applied the one-year ban on official dealings with past clients to past employers as well. *See Op. Sea. Ethics & Elects.* 94-15, at 4. Accordingly, applying Commission precedent would bar the Director from participating in official actions affecting Vera until March 2006.

The Director's ongoing involvement in Vera, however, is the kind of activity that would cause a reasonable person to question his "independence of judgment" in official actions he took involving Vera, raising issues under SMC 4.16.070.1.a. In order to comply with the Ethics Code, the Director should continue to disqualify himself from matters involving Vera for at least a year after his work as a member of the fundraising committee comes to an end. Before

participating in official matters involving Vera, the Commission recommends that the Director seek advice from the Executive Director or the Commission.

### **Conclusion**

The Ethics Code will not preclude the Director from assisting Vera with its fundraiser. The Code will, however preclude: (i) the Director's use of his City position or City resources at his disposal to assist Vera, (ii) the Director's solicitation of anything of value from those who may wish to receive special consideration from the Director in the performance of his official duties, and (iii) the Director's participation in matters affecting Vera until a reasonable person would be satisfied that the Director can exercise independent judgment on such matters.

This Advisory Opinion deals solely with the application of SMC Chapter 4.16 to the facts presented. The Commission is not empowered to provide advice on whether the arrangement complies with other local, state and federal laws, or whether the arrangement is prudent or wise public policy.

APPROVED December 14, 2005, by vote of the Commission.

# Exhibit R

August 11, 1997

\*\*\*\*\*

No. 97-07

Re: Request For Advisory Opinion No. 97-1A-0415-1, Outside Business

Dear \*\*\*\*\*:

You ask if the Code of Ethics prohibits you from taking an unpaid position as Executive Director of a non-profit association that will apply for grants from the Department of Housing and Human Services, when you are an employee of the Engineering Services section of the Seattle Public Utility. The brief answer is no, the Code does not prohibit such conduct so long as you do not use your City position to influence the City to award a grant to the non-profit and you do not use City paid time or City facilities to conduct the non-profit's business.

#### **STATEMENT OF FACTS**

\*\*\*\*\* is a Construction Manager in the Engineering Services Section of the Seattle Public Utility. In that position, he has no grant awarding authority and does not work with people who do.

\*\*\*\*\* would like to accept the unpaid position of Executive Director of a non-profit association that will purchase transition housing for women between the ages of 18 and 34. The association will have a board of four professionals who will be paid for their work in the housing. They will provide such services as counseling, case management and property management. Currently, the association is working with the State to determine if it can acquire properties over the I-90 lid. The association will apply to a bank for financing the purchase of a thirteen to fourteen unit complex. Once the property is acquired, the association will apply for property rehabilitation funds from the Seattle Department of Housing and Human Services, Housing Division and for education and rehabilitation funds from the U.S. Department of Housing and Urban Development, Education Division.

#### **ANALYSIS**

The Code of Ethics prohibits City officers and employees from engaging in conduct that would appear to conflict with, be incompatible with or impair independent judgment in performing official duties. SMC 4.16.070(1)(a) provides that no current officer or employee shall:

Engage in any transaction or activity, which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of

official duties, or which impairs, or would to a reasonable person appear to impair, the officer's or employee's independence of judgment or action in the performance of official duties and fail to disqualify him or herself from official action in those instances where the conflict occurs.

In Op Sea Ethics & Elects Comm'n 11 (1992), we advised that an employee with the Solid Waste Utility in the Engineering Department could accept a one-time position with the US Department of Energy in which she would review the solid waste portion of a national energy modeling system. Her City duties included developing the City's long range forecasting model for solid waste tonnage and recycling, cost-benefit analysis on recycling programs, contract management for the waste composition project, and budgeting for the utility. We reasoned that since the duties in the proposed position are different and do not involve the work performed for the City, the proposed position would not conflict with and is not incompatible with her City duties. Also, It would not impair or appear to impair her independent judgment in the performance of her official duties. Like that employee, \*\*\*\*\*' official duties are different from those of Executive Director of the non-profit association that will apply for City funds to rehabilitate transition housing. Since his official duties do not involve grants or housing rehabilitation, the Code does not prohibit him from engaging in the work of Executive Director, as he has described it. He may not, however, use his City position to attempt to influence the City to award a grant to the non-profit.

The Code of Ethics prohibits City officers and employees from attempting to influence the City to contract with entities in which they have an interest. SMC 4.16.070(2)(d) provides that no current City officer or employee shall:

Regardless of prior disclosure thereof, have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in a business entity doing or seeking to do business with the City, and influence or attempt to influence the selection of, or the conduct of business with, such business entity by the City.

In Op Sea Ethics & Elects Comm'n 32 (1992), we advised that a City employee's company may subcontract on a City project if the employee had no involvement in the contracting process or in the day-to-day operations of the company and did not use his City relationships to obtain the award. In that case, we defined attempt to influence as using the City position or work relationship to persuade the City to do business with the employee.

The prohibition against the "influence or attempt to influence the selection of" the employee's business means that: (1) in an RFP or competitive bid process the employee may not do more than any other vendor is allowed to persuade the City to select the employee's product or service, i.e., submitting the proposal or bid; and (2) where there is no RFP or competitive bid process, the employee may not use his/her position or the work relationships gained by reason of City employment to persuade the City to do business with the employee.

Op Sea Ethics & Elects Comm'n 32 at 6 (1992). Thus, \*\*\*\*\* may not contact Department of Housing and Human Services employees whom he may know as a fellow City employee to urge them to award a grant to the non-profit. He may use only the same process that other grant competitors use to obtain the award.

Finally, \*\*\*\*\* may not use City paid time or City facilities to conduct the business of the non-profit. SMC 4.16.070(2)(b) prohibits the use of City funds or facilities for other than a City purpose.

## CONCLUSION

The Code of Ethics does not prohibit a City employee from accepting a position as an unpaid Executive Director of a non-profit that provides transition housing, training and rehabilitation using City and Federal funds, provided that: (1) the employee's official duties are not involved in grant awards for housing, education or rehabilitation and he does not work with employees who have such duties, in compliance with SMC 4.16.070(1)(a); (2) he does not attempt to influence the City to award a grant to the non-profit, beyond the process that is available for any other non-profit to request an award, in compliance with SMC 4.16.070(2)(d); and (3) he does not use City paid time or City funds to conduct the business of the non-profit, in violation of SMC 4.16.070(2)(b).

The Commission's advisory opinion is based on the general facts as stated above. The Commission does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Commission to reach a different conclusion. In addition, Commission advisory opinions are narrowly drawn to interpret the ordinances the Commission is authorized to administer. They do not address whether the proposed action is prudent, good public policy or effective management practice.

## FOR THE SEATTLE ETHICS AND ELECTIONS COMMISSION

Carolyn M. Van Noy,  
Executive Director

This action was reviewed and approved by the Commission at its meeting of August 6, 1997. The Commission members voting to take this action were:

Daniel Ichinaga, Chair  
Sharon K. Gang

John A. Loftus  
Catherine L. Walker

Not in attendance were:  
Marc Boman   Rosselle Pekelis  
Timothy Burgess



# Exhibit S

June 6, 1994

\*\*\*\*\*

No. 94-17

Re: Request For Advisory Opinion No. 94-1A-0406-1 Accepting Gifts From Entities That Do Business With The City

Dear \*\*\*\*\*:

You ask if the Code of Ethics prohibits the Department of Administrative Services (DAS) Data Processing Division from accepting \$42,000 worth of data processing equipment from Digital Equipment Corporation, to be used on the Public Access Network (PAN), when Digital helped DAS develop the prototype of the network and will probably be a competitor if the City sends out requests for proposal for the network and is a competitor for two other pending projects. The brief answer is no, because the gift is not for an individual's benefit and the gift does not appear to be given with intent to influence an impending City action.

#### **STATEMENT OF FACTS**

Digital Equipment Corporation has offered to give computer equipment worth \$42,000 to DAS Data Processing Division to implement a demonstration project for PAN. PAN is a network that would allow the public to obtain government, school, community, entertainment and tourist information, as well as connect to other networks, such as the Internet, through workstations in public buildings or privately owned personal computers. Digital has worked with DAS Data Processing employees to develop a prototype for PAN, including the workstations. The City may proceed with the development of PAN or may turn it over to a non-profit, for profit or other government organization. The project will take a lot of cooperation from all levels of government and from the private sector.

Digital is currently a competitor in two City requests for proposal that involve DAS Data Processing employees: the Backbone Project and the Human Resources Information System. As we understand it, Backbone is a proposal to interconnect all City departments so they can share e-mail and other data services. The Human Resources Information System is custom computerized tracking of all personnel data. The DAS Director and several people from other City departments serve on a selection panel for the Backbone contractors and Personnel, with input from DAS, has developed the specifications and has established a selection panel for the Human Resources system. Completion of the selection process for these two projects could take as long as 5 months, too long to delay the acceptance or rejection of the proposed gift. In addition, Digital is always in competition for City data processing business. Therefore, there is no time to accept this gift when proposals will not be pending.

Commission staff was originally asked to provide a verbal opinion, because the department could not wait for a written opinion. In response, we advised that the gift be contributed to a foundation, to avoid any appearance of influence on the pending vendor selection processes. The gift has been given to a foundation. We issue this opinion to explain the rationale and to provide guidance for future conduct when offered gifts from entities that do business with the City.

## ANALYSIS

### **1. The Code of Ethics Generally Does Not Prohibit The Acceptance of Gifts That Benefit The City, Rather Than Individuals.**

The Code of Ethics prohibits City officers and employees from soliciting or receiving anything of value that would appear to be given with intent to influence or to receive or give special consideration in official action. SMC 4.16.070(3)(a) provides that no City officer or employee shall:

Solicit or receive any retainer, gift, loan, entertainment, favor, or other thing of monetary value from any person or entity where the retainer, gift, loan, entertainment, favor, or other thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by such officer or employee in his or her official capacity; provided, that nothing shall prohibit contributions which are solicited or received and reported in accordance with applicable law.

The purpose of this provision is to assure the public that City transaction decisions are based on the merits of the solutions, not the favors or other benefits that may be offered to City decision makers. In several opinions, the Commission and its predecessor, the Board of Ethics, advised that the Code prohibits officers and employees from accepting gifts that would be used by individuals in their departments.

In a situation similar to this one (a short deadline required a quick answer), the Board Chair advised that there is a possible conflict if DAS employees attend a dinner sponsored by a corporation that was awarded a large City computer contract, when an unsuccessful bidder has brought a legal action to challenge that award and over the eight year life of the contract component parts will be awarded through public bid process.

At this point, it is not a question of whether the Code of Ethics is being violated. [The Board Chair] suggested that by holding the function, the City would run the risk of a complaint being filed and, in that event, the full Board would have to determine a possible conflict based upon a complete set of facts. As was discussed by phone, even with City personnel picking up half of the \$500 tab for the food and room, a cloud of speculation could still exist as to the fairness of future transactions as well as the appearance problem that will continue to plague the project.

Op Sea Bd of Ethics 12 (1985). In Op Sea Bd of Ethics 6 (1991), the Board advised that Engineering Department (SED) employees may not solicit gifts from area merchants in private-owned buildings for the Transportation Fair for City Employees, because SED is the enforcement agency in the private buildings for the City's transportation management program. Such solicitation would suggest an obligation to give.

In Op Sea Bd of Ethics 8 (1991), the Board advised that even though Seattle Center rental agreements are fixed, non-negotiable, and established by ordinance, Seattle Center personnel may not accept free tickets from event promoters, to avoid the appearance of an intent to obtain or confer special consideration or influence. Since the State Constitution prohibits giving tickets to

potential sponsors, a non-profit foundation could be used to accept and distribute free tickets, avoiding Ethics Code and Constitutional prohibitions.

In the three decisions discussed above, the "gifts" were personal benefits to individual employees, even though they were given to the employing departments. Those gifts were prohibited under the Code. In the two decisions discussed below, the gifts were not a personal benefit and were not prohibited under the Code.

In *Op Sea Ethics & Elects Comm'n 5* (1992), the Commission advised that DAS may accept a contribution of paper to be used for calendars at the Women In Trades Fair and the Blacks In Government Conference and place a notice on the calendars of the paper contribution. Since the contributor had no pending or current contracts with the City and would otherwise destroy the paper, it would not appear to a reasonable person that the offer was made to obtain special consideration or influence.

In *Op Sea Ethics & Elects Comm'n 20* (1992), the Commission advised the DAS Director of Communications & General Services Division that vendors who have the contract for the City/County 911 service may assist in paying out of pocket expenses for a City booth demonstrating that equipment at a national convention. Since the vendors already have contracts with the City for this equipment there is no special consideration that they can receive from the City.

Like the last two decisions, discussed above, Digital's proposed gift is not for the personal benefit of City employees, but would be used by City employees to conduct City business. The inquiry does not end here. While most gifts to the City are not prohibited, some are problematic and should not be accepted. Therefore, the following analysis must be considered.

## **2. The Code Prohibits The Acceptance of Gifts That Apparently Or Actually Were Intended To Influence Impending City Action.**

The City frequently receives gifts that enhance its ability to conduct the public's business. The Commission does not want to discourage the acceptance of gifts, but is concerned that they are not solicited or received in violation of the Code. Any gift accepted by the City should not have an appearance of intent to influence official action. Determining whether the gift would appear intended to have an affect on impending City action requires a balancing test that may include consideration of a number of factors. Among those are : (1) whether the pending process involves a lot of discretion or is very objective; (2) whether the decision maker in the impending action knows the donor's identity and the size of the gift; and (3) the value to the donor of being able to influence the pending action.

For example, if the Parks Department were offered a gift of money from the Volksmarch Society for Greenlake improvements when the department was in the midst of formulating proposed actions to resolve the conflicts between walkers and bikers on the Greenlake path, it should refuse the gift. The balancing suggested above would proceed as follows: (1) the gift would be timed close to an official action that is completely discretionary; (2) the decision maker would know the identity of the donor and the amount of the gift; and (3) the value to the donor could be great because the impending action is of great significance to the donor and the people it represents and the donor represents one of the two factions in the controversy involved in the impending action. Such a gift would appear to have an influence on the action that the department will take. Instead of accepting

the gift for Greenlake improvements, the Society could give the gift to a foundation set up for parks improvements and remain anonymous to the department decision makers who will be involved in the Greenlake dispute.

The pending selection process for Backbone and HRIS in which Digital is a competitor is not like the possible Greenlake improvements in the Parks hypothetical. Analyzing the Digital gift under the balancing process described above, we find: (1) the DAS vendor selection process is relatively objective, i.e., governed by strict legal requirements that prevent the influence of money; (2) the decision maker would know the identity of the donor and the amount of the gift; and (3) the influence value of the gift for Digital is minimal because the gift represents a relatively small contribution to the PAN project and there are many vendors that can compete for the Backbone and HRIS projects. Therefore, unlike the Parks hypothetical, DAS could accept the Digital equipment for the City, through a City Council ordinance.

## **CONCLUSION**

The Code of Ethics does not prohibit City departments from accepting gifts that would benefit the City, not individual employees, and that would not appear to be intended to influence impending City actions. Identifying those that would appear to be intended to influence impending action (1) whether the impending action involves a discretionary or objective process; (2) whether the decision maker in the impending action knows the identity of the donor and the size of the gift; and (3) whether the potential value of the influence to the donor is great.

The Commission's advisory opinion is based upon the facts as stated above. Please be aware that modification or change of the facts might cause the Commission to reach a different conclusion.

## **FOR THE SEATTLE ETHICS AND ELECTIONS COMMISSION**

Carolyn M. Van Noy,  
Executive Director

This action was reviewed and approved by the Commission at its regular meeting of June 1, 1994. The Commission members voting to take this action were:

Timothy Burgess, Chair  
Lue Rachele Brim-Donahoe  
Emilia R. Castillo  
Jeri A. Rowe

Not in attendance were:  
William L. Fleming, Vice Chair  
Candy S. Marshall  
Dr. Edward Palmason

# Exhibit T

76-10

*advis.  
ruling*

November 10, 1976

Frank R. Hanson, Chief  
Seattle Fire Department  
301 Second Avenue S.  
Seattle, Washington 98104

Dear Chief Hanson:

I refer to your letter of October 6, 1976 and the discussion you had with Aaron R. Coleman, Staff Assistant, of this office on October 5, 1976 regarding a possible conflict of interest situation.

You indicate that since January of this year, 14 members of the Seattle Fire Department and another 14 mem from departments in the Puget Sound area and as far south as Vancouver, have been attending a 286-hour Arson Investigators Training School in Seattle - the only one in the nation.

You point out that it has been suggested that you have a brief cocktail party during which certificates would be presented to the investigators. A limited number of Seattle Fire Department personnel would attend, as well as one City Councilman, Lt. Governor John Cherberg and four or five insurance executives. You state that cocktails and hors d'oeuvres would be served to the guests with the total cost to be about \$500.00. Since no City funds are available for this purpose, you state that you have contacted four local insurance companies regarding funding the party and they have expressed a willingness to absorb the cost. In this connection, you also point out that (1) for the past ten years the Independent Insurance Agents and Brokers of King County with Sears Roebuck have funded the Seattle School Fire Prevention Program in its entirety; (2) the Washington Insurance Council has funded a state-wide toll-free Arson Hot Line; (3) the industry held a one-day Arson Seminar in Seattle last spring in which the Seattle Fire Department was a major participant; (4) the industry recently established a system whereby citizens having information leading to the arrest and conviction of arsonists be eligible for up to \$5,000 reward; (5) and the fire service nationally is acutely aware that they must have financial assistance from the insurance industry if they are to combat the arson problem. Therefore, the insurance industry is not establishing a presedent in this instance by assisting a public agency.

November 10, 1976

In view of the urgency of this matter, your question regarding a possible conflict of interest was presented orally to the Board by Mr. Coleman on October 5, 1976. The Board felt that there would not be a conflict of interest over underwriting drinks and appetizers for the Arson Investigators Training School graduates, their wives and a few guests. However, the Board suggests that the Arson graduates not be advised of the names of the sponsoring companies in the event that some of the graduates may have to appear against or for any of the said companies in Court where testimony must be given.

Thank you for calling this matter to our attention. If we can be of service to you again, please feel free to call us at any time.

Sincerely,

James T. Sullivan  
Chairman  
Board of Ethics/Fair Campaign  
Practices Commission

JTS/cj



# Exhibit U

CROSSCUT

MONDAY 10, OCTOBER 2016

# How Martha Choe forged one of Washington's most influential careers

by Drew Atkins

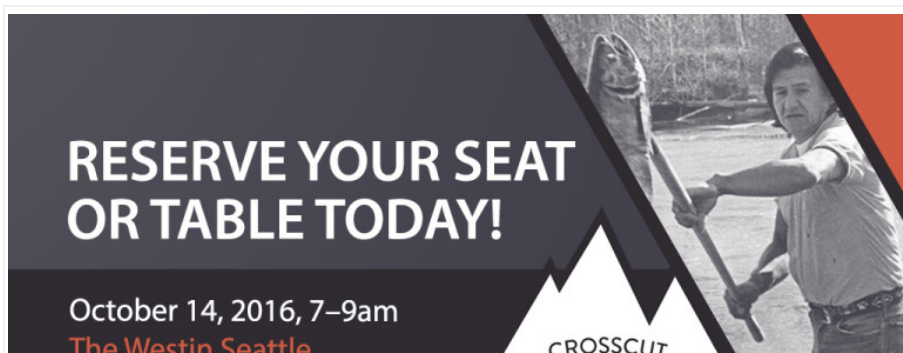
Following a dinner with policymakers and alumni in Tacoma on November 4, 1987, the president of Western Washington University, G. Robert Ross, boarded a small plane. Two of the school's vice presidents, Jeanene DeLille and Don Cole, joined him. As they made their way north to Bellingham, home of their university, the pilot dipped low for reasons that are still unknown. The plane became lost in the fog, and that was the last anyone heard from its occupants. A later news report would say it "disintegrated (<http://www.apnewsarchive.com/1987/Grief-Sobers-Campus-After-Three-Top-Officials-Die-In-Plane-Crash/id-95c35254fb7260195effd4deb125d9fe>)" as it hit a forest, killing everyone on board.

The university of roughly 10,000 students was thrown into disarray and grief following the crash. And as WWU worked through the tragedy, the school turned to Martha Choe – then a banking executive in her early 30s and member of the college's board – to play a key role in guiding the institution into its next chapter, chairing the search committee for Ross' replacement.

For Choe, this event was the start of her career in leadership.

"Finding a new president is the most important thing a board can do," she says. "I guess you can say that's what started kind of pushing me toward public service and running for office, the work on that board."

Never before had Choe been given such a serious responsibility, she says, or had a job so important to so many people. But for the rest of her career, this would become a theme: Choe is a person to be trusted with the jobs that mean something.



**RESERVE YOUR SEAT  
OR TABLE TODAY!**

October 14, 2016, 7-9am  
The Westin Seattle

CROSSCUT

## COURAGE AWARDS

Photo of Billy Frank Jr. courtesy of NW Indian Fisheries Commission

***On Friday, Choe will receive the Lifetime Achievement Award at the Crosscut Courage Awards. For information on the event, click here. (<https://www.eventbrite.com/e/crosscut-courage-awards-registration-26610232923>)***

Years later, as a Seattle city councilmember, Choe was asked to consider running for mayor. Still later, she would be asked to consider replacing Jim McDermott, to serve as Seattle's voice in the U.S. House of Representatives.

But none of these plans ever felt right to her. Looking back on her long and varied career — which ranges from teaching high school in Oregon, to exerting global influence as Chief Administrative Officer of the Gates Foundation, to serving as mentor to a significant number of state leaders, including a former aide who now serves as Seattle's mayor, Ed Murray — the pursuit of influence has never shaped her decisions, she says.

"I've always had this rhythm that's guided me, and helped me know what to say 'Yes' to," she says. "It's about being in accord with the universe, and how you listen to it."

There's often a tendency to define people by their jobs and how they pay the bills. Sometimes that's fair, as that's where some people direct most of their thinking. But in discussing Eastern philosophy with Choe, it becomes clear that Buddhism is a central part of how she sees her life and its purpose.



***Choe during a field visit in northern Ethiopia in 2014, speaking with a beneficiary of a Gates Foundation's agricultural development program focused on helping female-headed households.***

***Credit: Dick Lake***

Her practice as a Zen priest, she says, prevents her from holding on to a job when it's time to let go, from settling for mediocrity when a bigger impact is possible, and from letting her ego determine her choices.

That's not to say it hasn't sometimes been challenging to "follow the right rhythm," as she puts it. When she was elected to Seattle City Council in 1990, Choe promised herself that she'd stay for only two terms, for example. But as that deadline approached, she "was surprised how tempted I was" to remain in Seattle government.

"You get caught up in your ego," she says. "You see all the other councilmembers leaving as

well, and you think, ‘What will the council do without me?’”

Another example came in 2004, after she’d helped spearhead one of the biggest economic initiatives in state history. Following her second term on city council, Choe was tapped by then-Gov. Gary Locke to serve as the director of the Washington State Department of Community, Trade and Economic Development, today’s Department of Commerce. It was a high-pressure position, which included leading trade missions around the world, and helping Washington successfully compete with 47 other states to win the assembly of Boeing’s new 787 Dreamliner.

Fighting to keep Boeing jobs in the state – which led to Washington passing the largest tax cut in U.S. history for the company – was stressful, she says, and afterward she planned to take a sabbatical for up to a year.

But the powers-that-be had one more job for Choe. When Patty Stonecipher, then-CEO of the Bill & Melinda Gates Foundation, caught wind that Choe was eyeing a departure from state government, she initiated a lobbying campaign to poach Choe and bring her into the philanthropic organization. Choe says she rejected these advances multiple times, but the Gates Foundation was persistent.

Choe joined the organization as director of the Global Libraries initiative in 2004, a program that treats libraries as tools for promoting democracy, health and economic mobility around the world, particularly as a means of accessing the internet.

Four years into her tenure, however, the foundation started preparing for a period of rapid expansion. To help them navigate these waters, Choe was promoted to chief administrative officer. During her time in the position, the foundation roughly doubled its number of employees and opened new offices around the world.

“When it comes to leading people and managing difficult problems, Martha was definitely ‘in the major leagues’ (to use a baseball expression that I think she would appreciate being a big Mariners fan),” wrote Dick Lake, Director of Global Security for the Gates Foundation, in an email. “In addition ... she never lost sight of the fact that the purpose of our work was ultimately about making a positive difference in the lives of people. I saw that passion often whether in Seattle or out in the field. Her dedication was infectious and inspiring to those of us who had the privilege of working with her.”

Choe left the Gates Foundation two years ago, describing 10 years at the organization as a “nice round number” on which to end. She says joining the foundation didn’t seem like a good fit initially – a deviation from the rhythm she’d expected to set – but the possibilities it presented proved irresistible.

“Usually in government, you have so many excuses to hide behind,” says Choe. “You don’t have the funds. You don’t have the right people or the right leadership. The Gates Foundation was just too exciting and terrifying an opportunity to pass up. You didn’t have any place to hide from when it comes to making a maximum impact.”

Following her departure, Choe, 61, has done some traveling, and thrown herself back into service to the Puget Sound community. As the daughter of immigrants from South Korea, she’s worked to increase the influence of the region’s Asian community throughout her career, and to help address their issues. She continues to do so through such efforts as mentorship and voter registration campaigns.

“The mobilization of young people right now is so important,” she says. Choe is heartened by the activist movements demanding more rights for immigrants and minorities in the U.S.,

even if their actions are often rooted in anger and frustration toward stalled progress. That is far more welcome, she says, than cynicism. To believe in change is to be optimistic on some level.

“There are many stories of failure, to be sure, but there is real progress being made,” she said in a recent commencement address (<http://evans.uw.edu/alumni/martha-choe-tells-class-2014-optimism-collaboration-and-innovation>) to the Evans School of Public Policy and Governance at the University of Washington. “Those recurrent themes of optimism (a hope that tomorrow can be better), partnerships (you can’t go it alone), and innovation (something as simple as an empty water bottle with a straw or as complex as a rotavirus vaccine) are the underpinning so much of public affairs and public policy.”

Starting with her work on WWU’s board, Choe says responsibility has been foisted upon her again and again for decades, and she feels grateful for that. But now she has time to be more reflective, and is letting her next steps reveal themselves, rather than rushing them to coalesce. She’s giving that rhythm of her life a lot of thought, she says.

“The only true reality is that change is real,” she says. The practice of Zen, she says, “allows you be comfortable with that change, but as humans I think holding on is so natural ... The key is to remember there’s no separation between other people and you, and that connection between people is very deep in a profound way.”

Strengthening that connection, says Choe, is where the work with true meaning lies.

# Exhibit V

**ED MURRAY LEGAL DEFENSE FUND  
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**(Fund Leader)**

I, \_\_\_\_\_, wish to raise and administer funds for the Ed Murray Legal Defense Fund (the “Fund”). I understand that the Fund is independent from the Mayor’s Office and the Ed Murray for Mayor campaign (the “Campaign”), and that the Fund has been formed to gather anonymous contributions to help defray the cost of Edward B. Murray’s personal legal defense in an ongoing civil lawsuit against him. To avoid any actual or potential ethical conflicts related to the Fund, I agree to the following:

- I have no role in the Mayor’s Office or the Campaign. I will not communicate with Edward B. Murray (the “Mayor”), staff members in the Mayor’s Office, or staff members in the Campaign, about City or Campaign business.
- I will not communicate with the Mayor about the Fund, other than to discuss the Fund’s payment of his legal expenses or its total revenues.
- I will not communicate about the Fund with staff members of the Mayor’s Office or staff members of the Campaign, except for:
  - soliciting contributions to the Fund; or
  - communications about the staff member soliciting for the Fund or contributing to the Fund.
- I will not otherwise communicate with anyone outside the Fund about solicitations for or contributions made to the Fund, except as required by law or court order.
- I will otherwise preserve the confidentiality of non-public information related to the Fund.
- If any individual or entity seeks to compel disclosure of any information related to the Fund, I will promptly notify the Fund so that it may seek a protective order or other appropriate remedy.
- I will promptly notify the Fund of any unauthorized disclosure of information related to the Fund or any violation of this Agreement, whether inadvertent or otherwise.

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I acknowledge, understand, and agree that my obligations shall apply at all times in the future.

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**ED MURRAY LEGAL DEFENSE FUND  
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**(Edward B. Murray)**

I, Edward B. Murray, understand that an independent Ed Murray Legal Defense Fund (the "Fund") has been formed to gather anonymous contributions to help defray the cost of my legal defense in the ongoing civil lawsuit against me. To avoid any actual or potential ethical conflicts related to the Fund, I agree to the following:

- I will not communicate with anyone about the operations of the Fund or contributions made to it, except for:
  - direct communications with the Fund regarding the payment of my legal expenses or the total amount of Fund revenues; or
  - as required by law or court order.
- I will not otherwise seek out information about the Fund.
- If any individual or entity seeks to compel disclosure of any information related to the Fund, I will promptly notify the Fund so that it may seek a protective order or other appropriate remedy.
- I will promptly notify the Fund of any unauthorized communications related to the Fund or any violation of this Agreement, whether inadvertent or otherwise.
- I will never give any special consideration or influence to anyone because of a contribution to the Fund.

I certify that I have not previously communicated with anyone about a particular contribution to the Fund.

I further acknowledge, understand, and agree that my obligations shall apply at all times in the future.

Edward B. Murray

\_\_\_\_\_

Date: \_\_\_\_\_

**ED MURRAY LEGAL DEFENSE FUND  
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**(Mayor's Office Staff)**

I, \_\_\_\_\_, am a staff member in the Mayor's Office with decision-making authority. I understand that an independent Ed Murray Legal Defense Fund (the "Fund") has been formed to gather anonymous contributions to help defray the cost of Edward B. Murray's personal legal defense in the ongoing civil lawsuit against him. To avoid any actual or potential ethical conflicts related to the Fund, I agree to the following:

- I will not use or direct the use of City property or time for any Fund-related purposes. Activities of mine related to the Fund, if any, will be done in an unofficial capacity and by my personal choice only.
- I will not communicate with Edward B. Murray about the Fund or any contributions made to it.
- I will not communicate with anyone else about the Fund or any contributions made to it, except for:
  - direct communications with the Fund about soliciting contributions to it or contributing to it;
  - soliciting contributions to the Fund, but only as set forth below;
  - communications with anyone who approaches me to make a contribution to the Fund, in which case I will not disclose whether I have contributed or intend to contribute to the Fund;
  - if I have contributed to the Fund, then communications as authorized by the Fund's Confidentiality and Non-Disclosure Agreement for Contributors; or
  - as required by law or court order.
- If I solicit contributions to the Fund, it will be according to the following terms:
  - I will immediately inform any persons I approach that they must not reveal to me whether they intend to contribute or have previously contributed to the Fund, and that any contribution would be anonymous; and
  - I will not communicate or inquire about any resulting contributions to the Fund.
- I will not otherwise seek out information about the Fund.

- If any individual or entity seeks to compel disclosure of any information related to the Fund, I will promptly notify the Fund so that it may seek a protective order or other appropriate remedy.
- I will promptly notify the Fund of any unauthorized disclosure of information related to the Fund or any violation of this Agreement, whether inadvertent or otherwise.
- I will never give any special consideration or influence to anyone because of a contribution to the Fund.

I certify that I have not previously communicated with anyone about a particular contribution to the Fund.

I further acknowledge, understand, and agree that my obligations shall apply at all times in the future.

Printed Name of Staff Member: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Staff Member: \_\_\_\_\_

Date: \_\_\_\_\_

**ED MURRAY LEGAL DEFENSE FUND  
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**(Campaign Staff)**

I, \_\_\_\_\_, am an officer or other staff member with decision-making authority in the Ed Murray for Mayor campaign (the “Campaign”). I understand that an independent Ed Murray Legal Defense Fund (the “Fund”) has been formed to gather anonymous contributions to help defray the cost of Edward B. Murray’s personal legal defense in the ongoing civil lawsuit against him. To avoid any actual or potential ethical conflicts related to the Fund, I agree to the following:

- I will not use or direct the use of Campaign property or time for any Fund-related purposes. Any activities of mine related to the Fund will be done in an individual capacity (not in my role with the Campaign) and by my personal choice only.
- I will not communicate with Edward B. Murray (the “Mayor”) about the Fund or any contributions made to it.
- I will not communicate with anyone else about the Fund or any contributions made to it, except for:
  - direct communications with the Fund about soliciting contributions to it or contributing to it;
  - soliciting contributions to the Fund, but only as set forth below;
  - communications with anyone who approaches me to make a contribution to the Fund, in which case I will not disclose whether I have contributed or intend to contribute to the Fund;
  - if I have contributed to the Fund, then communications as authorized by the Fund’s Confidentiality and Non-Disclosure Agreement for Contributors; or
  - as required by law or court order.
- If I solicit contributions to the Fund, it will be according to the following terms:
  - I will immediately inform any persons I approach that they must not reveal to me whether they intend to contribute or have previously contributed to the Fund, and that any contribution would be anonymous;
  - I will not communicate or inquire about any resulting contributions to the Fund.
- I will not otherwise seek out information about the Fund.

- If any individual or entity seeks to compel disclosure of any information related to the Fund, I will promptly notify the Fund so that it may seek a protective order or other appropriate remedy.
- I will promptly notify the Fund of any unauthorized disclosure of information related to the Fund or any violation of this Agreement, whether inadvertent or otherwise.

I certify that I have not previously communicated with anyone about a particular contribution to the Fund.

I further acknowledge, understand, and agree that my obligations shall apply at all times in the future.

Printed Name of Staff Member: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Staff Member: \_\_\_\_\_

Date: \_\_\_\_\_

**ED MURRAY LEGAL DEFENSE FUND  
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**Contributor**

I, \_\_\_\_\_, am making a contribution to the Ed Murray Legal Defense Fund (the “Fund”). I am making this contribution without any expectation or intent of obtaining special consideration or influence on any official action. As a condition of making said contribution, I agree to the following:

- I will not communicate with Edward B. Murray (the “Mayor”) about the Fund or any contributions made to it.
- I will not communicate about the Fund with persons who are staff members in the Mayor’s Office or the Ed Murray for Mayor campaign (the “Campaign”), except for:
  - responding to solicitations for a contribution to the Fund, in which case I will not disclose whether I have contributed or intend to contribute to the Fund; or
  - soliciting contributions to the Fund, without disclosing whether I have contributed or intend to contribute to the Fund.
- I will not communicate with anyone else about any contributions I have made to the Fund, except for:
  - with the Fund itself;
  - with my spouse, if he or she has agreed, by signing in the space provided below, to abide by the terms of this Agreement;
  - with an attorney, accountant, or similar agent of mine who needs the information, has confidentiality obligations to me, and has been informed of the confidential nature of the information; or
  - as required by law or court order.
- I will otherwise preserve the confidentiality of non-public information related to the Fund.
- If any individual or entity seeks to compel disclosure of any information related to the Fund, I will promptly notify the Fund so that it may seek a protective order or other appropriate remedy.
- I will promptly notify the Fund of any unauthorized disclosure of information related to the Fund or any violation of this Agreement, whether inadvertent or otherwise.

I certify that I have not previously communicated with the Mayor about contributing to the Fund.

I further certify that I have not previously indicated to any staff member of the Mayor's Office or the Campaign that I would contribute to the Fund.

I acknowledge, understand, and agree that my obligations shall apply at all times in the future.

I further acknowledge, understand, and agree that I am responsible for consulting my own tax advisors as to the tax consequences associated with my contribution.

Printed Name of Contributor: \_\_\_\_\_

Signature of Contributor: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name of Spouse: \_\_\_\_\_

Signature of Spouse: \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit W



# The Signature Effect: Signing Influences Consumption-Related Behavior by Priming Self-Identity

KERI L. KETTLE  
GERALD HÄUBL

Evidence from four studies shows that signing one's name influences consumption-related behavior in a predictable manner. Signing acts as a general self-identity prime that facilitates the activation of the particular aspect of a consumer's self-identity that is afforded by the situation, resulting in behavior congruent with that aspect. Our findings demonstrate that signing causes consumers to become more (less) engaged when shopping in a product domain they (do not) closely identify with (studies 1 and 2), to identify more (less) closely with in(out)-groups (study 3), and to conform more with (diverge more from) in(out)-groups when making consumption choices in preference domains that are relevant to signaling one's identity (study 4). We discuss the theoretical and practical implications of these findings.

Your handwritten signature plays an important role in your life. As a consumer, you often sign your name on documents to authorize, initiate, or complete transactions (e.g., credit card purchases). Moreover, by signing particular documents, you can commit yourself to years of marriage, mortgage payments, or military service. In this article, we examine the possibility that the mere act of signing your name might influence your consumption-related behavior, such as how much time you spend in a retail store or what you buy there. We introduce and test a theoretical account of how signing affects subsequent behavior.

We propose that signing one's name acts as a general self-identity prime. Here, the term *self-identity* refers to the totality of all selves, identities, and schemas that form one's sense of self (Markus 1977). Building on the theory of

affordances (Gibson 1977; Greeno 1994), we hypothesize that the general priming of one's self-identity (as a result of producing one's signature) makes it more likely that situational affordances activate the relevant aspect of one's self-identity and that this in turn leads to behavior that is congruent with the activated aspect.

Evidence from four studies demonstrates this phenomenon in consumption-related domains. Signing their name—as opposed to printing it—in an ostensibly unrelated task induces consumers to become more (less) engaged when shopping in a product domain they (do not) closely identify with (studies 1 and 2), leads people to identify more closely with in-groups and less closely with out-groups (study 3), and causes consumers to conform more with in-groups and diverge more from out-groups when making consumption choices in preference domains that are relevant to signaling one's identity (study 4). These findings have important marketplace implications. For instance, a retailer might predictably influence the shopping behavior of its customers by eliciting their signatures.

## SIGNATURES AND IDENTITY

A basic premise that underlies our theorizing is that individuals strongly associate their signature with their identity. Although there are numerous ways in which people may present their identity to others, signing one's name has distinct legal, social, and economic implications (Fraenkel 1992; Harris 2000). Individuals must often sign their name

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in situations where printing it would not be sufficient, such as when they authorize actions (e.g., the purchase or sale of financial instruments), indicate their understanding of a document (e.g., a consent form), or commit to the terms of a contract (Kam et al. 2001; Knapp, Crystal, and Prince 2003; Mann 1994; McCabe, Trevino, and Butterfield 1996; Mnookin 2001; Parizeau and Plamondon 1989).

Some of society's most important documents—including judges' rulings (LaFave and Remington 1964), corporate tax returns (Weinberg 2003), government legislation (Jackson and Roosevelt 1953), and contracts (Knapp et al. 2003)—require signatures to be official. As a result, handwritten signatures are often used as evidence of one's actions and obligations in courts of law (Mnookin 2001; Risinger, Denbeaux, and Saks 1989; Weinberg 2003), and it is illegal to forge another person's signature (Lemert 1958). By contrast, printing one's name on a document does not imbue the same meaning, nor is it illegal to print another person's name. Moreover, prior research suggests that the legal significance of signatures is widely understood and that forging someone else's signature causes physiological responses that reflect the experience of guilt (Lubow and Fein 1996).

The act of signing one's name is a highly expressive behavior (Harvey 1934; Warner and Sugarman 1986; Zweigenhaft and Marlowe 1973), and people tend to craft a signature that is clearly distinguishable from others' signatures and thus difficult to forge (Bensefia, Paquet, and Heutte 2005; Kam et al. 2001). Consistent with our premise that individuals strongly associate their signature with their self-identity, people believe that the unique manner in which they sign their name reflects their personality and character traits (Briggs 1980; Hughes, Keeling, and Tuck 1983; King and Koehler 2000; Rafaeli and Klimoski 1983). Moreover, research indicates that the size of one's signature can be influenced by particular aspects of one's self-identity. In particular, signatures tend to be larger for people with greater need for uniqueness (Snyder and Fromkin 1977), with more dominant personalities (Jorgenson 1977), and of higher social status (Aiken and Zweigenhaft 1978), and in situations in which one's self-esteem is higher (Rudman, Dohn, and Fairchild 2007; Stapel and Blanton 2004; Zweigenhaft 1977).

Research in several domains has examined how signing a particular document—such as a contract or honor code—influences behavior as it pertains to the signed document. For instance, students who were required to sign a university's honor code subsequently acted more honestly (Mazar, Amir, and Ariely 2008; McCabe and Trevino 1993, 1997; McCabe et al. 1996), and requiring people to sign a contract (about a specific target behavior) has been shown to increase their conformity to the contract terms in behavioral domains ranging from weight loss to seat belt use (Anker and Crowley 1981; Rogers et al. 1988; Staw 1974; Stevens et al. 2002; Ureda 1980; Williams et al. 2005). Notably, in these studies (with the exception of Anker and Crowley 1981 and Staw 1974), behavior was influenced even though violating the contract or honor code was legally and economically

inconsequential. This highlights the important meaning associated with signing one's name on a document and, thus, supports the premise of a strong relationship between signatures and identity.

In sum, prior work in several fields supports our premise that people strongly associate their signature with their identity. We now turn to developing the proposition that signing one's name acts as a general self-identity prime and to outlining how we envision this to predictably influence consumption-related behavior.

## SELF-IDENTITY, PRIMING, AND BEHAVIOR

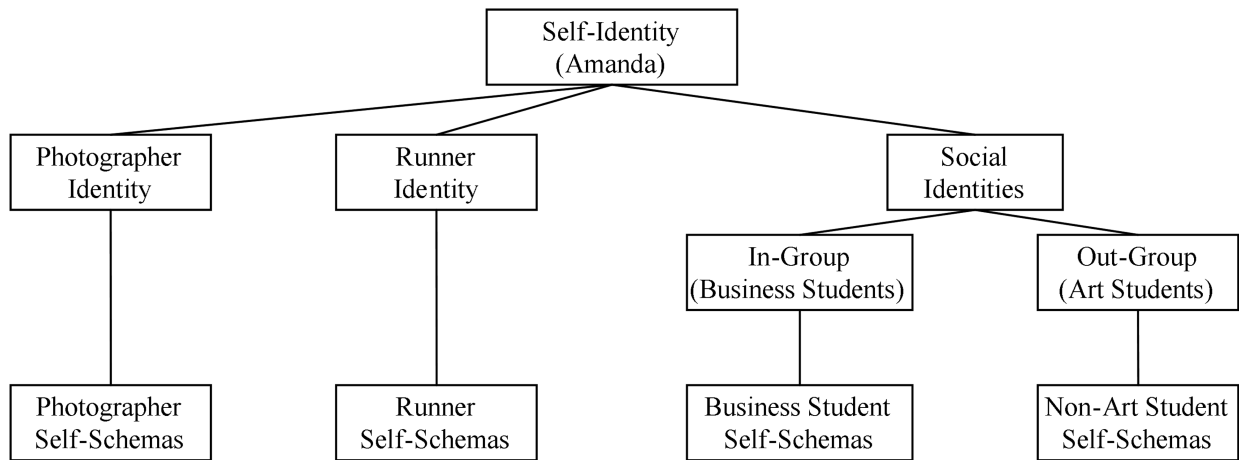
Each of us has a sense of who we are. We perceive ourselves as having (or lacking) certain physical attributes, character traits, and abilities, and we believe that we belong to certain social groups (and don't belong to others). Several different terms have been used in the literature to describe this overall sense of self, including "self-identity," "identity," "self," and "self-concept" (e.g., Belk 1988; Ellemers, Spears, and Doosje 2002; Gecas and Burke 1995; Howard 2000; James 1890; Lewicki 1984; Markus and Kunda 1986; Markus and Wurf 1987; Roberts and Donahue 1994; Rochberg-Halton 1984; Segal 1988; Thoits 1983). We use the term *self-identity* to refer to all of the selves, identities (including social identities), and self-schemas that comprise people's sense of who they are. As an illustration of this conceptualization, figure 1 represents our fictional character Amanda's (partial) self-identity, which includes multiple aspects—her gender identity, her social identities, and her identities as a runner and a photographer—as well as the schemas associated with each of these aspects.

Prior research has shown that aspects of one's self-identity can be differentially activated and that the activation of a particular aspect makes it more likely that one's subsequent responses are congruent with that aspect (Berger and Heath 2007; DeMaree, Wheeler, and Petty 2005; Forehand, Reed, and Deshpandé 2002; Reed 2004; Sela and Shiv 2009; Wheeler and Petty 2001). For example, priming consumers' ethnicity leads them to respond more favorably to same-ethnicity spokespeople (Forehand and Deshpandé 2001), and priming a relevant out-group leads people to diverge from that group's behavioral norms (Spears et al. 2004). Although the nature of prime-to-behavior effects is well established for contexts in which a specific identity (e.g., gender) or schema (e.g., hostility) is primed, little is known about how a general self-identity prime—such as signing one's name—might influence behavior.

In order for a prime to affect a person's behavior, the situation s/he is in must provide an *affordance*—a precondition for activity that is available to an individual's perceptual systems—that is associated with the primed construct (Dijksterhuis and Bargh 2001; Gibson 1977; Greeno 1994; Guinote 2008; Oyserman 2009). Affordances thus serve as cues in the environment that can guide judgments and behavior (Cesario et al. 2010; Greeno 1994; Guinote

FIGURE 1

EXAMPLE OF SELF-IDENTITY



2008). For instance, evaluating advertisements featuring same-ethnicity spokespeople affords consumers' ethnic identity, with the ads serving as identity-relevant cues (Forehand and Deshpandé 2001). The role of affordances has received little attention in the priming literature—presumably because the necessity of affordances is implicitly reflected in the design of most priming studies (for a recent exception, see Cesario et al. 2010). In the context of a general self-identity prime, affordances are crucial because only certain aspects of one's self-identity may be relevant in a given situation. Using Amanda as an example, the running aspect of her identity is afforded at a sporting goods store, whereas the business student aspect is afforded in a marketing class.

Our key hypothesis is that signing one's name acts as a general self-identity prime and that this interacts with the situational environment to activate—and thus promote behavior that is congruent with—the aspect of one's self-identity that is afforded (i.e., cued) by the situation. For example, imagine that Amanda enters a specialty sporting goods store for runners. In this case, our prediction is that signing her name makes it more likely that the situational affordance (i.e., the opportunity to shop for running gear) will activate the relevant aspect of her self-identity (i.e., being a runner) and, thus, cause her behavior in the store to be more congruent with her runner identity (e.g., spend more time looking at running shoes). Our theoretical account thus implies concrete predictions about a variety of behavioral consequences, depending on the particular situation that an individual is in. In this article, we test such specific predictions about consumption-related behavior in several domains.

## OVERVIEW OF STUDIES

We present evidence from four studies that examine the effect of signing one's name in situations that afford dif-

ferent aspects of a consumer's self-identity—strength of identification with particular product domains (studies 1 and 2) and social identities (studies 3 and 4). In each study, participants were randomly assigned to either sign or print their own name on a blank piece of paper (ostensibly for a separate study about handwriting) before entering the focal situation. The first two studies examine how signing their name influences the relationship between how closely consumers associate their self-identity with a specific product domain and their level of engagement in a shopping task in that domain, both in a controlled laboratory setting (study 1) and in an actual retail environment (study 2). This is followed by study 3, which investigates how signing affects how closely people identify with referent social groups. Finally, study 4 examines how signing their name influences the extent to which consumers signal their social identity through their product choices.

## STUDY 1

It is well established that consumers use products and possessions to help define aspects of their self-identity (Kleine, Kleine, and Allen 1995). Consumers have relationships with particular brands (Fournier 1998), they signal their social identity to others through the products they choose (Berger and Heath 2007; White and Dahl 2007), their extended selves include possessions (Belk 1988), and they consider their engagement in certain activities—and the use of products that are relevant to these activities—to be central to their sense of self (Ahuvia 2005; Vallerand et al. 2003). Because people are highly engaged with products and activities that they associate with their self-identity (Tyler and Blader 2003), it is congruent with one's identity to be more (less) behaviorally engaged when shopping in a product domain that is close to (distant from) one's sense of self.

Based on our overall hypothesis that signing one's name acts as a general self-identity prime, we predict that signing their name causes consumers to become more engaged when shopping in a product domain that they associate closely with their self-identity and less engaged in a domain that is distant from their sense of self.

To test this prediction, we examine the engagement of consumers in a shopping task as a function of how closely they associate the product domain with their self-identity. We selected two products—digital cameras and dishwashers—that are similar in terms of their technical complexity, price, and the frequency with which they are used, but that we expected to be more (cameras) or less (dishwashers) closely associated with consumers' self-identities.

## Method

*Participants.* A total of 57 undergraduate students at the University of Alberta completed a series of studies for partial course credit.

*Design.* A 3 (handwriting task: sign, print name, control)  $\times$  2 (product category: cameras, dishwashers) between-subjects design was used.

*Handwriting Manipulation.* Each participant was given two sheets of paper (stapled together) and a pen. The top sheet contained a set of instructions and a cover story indicating that this was part of a study about handwriting. The bottom sheet contained the instructions "Please sign (print) your name on the line below" at the top of the page, followed by a single blank line.

*Procedure.* The study was conducted in a university research laboratory. Participants began the study seated in private cubicles. First, they were randomly assigned to a handwriting condition. For the sign and print treatments, participants either signed or printed their name once. Participants in the control condition received the same written instructions as those in the signature condition, with one exception—the last sentence stated, "Therefore, you will be asked to sign your name later in this session." Participants then proceeded to the second (ostensibly unrelated) portion of the study.

In the focal task, participants were randomly assigned to a product category (cameras or dishwashers). They were presented with three products from that category and asked to choose their preferred one from this set. Each of the three alternatives was described along 15 attribute dimensions. The descriptions of the three products were provided on a computer screen that was organized as a table with one row per attribute dimension and one column per alternative. For each alternative, its brand and model name, a product image, and its price were permanently displayed across the top of the table. The 45 pieces of attribute information were initially hidden, with 45 buttons appearing in their place in the table. Participants were told that they could inspect whichever pieces they wished by clicking the appropriate buttons. Once inspected, a piece of attribute information remained

visible for the remainder of the task. Participants were informed that they were free to complete the task by selecting their preferred alternative whenever they felt ready to make their choice.

For each of the two product categories, three alternatives and their descriptions (see app. A) were selected from the assortment of a large online retailer about a week before the study. For each participant, the alternatives and attribute dimensions were randomly assigned to the columns and rows of the table.

After choosing their preferred alternative, participants were directed to complete an unrelated task that took approximately 10 minutes. Participants then answered a series of questions about the product category (cameras or dishwashers) to which they had been assigned for the focal task. These included measures of how frequently they use the product (1 = never, 10 = frequently), their level of expertise regarding the product domain (1 = novice, 10 = expert), how important the product domain is to them (1 = not at all important, 10 = very important), and how closely they associate their self-identity with the product domain (1 = distant, 10 = close). Participants' responses to these four questions were combined to form a composite measure of how closely they associated their sense of self with that particular product domain ( $\alpha = .80$ ), which we refer to as "identity-product closeness."

## Results

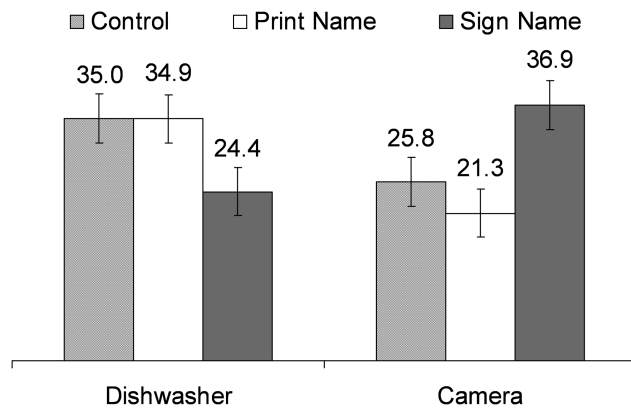
*Preliminary Analyses.* A 2 (product category: cameras vs. dishwashers)  $\times$  3 (handwriting task: sign vs. print name vs. control) ANOVA was used to examine the level of identity-product closeness for each of the two product categories. As expected, participants associated their self-identity much more closely with digital cameras ( $M_{\text{cam}} = 5.5$ ) than with dishwashers ( $M_{\text{dish}} = 3.7$ ,  $F(1, 51) = 8.8$ ,  $p < .01$ ). This effect was not moderated by the handwriting task ( $p = .75$ ), nor did the handwriting task have a main effect on identity-product closeness ( $p = .83$ ).

*Hypothesis Tests.* Two measures of participants' engagement in the shopping task were obtained in this study—the amount of information they inspected and the amount of time they spent on the shopping task. On average, participants examined 30 pieces of attribute information (Min = 10, Max = 45) and spent 2.6 minutes on the shopping task (Min = 1, Max = 5).

First, we examine the amount of information inspected by participants. A two-way ANOVA reveals a significant handwriting task  $\times$  product category interaction ( $F(5, 51) = 5.2$ ,  $p < .01$ ; see fig. 2A). A series of planned contrasts support our hypothesis that signing one's name promotes identity-congruent behavior. First, across product categories, participants who had signed their name differed, in terms of their engagement, from those who had printed their name ( $F(1, 34) = 9.4$ ,  $p < .01$ ) as well as from those in the control condition ( $F(1, 35) = 6.5$ ,  $p = .01$ ), with no difference between the latter two conditions ( $p = .64$ ). Consequently,

FIGURE 2

STUDY 1: AMOUNT OF PRODUCT INFORMATION INSPECTED AS A FUNCTION OF PRODUCT CATEGORY AND HANDWRITING TASK



we contrast the signature condition with the two other conditions combined. As predicted, for the product category more closely associated with consumers' self-identity (i.e., cameras), signing one's name caused significantly greater engagement in the shopping task ( $M_{\text{sign\_cam}} = 36.9$  attributes,  $M_{\text{other\_cam}} = 24.1$ ;  $F(1, 32) = 8.6, p < .01$ ) whereas, for the product category less closely associated with participants' self-identity (i.e., dishwashers), signing resulted in marginally less engagement ( $M_{\text{sign\_dish}} = 24.4, M_{\text{other\_dish}} = 34.4$ ;  $F(1, 21) = 3.0, p = .10$ ).

Next, we examine the time-based measure of engagement in the shopping task using a two-way ANOVA. The shopping time data exhibited a right skew due to their inherent left truncation (nonnegativity constraint) and were log-transformed for analysis. (For clarity of exposition, we present all time-based results in original units. However, all statistical tests are based on models estimated on log-transformed data.) A marginally significant handwriting task  $\times$  product category interaction emerges ( $F(2, 51) = 2.45, p = .09$ ). Planned contrasts support our theory. Across product categories, participants who had signed their name differed significantly, in terms of the amount of time spent on the task, from those in the control condition ( $F(1, 35) = 3.9, p < .05$ , one-tailed), and differed marginally from those who had printed their name ( $F(1, 34) = 2.5, p = .06$ , one-tailed), with no difference between the latter two conditions ( $p = .60$ ). As predicted, for cameras signing caused marginally greater engagement in the shopping task ( $M_{\text{sign\_cam}} = 2.8$  minutes,  $M_{\text{other\_cam}} = 2.1$ ;  $F(1, 32) = 1.7, p = .10$ , one-tailed) whereas for dishwashers—the category less closely associated with participants' self-identity—signing led to significantly less engagement ( $M_{\text{sign\_dish}} = 1.7, M_{\text{other\_dish}} = 2.2$ ;  $F(1, 21) = 3.79, p < .05$ , one-tailed).

## Discussion

Consistent with our theoretical account of the behavioral consequences of signing one's name, producing their signature caused participants in study 1 to behave in a manner congruent with the afforded aspect of their self-identity—it increased their engagement when shopping in a product domain that they associate closely with their self-identity, but it decreased their engagement in a domain that is distant from their self-identity. The results of this study also demonstrate that signing—but not printing—one's name changes behavior relative to a control group in which people neither sign nor print their name. In the next study, we also examine how signing influences the effect of how closely consumers associate a product domain with their self-identity on their engagement while shopping in that domain, but we do so in a retail setting.

## STUDY 2

This study examines consumers' engagement while shopping in a field setting. Participants were sent to a specialty retail store (the name of which includes the word "Running") to choose a pair of running shoes for themselves. Based on our hypothesis that signing one's name makes it more likely that situational affordances activate the relevant aspect of one's self-identity and, thus, leads to behavior congruent with the afforded aspect, we predict that signing leads to greater engagement with the shopping task for consumers who identify closely with running and reduces engagement for consumers who do not identify with running.

## Method

**Participants.** A total of 53 members of a volunteer research participation panel at the University of Alberta were recruited to complete a series of studies for a monetary reward.

**Design.** A two-level single factor (handwriting task: sign, print name) between-subjects design was used.

**Procedure.** The study involved two stages. The first was conducted in a university research laboratory, and the second took place at a retail store. In the first stage, participants were seated in private cubicles. Using a computer interface, they were (along with a large number of unrelated questions) asked to indicate their level of expertise with respect to running (1 = novice, 10 = expert), how frequently they run (1 = never, 10 = frequently), how interested they are in running (1 = not at all interested, 10 = very interested), and how close running is to their sense of self (1 = distant, 10 = close). Participants' responses to these four questions were combined to form a composite measure of how closely they associated their self-identity with running ( $\alpha = .76$ ), which we refer to as "identity-running closeness." Before they began the second stage of the study, participants completed a series of unrelated studies for approximately 45 minutes.

At the beginning of the second stage of the study, participants received directions to a coffee shop that was approximately a 10-minute walk from the laboratory. They were instructed to walk there (individually) to meet another researcher. Upon arrival at the coffee shop, participants were randomly assigned to one of the two treatment conditions of the handwriting task—that is, they were asked to either sign or print their name five times (for a study about handwriting). After completing the handwriting task, participants were given instructions for an ostensibly unrelated study about running shoes. These instructions read as follows:

Your next task is to go to [name of store] located 1 block south on [name of street]. We want you to choose a pair of running shoes for yourself. Your choice is consequential. One participant in this study (selected at random) will receive his/her chosen pair of shoes and a cash amount equal to \$200 minus the price of the shoes.

For example:

- If your shoes cost \$90, you will receive the shoes and \$110 in cash.
- If your shoes cost \$190, you will receive the shoes and \$10 in cash.

Participants were instructed to return to the coffee shop as soon as they had selected their preferred pair of running shoes. Once they arrived back at the coffee shop, they completed a brief questionnaire in which they were asked to indicate the number of pairs of shoes they tried on in the store, the brand name of the shoe they selected (e.g., Nike), its model name (e.g., Air III), and its pre-tax price. The amount of time each participant spent in the store was measured and recorded inconspicuously.

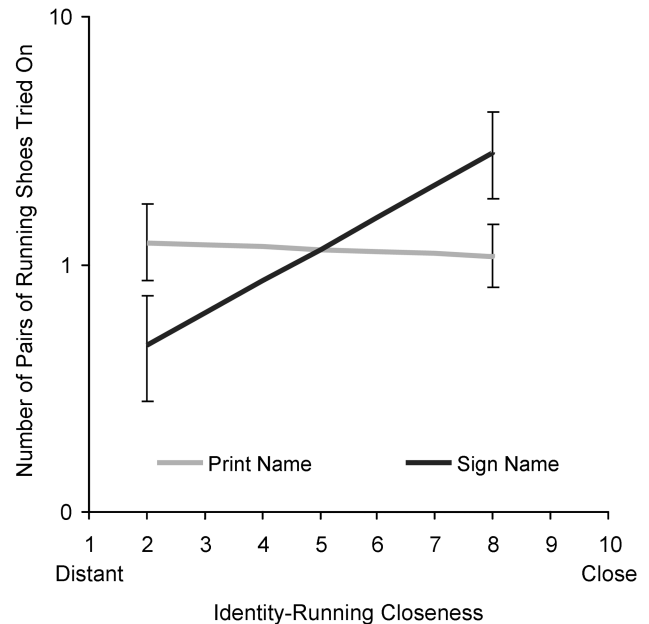
## Results

Two measures of participants' engagement in the shopping task were obtained in this study—the number of pairs of running shoes they tried on and the amount of time they spent in the store. On average, participants spent 11.7 minutes in the store (Min = 5, Max = 30) and tried on 1.1 pairs of running shoes (Min = 0, Max = 5).

First, we estimated a mixed-effects Poisson regression with the number of pairs of shoes tried on as the dependent variable and handwriting task (sign vs. print name), identity-running closeness, and their interaction as independent variables. This analysis reveals a significant handwriting task  $\times$  identity-running closeness interaction ( $\beta = 0.32$ ,  $p < .05$ ; see fig. 3). To shed light on the nature of this interaction, we examine the effect of identity-running closeness on the number of pairs tried on for each handwriting condition. As hypothesized, for participants who had signed their name, identity-running closeness had a significant positive impact on how many pairs of running shoes they tried on in the store ( $\beta = 0.30$ ,  $p < .001$ ), whereas no such effect was observed for those who had printed their name ( $p = .83$ ).

FIGURE 3

STUDY 2: NUMBER OF PAIRS OF RUNNING SHOES TRIED ON AS A FUNCTION OF IDENTITY-RUNNING CLOSENES AND HANDWRITING TASK



NOTE.—This figure shows the fitted regression lines (based on a Poisson regression).

A spotlight analysis (Aiken and West 1991; Fitzsimons 2008) at 1.5 standard deviations above the mean of identity-running closeness reveals that, as predicted, for consumers who closely associate their identity with running, signing (vs. printing) their name caused an increase in the number of pairs of running shoes they tried on ( $\beta = 0.79$ ,  $p < .05$ ). The corresponding analysis at 1.5 standard deviations below the mean indicates that, as hypothesized, for consumers who do not associate their identity with running, signing led to a reduction in the number of pairs of running shoes they tried on ( $\beta = -1.07$ ,  $p < .01$ ).

To examine the time-based measure of engagement in the shopping task, we regressed the (log-transformed) amount of time participants spent shopping for their pair of running shoes on the same set of independent variables. The results corroborate those for the number of pairs tried on. The handwriting task  $\times$  identity-running closeness interaction is marginally significant ( $\beta = 0.14$ ,  $p = .06$ ). As predicted, for participants who had signed their name, identity-running closeness had a significant positive influence on how much time they spent shopping ( $\beta = 0.10$ ,  $p < .05$ ), whereas this relationship was not significant in the print condition ( $p = .45$ ). Spotlight analyses at 1.5 standard deviations above and below the mean of identity-running closeness reveal that,

as hypothesized, for consumers who closely associate their identity with running, signing increased the amount of time they spent shopping for their pair of running shoes ( $\beta = 0.46$ ,  $p < .05$ , one-tailed), whereas for consumers who do not associate running with their self-identity, signing reduced the amount of time spent shopping ( $\beta = -0.38$ ,  $p < .05$ , one-tailed).

## Discussion

The results of studies 1 and 2 support our hypothesis that signing one's name acts as a general self-identity prime. Evidence from three different product domains (digital cameras, dishwashers, and running shoes) shows that providing their signature induces consumers to behave in a manner congruent with the afforded aspect of their self-identity. Signing their name caused participants who associated a product domain more (less) closely with their self-identity to become more (less) behaviorally engaged when shopping in that domain—it led to an increase (decrease) in the number of pieces of product information inspected, in the number pairs of shoes tried on, and in the amount of time spent shopping in a retail store.

Although these findings are fully consistent with our theoretical account of the signature effect, direct evidence that signing activates the specific aspect of one's self-identity that is afforded by the situation would provide even stronger support for this account. To that end, studies 3 and 4 were designed to allow a more conclusive assessment of the proposed mental mechanism, and they do so by examining the effect of signing one's name on behavior in connection with consumers' social identities.

## STUDY 3

Each of us possesses social identities—associations with social groups—that are central to how we view ourselves (Tajfel 1974). We define ourselves through our membership in some groups (“in-groups”) and our nonmembership in others (“out-groups”). Based on our overall theoretical account that signing makes it more likely that situational affordances activate the relevant aspect of one's self-identity, we hypothesize that signing one's name in a context that affords a particular social identity activates one's identification with the afforded social group.

In this study, some participants were asked to name a social group to which they belong (i.e., an in-group), whereas others were asked to name a social group to which they do not belong (i.e., an out-group). All participants then responded to three questions pertaining to the specific group that they had selected—how closely they identify with the group, how much they like its members, and how similar they believe they are to its members.

We have two key predictions. First, based on the notion that signing activates one's identification with the afforded social group, we predict that signing their name leads participants to identify more (less) closely with the in-group (out-group). Critically, because our theory predicts that sign-

ing activates the association between one's self-identity and the afforded social group, signing should not moderate how much one likes members of each type of group nor how similar one feels to the members of these groups. Our second prediction is that—based on prior work showing that activation of an identity leads people to respond more quickly to statements pertaining to that identity (Brewer and Gardner 1996; Wheeler and Fiske 2005)—signing causes individuals to take less time to answer the questions regarding the group they had selected.

## Method

*Participants.* A total of 118 undergraduate students at the University of Alberta completed a series of studies for partial course credit.

*Design.* A 2 (handwriting task: sign, print name)  $\times$  2 (type of social group: in-group, out-group) between-subjects design was used.

*Procedure.* The study was conducted in a university research laboratory. Participants were randomly assigned to one of the four conditions. Seated in private cubicles, they first completed the handwriting task—that is, they either signed or printed their name once on a blank sheet of paper (ostensibly for an unrelated study about handwriting). They were then asked to turn to the computer in their cubicle and follow the instructions provided on the screen (based on Berger and Heath 2007), which read: “In the text box below, please type in the name of a social group that you like and consider yourself quite similar to or belong to (dissimilar from or do not belong to). This group should be a tightly knit group, consisting of individuals who are very similar to one another.” After that, participants were asked a series of questions about the social group they had selected. They rated how strongly they identify with that group (1 = very little, 7 = a great deal), how much they like the people in the group (1 = not at all, 7 = a great deal), and how similar they believe they are to the members of the group (1 = extremely dissimilar, 7 = extremely similar).

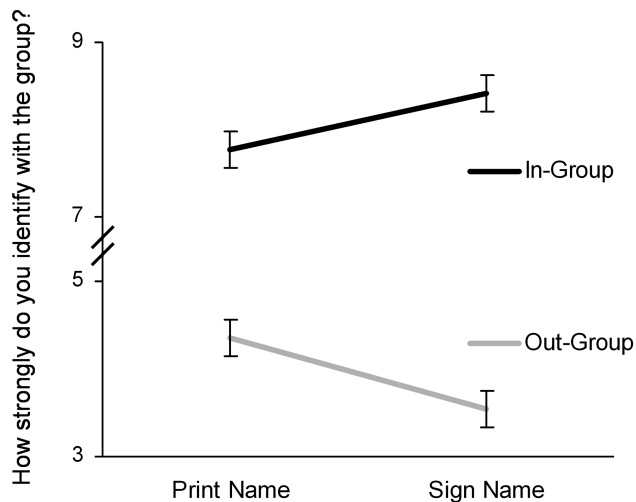
## Results

Responses to the three questions were analyzed with 2 (handwriting task: print vs. sign name)  $\times$  2 (type of social group: in-group vs. out-group) ANOVAs. As expected, participants identified more closely with in-groups than with out-groups ( $M_{in} = 8.1$ ,  $M_{out} = 4.1$ ;  $F(1, 114) = 138.0$ ,  $p < .001$ ), and they felt more similar to members of in-groups than to members of out-groups ( $M_{in} = 7.7$ ,  $M_{out} = 4.0$ ;  $F(1, 114) = 131.4$ ,  $p < .001$ ). This indicates that our manipulation of social group type was effective.

An examination of how strongly participants identified with the social group reveals a significant handwriting task  $\times$  social group type interaction ( $F(1, 116) = 4.6$ ,  $p < .05$ ; see fig. 4). Planned contrasts indicate that, as predicted, participants who had signed their name identified significantly more with in-groups ( $M_{in\_sign} = 8.4$ ,  $M_{in\_print} = 7.6$ ;

FIGURE 4

STUDY 3: IDENTIFICATION WITH A SOCIAL GROUP AS A FUNCTION OF SOCIAL GROUP TYPE AND HANDWRITING TASK



$F(1, 62) = 3.0, p < .05$ , one-tailed) and marginally less with out-groups ( $M_{\text{out\_sign}} = 3.5, M_{\text{out\_print}} = 4.4; F(1, 54) = 2.1, p = .07$ , one-tailed) than those who had printed their name.

By contrast, whether participants had signed or printed their name does not moderate how similar they believed they were to the members of the group (handwriting task  $\times$  social group type interaction:  $p = .32$ ), nor is there a main effect of handwriting task on similarity ( $p = .29$ ). Participants liked in-group members more than out-group members ( $M_{\text{in}} = 8.2, M_{\text{out}} = 6.4; F(1, 114) = 28.8, p < .001$ ), as expected, but the handwriting task does not moderate how much they liked the members of the group ( $p = .24$ ). A main effect of handwriting task reveals that participants who had signed their name liked members of both types of social groups slightly more than did those who had printed their name ( $M_{\text{sign}} = 7.7, M_{\text{print}} = 7.0; F(1, 114) = 4.0, p < .05$ ). This pattern of results is consistent with our hypothesis that signing activates one's identification with the afforded social group, and it suggests that signing does not affect one's perceived similarity to that group.

Next, we examine the (log-transformed) total amount of time it took participants to respond to the three questions about the social group they had selected with an ANOVA using the same set of independent variables. A marginally significant main effect of handwriting task indicates that, as predicted, participants who had signed responded more quickly than those who had printed their name ( $M_{\text{sign}} = 27.5$  seconds,  $M_{\text{print}} = 30.9$  seconds;  $F(1, 114) = 2.4, p = .06$ , one-tailed). A main effect of social group type also emerges ( $M_{\text{in}} = 27.7$  seconds,  $M_{\text{out}} = 31.1$  seconds;  $F(1, 114) = 3.5, p < .05$ ), which is consistent with prior work showing

that people respond more quickly to statements about in-groups than to statements about out-groups (Pratto and Shih 2000). Critically, the handwriting task  $\times$  social group type interaction is not significant ( $p = .24$ ), suggesting that—in line with our theory—signing activated the relevant aspect of participants' self-identity in both the in-group and the out-group condition.

## Discussion

The results of study 3 support our theoretical account that signing one's name acts as a general self-identity prime. Signing caused people to identify even more closely with groups to which they belong and even less closely with groups to which they do not belong. Moreover, participants who had signed their name responded more quickly to statements about the afforded social identity, which provides strong process evidence that signing activates the relevant aspect of one's self-identity.

## STUDY 4

This study examines the effect of signing on product choices in situations that afford a social identity, and it provides an opportunity to obtain further evidence on the mental process implied by our theoretical account of the signature effect—identity activation. We used an identity-signaling paradigm adapted from Berger and Heath (2007) requiring participants to make choices in 19 different preference domains that vary in the extent to which they are relevant to signaling one's social identity. As in study 3, some participants were asked to name a group to which they belong (in-group), whereas others were asked to name a group to which they do not belong (out-group). For each of the 19 domains, participants were asked to indicate which of three available options they would choose, having been provided with information about the preferences of the members of the in-group or out-group they had named. The three options varied in terms of how popular they were with the members of that specific social group. Choice of the most popular option indicated conformity to the social group, whereas choice of the least popular option indicated divergence from it (see Berger and Heath 2007).

We have three predictions for this study. First, consistent with our overall hypothesis that signing promotes behavior that is congruent with the relevant aspect of one's self-identity, we predict that signing causes consumers to make choices that are more congruent with the afforded social group—participants who have signed their name should conform more with in-groups and diverge more from out-groups. Second, in line with our hypothesis that providing a signature activates one's identification with the afforded social group, we predict that signing has a stronger influence on choice in preference domains that are more relevant to signaling one's identity to others (e.g., music genre) than in domains that are not as relevant in this regard (e.g., bike light).

Our third prediction for this study pertains to decision



time. The choices that participants were able to make can be classified as either identity-congruent (conforming with an in-group or diverging from an out-group) or identity-incongruent (diverging from an in-group or conforming with an out-group). In general, identity-incongruent choices tend to reflect greater conflict than identity-congruent choices. We predict that activation of one's identification with the afforded social group (caused by signing one's name) amplifies the conflict associated with making choices that are identity-incongruent (and reduces the conflict associated with making identity-congruent choices). In line with prior work showing that the amount of time individuals take to make a choice is an indicator of how much conflict the decision involves (Busemeyer and Townsend 1993; Diederich 2003; Tyebjee 1979), we predict that signing causes decision times to be longer for identity-incongruent than for identity-congruent choices.

## Method

**Participants.** A total of 143 undergraduate students at the University of Alberta completed a series of studies for partial course credit.

**Design.** A 2 (handwriting task: sign, print name)  $\times$  2 (type of social group: in-group, out-group)  $\times$  19 (preference domain) mixed design was used, with preference domain being manipulated within subject and the two other factors being manipulated between subjects.

**Procedure.** The study was conducted in a university research laboratory. Participants were seated in private cubicles, and they were randomly assigned to one of the four between-subjects conditions. The study involved three stages. In the first stage, participants completed a handwriting task identical to that used in study 3—either signing or printing their name once—and then turned to the computer in their cubicle, where they were asked to enter the name of an in-group or out-group (depending on which condition they had been assigned to). The remainder of the study was computer based.

In the second stage, participants chose one of three options in each of the 19 preference domains. The order in which these domains were presented was determined at random for each participant. For each domain, the following instructions were provided: "Imagine that we asked the members of the group you identified, [name of group], to choose one of three [preference domains]. The figure below represents the proportion of group members that chose each option." This statement was accompanied by a pie graph that indicated that 65% of the members of the group had chosen option A, 25% had chosen option B, and 10% had chosen option C. Below the pie graph, the following question appeared: "Which [preference domain] would you choose?" Participants indicated their choice by clicking one of three response buttons (labeled "Option A," "Option B," and "Option C").

Finally, in the third stage, participants were asked a series

of questions about the social group they had selected. They rated how strongly they identify with that group (1 = very little, 7 = a great deal), how much they like the people in the group (1 = not at all, 7 = a great deal), and how similar they believe they are to the members of the group (1 = extremely dissimilar, 7 = extremely similar).

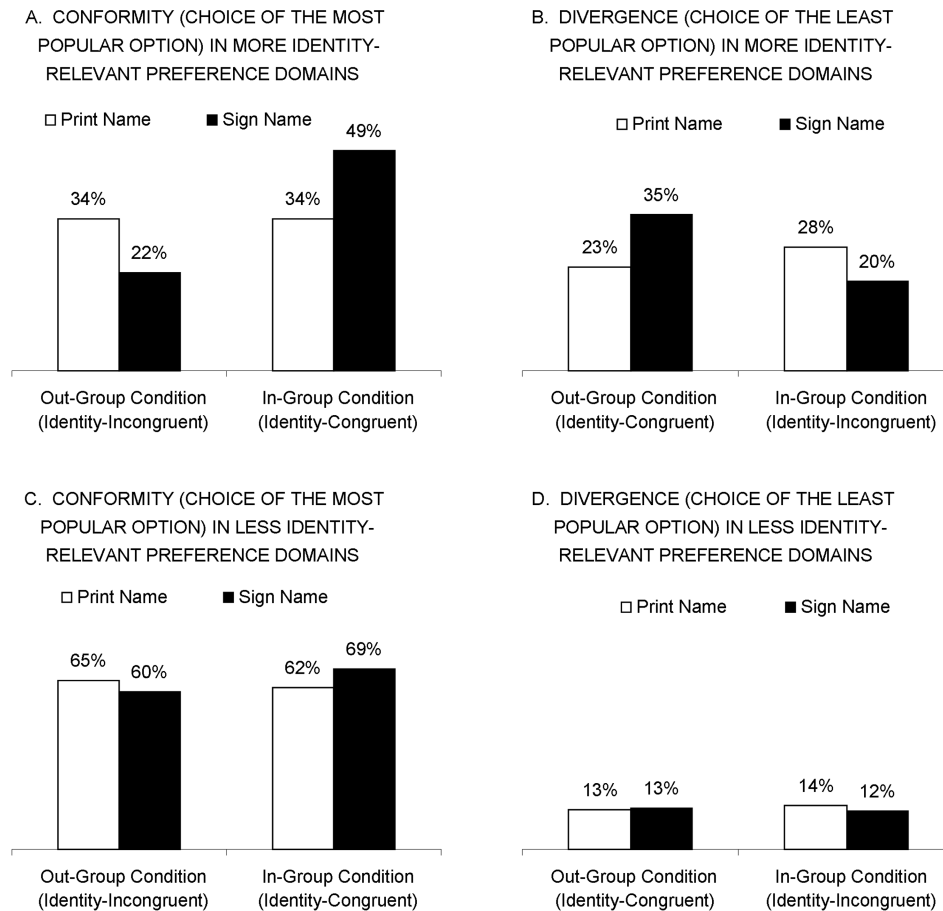
## Results

**Preliminary Analyses.** As expected, participants identified more closely with in-groups than with out-groups ( $M_{in} = 7.4$ ,  $M_{out} = 4.8$ ;  $F(1, 139) = 52.3$ ,  $p < .001$ ), and they felt more similar to members of in-groups than to members of out-groups ( $M_{in} = 7.1$ ,  $M_{out} = 4.8$ ;  $F(1, 139) = 63.6$ ,  $p < .001$ ). This indicates that our manipulation of social group type was effective. On average, participants liked members of out-groups ( $M_{out} = 7.1$  out of 10), although they did like members of in-groups slightly more ( $M_{in} = 8.1$ ;  $F(1, 139) = 14.5$ ,  $p < .001$ ). Unexpectedly, the handwriting task had a main effect on how closely participants identified with the social group ( $M_{print} = 6.7$ ,  $M_{sign} = 5.9$ ;  $F(1, 139) = 5.27$ ,  $p = .02$ ) and on how similar they felt to members of the social group ( $M_{print} = 6.4$ ,  $M_{sign} = 5.8$ ;  $F(1, 139) = 66.3$ ,  $p = .02$ ), but not on how much participants liked group members ( $M_{print} = 7.7$ ,  $M_{sign} = 7.6$ ;  $p = .66$ ). Critically, the handwriting task  $\times$  social group type interaction was not significant for any of these variables (strength of identification:  $p = .14$ ; similarity:  $p = .30$ ; liking:  $p = .71$ ). This pattern of results differs from that observed in study 3, which is not surprising given that these measures were taken after participants had made choices in 19 preference domains.

**Hypothesis Tests.** Our first two predictions were that signing would lead participants to make more identity-congruent choices and that this effect would be greater in domains that are more relevant to signaling one's identity to others. To test these predictions, we first constructed an identity-relevance score for each preference domain based on the results of Berger and Heath's study 2, such that the least identity-relevant domain was assigned a value of 1 and the most identity-relevant one was given a value of 19 (see app. B). We then performed a mixed-effects logistic regression with choice of option C—indicating divergence—as the dependent variable and with handwriting task (sign vs. print name), type of social group (in-group vs. out-group), the identity-relevance score of the preference domain, and all possible interactions as independent variables, along with a random effect for participant. A main effect of identity relevance ( $\beta = 0.08$ ,  $p < .001$ ) indicates that, overall, the inclination to diverge was greater in preference domains that are relevant to signaling one's identity to others, as expected. More importantly, this analysis reveals a significant three-way interaction ( $\beta = 0.09$ ,  $p < .05$ ). To shed light on the nature of this three-way interaction, we examine the handwriting task  $\times$  social group type interaction separately at the highest and the lowest levels of identity relevance. As predicted, the handwriting task  $\times$

FIGURE 5

## STUDY 4: CONFORMITY AND DIVERGENCE AS A FUNCTION OF HANDWRITING TASK, SOCIAL GROUP TYPE, AND RELEVANCE OF THE PREFERENCE DOMAIN TO SIGNALING ONE'S IDENTITY



social group type interaction is significant when identity relevance is highest ( $\beta = 1.40, p < .01$ ) but not when identity relevance is lowest ( $p = .74$ ). Planned contrasts (at the highest level of identity relevance) reveal that, in line with our theory, signing caused participants to diverge more from out-groups ( $\beta = 0.74, p < .05$ ) and diverge less from in-groups ( $\beta = -0.65, p < .05$ ) in domains that are relevant to signaling one's identity.

For choice of option A (indicating conformity), a similar mixed-effects logistic regression reveals a main effect of identity relevance ( $\beta = -0.16, p < .001$ ) indicating that, as expected, the inclination to conform was lower in preference domains that are relevant to signaling one's identity to others. More importantly, a marginally significant three-way interaction ( $\beta = 0.02, p = .07$ ) emerges. Consistent with our theoretical account, the handwriting task  $\times$  social group type interaction is significant when identity relevance is highest ( $\beta = 0.41, p < .001$ ) but not when it is lowest ( $p = .32$ ). Planned contrasts (at the highest level of identity

relevance) reveal that, as predicted, signing caused participants to conform more with in-groups ( $\beta = 0.84, p < .01$ ) and conform less with out-groups ( $\beta = -0.82, p < .05$ ) in identity-relevant domains.

Figure 5 illustrates the nature of the interplay between handwriting task, social group type, and identity relevance of the preference domain. We split the preference domains into two categories based on their degree of identity relevance. Specifically, the 10 domains with the highest identity-relevance scores were categorized as "More Identity-Relevant" (Favorite Actor, Car Brand, Car Model, Hairstyle, Jacket, Music Artist, Music CD, Music Genre, Sitcom, Sunglasses), and the remaining domains were categorized as "Less Identity-Relevant" (Backpack, Bike Light, Detergent, Dinner Entrée, Dish Soap, Power Tools, Sofa, Stereo, Toothpaste). In the more identity-relevant preference domains, signing caused greater divergence from out-groups ( $P_{\text{sign\_out}} = 35\%$ ,  $P_{\text{print\_out}} = 23\%$ ) and less divergence from in-groups ( $P_{\text{sign\_in}} = 20\%$ ,  $P_{\text{print\_in}} = 28\%$ ), and it caused greater con-

formity to in-groups ( $P_{\text{sign\_in}} = 49\%$ ,  $P_{\text{print\_in}} = 34\%$ ) and less conformity to out-groups ( $P_{\text{sign\_out}} = 22\%$ ,  $P_{\text{print\_out}} = 34\%$ ). By contrast, signing had no effect in the domains that are less relevant to signaling one's identity.

Our third prediction was that signing would cause decision times to be longer for identity-incongruent choices (divergence from an in-group or conformity with an out-group) than for identity-congruent choices (conformity with an in-group or divergence from an out-group). We examined participants' (log-transformed) decision times using a mixed-effects model with handwriting task (sign vs. print name), whether the chosen option was identity congruent or identity incongruent, and their interaction as predictor variables, along with a dummy variable for preference domain and a random effect for participant. This analysis reveals a significant interaction effect ( $F(2, 2,554) = 9.5$ ,  $p < .01$ ), the nature of which provides strong support for our theoretical account (see fig. 6). Signing caused participants to take more time to make identity-incongruent than identity-congruent choices ( $M_{\text{sign\_incon}} = 5.14$  seconds,  $M_{\text{sign\_con}} = 4.23$  seconds;  $p < .01$ ), whereas there was no difference in decision times among those who had printed their name ( $M_{\text{print\_incon}} = 4.75$  seconds,  $M_{\text{print\_con}} = 4.74$  seconds;  $p = .87$ ). Thus, consistent with our theoretical account, signing caused decision times to be longer when participants made choices that were in conflict with, rather than congruent with, the afforded aspect of their self-identity.

## Discussion

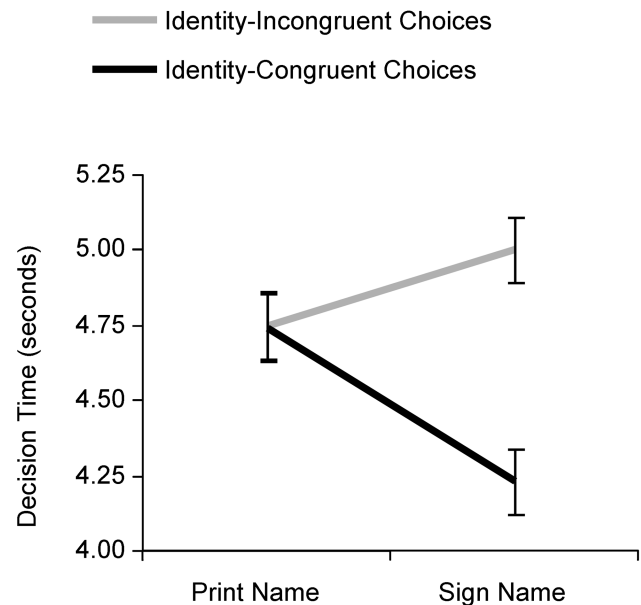
The findings of study 4 provide strong evidence that signing one's name acts as a general self-identity prime. Consistent with our hypothesis, signing their name had a polarizing effect on participants' choices in a setting where a particular social identity was afforded—it caused them to diverge more from an out-group and conform more with an in-group, and this effect was stronger in domains that are more relevant to signaling one's identity to others. Finally, an analysis of decision times supports our proposed mental mechanism—namely, that the signature effect is driven by the activation of the relevant aspect of one's self-identity.

## GENERAL DISCUSSION

Consumers sign their name in many everyday situations, and they do so for a wide range of purposes—such as to identify themselves, to authorize payment, to enter into agreements, and to commit themselves to future obligations. Yet, despite the pervasiveness of handwritten signatures in human economic life, prior research has provided little insight into whether signing one's name influences subsequent behavior. We have introduced the hypothesis that signing one's name acts as a general self-identity prime, thus making it more likely that situational affordances activate the relevant aspect of one's self-identity. Converging evidence from four studies—examining various consumption domains and involving different aspects of a consumer's self-identity—demonstrates that signing promotes behavior con-

FIGURE 6

STUDY 4: DECISION TIME AS A FUNCTION OF HANDWRITING TASK AND WHETHER CHOICE IS IDENTITY-INCONGRUENT OR IDENTITY-CONGRUENT



gruent with the specific aspect of one's self-identity that is afforded by the situation.

The present research makes several key contributions to our understanding of consumer behavior. It is the first to demonstrate that signing one's name influences subsequent behavior in a predictable manner and thus enhances our understanding of the significance of the act of signing. This work also makes a novel contribution to the priming literature—which has focused on the role of cues in the activation of particular constructs or identities (e.g., Berger and Fitzsimons 2008; Kay et al. 2004; North, Hargreaves, and McKendrick 1997)—by showing that the act of producing one's signature affects one's subsequent responsiveness to identity-relevant cues.

This article adds to prior work that has explored the general priming of one's self-concept (such as through exposure to self-referent words or by having one respond to personality test items; see Dijksterhuis and van Knippenberg 2000; Hamilton and Shuminsky 1990; Smeesters et al. 2009) in that it identifies a simple intervention—signing one's name—that acts as a general self-identity prime. In addition, it extends recent work suggesting that a given intervention can produce different effects on behavior (Cesario et al. 2010; Wheeler and Berger 2007) by demonstrating that an identity-relevant action such as producing one's signature can have contrasting effects on one's behavior depending on which aspect of one's self-identity is afforded in a particular situation.

The findings presented here provide a novel perspective

on prior research that examines how signing a document influences subsequent behavior. Because people are more likely to engage in a behavior once they have signed a document that indicates their intention to do so (Anker and Crowley 1981; Mazar et al. 2008; McCabe and Trevino 1997; Rogers et al. 1988; Stevens et al. 2002; Ureda 1980; Williams et al. 2005), one might assume that merely signing one's name implies a commitment (Cialdini 2001; Schwarzwald, Bizman, and Raz 1983). However, people often sign documents for purposes that are not associated with commitment—they sign to authorize an action (e.g., a professor signing to approve a dissertation), to identify themselves (e.g., on a passport), or to affirm their understanding of a document's contents (e.g., an insurance form). Thus, although a signature does not necessarily imply commitment, it does always represent one's identity. For instance, our finding that signing causes people to spend less time and effort when shopping in a product domain that they do not identify closely with (studies 1 and 2) is consistent with our theoretical account, but not with one based on commitment.

This article's key finding—that providing a signature predictably influences subsequent behavior—suggests novel interventions that sellers could use in order to influence consumer behavior. For instance, a retailer might ask shoppers to their sign their name after completing a survey, to enter a prize draw, or to enroll in a loyalty program, since doing so should lead consumers who identify closely with the store's products to subsequently be more engaged. However, such signature interventions should be used cautiously, as signing tends to reduce engagement in consumers who lack such identification. For instance, a sporting goods store specializing in high-end running gear could benefit from having avid runners sign but might be better off not soliciting signatures from average consumers shopping for a pair of sneakers.

The present work suggests several directions for future research. First, although our results highlight the robustness of the signature effect—it holds for different aspects of one's self-identity, it can be obtained both in the lab and in field settings, and a single signature is sufficient to change behavior—future work should aim to identify boundary conditions for the effect. One possible condition is the presence

of any factor that inhibits consumers' opportunity to properly produce their signature. In line with recent work indicating that writing with one's nondominant hand can shake one's self-view confidence (Gao, Wheeler, and Shiv 2009), we expect that a disruption of the process of signing—such as by forcing people to sign in a constrained space (e.g., on a small slip of paper) or with utensils that prevent them from precisely replicating their signature (e.g., on an electronic signature pad)—should diminish the signature effect (and perhaps even produce contrasting effects on behavior, such as causing consumers to subsequently choose self-view-bolstering products to restore their confidence).

Second, although our results indicate that signing leads to the activation of the specific aspect of one's self-identity that is hypothesized to be afforded by the situation, our theory does not require that only a single aspect is activated—merely that the relevant aspect is activated more strongly than others. Real-world situations (particularly complex ones) can simultaneously afford multiple, potentially conflicting aspects of one's self-identity (Hong et al. 2003; Shih, Pittinsky, and Ambady 1999), and this may lead to the joint activation of different aspects. Enhancing our understanding of what happens when multiple aspects of one's identity are simultaneously afforded is an important area for further research.

Finally, it would be worth examining how providing a signature within a consumption context affects behavior. One limitation of the present work is that participants signed on blank pieces of paper in a task that was ostensibly unrelated to consumption. Although this ensured high internal validity of our findings by clearly isolating the act of signing, it did so at the expense of external validity. Future research should investigate how signing one's name might interact with the nature of the document being signed. For example, is the signature effect diminished or enhanced when consumers sign important documents such as mortgage agreements? Similarly, does the purpose of the signature—for example, verifying that a course of action has been completed versus committing to a future course of action—moderate its effect on subsequent behavior? Because consumers sign (or can be asked to do so) in many consumption contexts, it is important to develop a deeper understanding of how producing one's signature influences behavior.

**APPENDIX A**  
**PRODUCT DESCRIPTIONS (STUDY 1)**

**TABLE A1**  
**PRODUCT CATEGORIES**

| Digital cameras                  |                                 | Dishwashers         |                                   |                                   |                                   |
|----------------------------------|---------------------------------|---------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Brand                            | Nikon                           | Brand               | Frigidaire                        | Maytag                            | Whirlpool                         |
| Model                            | P80                             | Model               | GLD 225                           | MDB 560                           | DU 1055                           |
| Price                            | \$400                           | Price               | \$500                             | \$500                             | \$500                             |
| 35mm equivalent zoom             | 486 mm                          | Filtration system   | 100% filtration                   | Micro-fine plus                   | Automatic purge filtration        |
| Viewfinder type                  | Electronic                      | Delay start options | 2, 4, 6 hours                     | 1-6 hours                         | 2-4 hours                         |
| Digital sensor size              | 10.0 MP                         | Drying options      | Heat, no dry                      | Heated dry                        | Heated dry                        |
| Digital zoom                     | 4.0 X                           | EnerGuide rating    | 343 KWh / year                    | 346 KWh / year                    | 370 KWh / year                    |
| Effective size of digital sensor | 10.7 MP                         | Interior finish     | Dura life                         | Plastic                           | Plastic                           |
| Flash range                      | 9 meters                        | Number of cycles    | 4                                 | 4                                 | 4                                 |
| Focus range                      | 40 cm                           | Product dimensions  | 60.6 (W) x 84.7 (H) x 61.3 (D) cm | 60.6 (W) x 87.6 (H) x 60.6 (D) cm | 60.6 (W) x 87.6 (H) x 62.2 (D) cm |
| Internal memory                  | 52 MB                           | Warranty            | 1 year parts & labor              | 1 year limited                    | 1 year limited                    |
| LCD monitor size                 | 2.7 inches                      | Weight              | 33 kg                             | 42 kg                             | 42 kg                             |
| Aperture range                   | f/2.8 - f/45                    | Sensors             | Smart soil                        | Precision clean & turbidity       | Auto soil sensor                  |
| Optical zoom                     | 18 X                            | Short (Econo) wash  | Yes                               | No                                | No                                |
| Shutter speed                    | 1 / 4,000 sec                   | Wash system         | Precision wash                    | Jetclean II wash system           | Sheer clean wash                  |
| Weight                           | 365 grams                       | Wash levels         | 5                                 | 3                                 | 5                                 |
| Warranty                         | 2 years parts & labor           | Rack material       | Nylon                             | Vinyl                             | PVC                               |
| Camera dimensions                | 11.0 (W) x 7.9 (H) x 7.8 (D) cm | Lock type           | Squeeze                           | Pull                              | Latch engage                      |
|                                  | 11.7 (W) x 7.9 (H) x 7.9 (D) cm |                     |                                   |                                   |                                   |
|                                  | 11.6 (W) x 8.1 (H) x 8.6 (D) cm |                     |                                   |                                   |                                   |

## APPENDIX B

TABLE B1

PREFERENCE DOMAINS (STUDY 4)

| Domain         | Identity-relevance score |
|----------------|--------------------------|
| Bike light     | 1                        |
| Dish soap      | 2                        |
| Detergent      | 3                        |
| Toothpaste     | 4                        |
| Power tools    | 5                        |
| Stereo         | 6                        |
| Sofa           | 7                        |
| Backpack       | 8                        |
| Dinner entrée  | 9                        |
| Sunglasses     | 10                       |
| Car model      | 11                       |
| Favorite actor | 12                       |
| Car brand      | 13                       |
| Jacket         | 14                       |
| Sitcom         | 15                       |
| Favorite CD    | 16                       |
| Music artist   | 17                       |
| Hairstyle      | 18                       |
| Music genre    | 19                       |

NOTE.—Based on Berger and Heath (2007, study 2).

## REFERENCES

- Ahuvia, Aaron C. (2005), "Beyond the Extended Self: Loved Objects and Consumers' Identity Narratives." *Journal of Consumer Research*, 32 (June), 171–84.
- Aiken, Leona S. and Stephen G. West (1991), *Multiple Regression: Testing and Interpreting Interactions*, Newbury Park, CA: Sage Publications.
- Aiken, Lewis R. and Richard L. Zweigenhaft (1978), "Signature Size, Sex, and Status in Iran," *Journal of Social Psychology*, 106 (2), 273–74.
- Anker, Antoinette L. and Thomas J. Crowley (1981), "Use of Contingency Contracts in Specialty Clinics for Cocaine Abuse," in *Problems of Drug Dependence*, ed. Louis S. Harris, Rockville, MD: National Institute on Drug Abuse, 452–59.
- Belk, Russell W. (1988), "Possessions and the Extended Self," *Journal of Consumer Research*, 15 (2), 139–68.
- Bensefia, Ameer, Thierry Paquet, and Laurent Heutte (2005), "Handwritten Document Analysis for Automatic Writer Recognition," *Electronic Letters on Computer Vision and Image Analysis*, 5 (2), 72–86.
- Berger, Jonah, and Grainne Fitzsimons (2008), "Dogs on the Street, Pumas on Your Feet: How Cues in the Environment Influence Product Evaluation and Choice," *Journal of Marketing Research*, 45 (1), 1–14.
- Berger, Jonah, and Chip Heath (2007), "Where Consumers Diverge from Others: Identity Signaling and Product Domains," *Journal of Consumer Research*, 34 (4), 121–34.
- Brewer, Marilyn B. and Wendi Gardner (1996), "Who Is This 'We'? Levels of Collective Identity and Self Representations," *Journal of Personality and Social Psychology*, 71 (1), 83–93.
- Briggs, Dennis (1980), "A Study of the Influence of Handwriting upon Grades Using Examination Scripts," *Educational Review*, 32 (2), 185–93.
- Busemeyer, Jerome R. and James T. Townsend (1993), "Decision Field Theory: A Dynamic-Cognitive Approach to Decision Making in an Uncertain Environment," *Psychological Review*, 100 (3), 432–59.
- Cesario, Joseph, Jason E. Plaks, Nao Hagiwara, Carlos David Navarrete, and E. Tory Higgins (2010), "The Ecology of Automaticity: How Situational Contingencies Shape Action Semantics and Social Behavior," *Psychological Science*, 21 (9), 1311–17.
- Cialdini, Robert B. (2001), "Harnessing the Science of Persuasion," *Harvard Business Review*, 79 (9), 72–79.
- DeMaree, Kenneth G., S. Christian Wheeler, and Richard E. Petty (2005), "The Effects of Stereotype Activation on Behavior: A Review of Possible Mechanisms," *Psychological Bulletin*, 127 (November), 797–826.
- Diederich, Adele (2003), "Decision Making under Conflict: Decision Time as a Measure of Conflict Strength," *Psychonomic Bulletin and Review*, 10 (1), 167–76.
- Dijksterhuis, Ap, and John A. Bargh (2001), "The Perception-Behavior Expressway: Automatic Effects of Social Perception on Social Behavior," in *Advances in Experimental Social Psychology*, ed. Mark P. Zanna, 33, New York: Academic Press, 1–40.
- Dijksterhuis, Ap, and Ad van Knippenberg (2000), "Behavioral Indecision: Effects of Self-Focus on Automatic Behavior," *Social Cognition*, 18 (1), 55–74.
- Ellemers, Naomi, Russell Spears, and Bertjan Doosje (2002), "Self and Social Identity," *Annual Review of Psychology*, 53, 161–86.
- Fitzsimons, Gavan J. (2008), "Death to Dichotomizing," *Journal of Consumer Research*, 35 (1), 5–8.
- Forehand, Mark R., Americus Reed II, and Rohit Deshpandé (2002), "Identity Salience and the Influence of Activation of the Social Self-Schema on Advertising Response," *Journal of Applied Psychology*, 87 (6), 1086–99.
- Forehand, Mark R., and Rohit Deshpandé (2001), "What We See

- Makes Us Who We Are: Priming Ethnic Self-Awareness and Advertising Response," *Journal of Marketing Research*, 38 (3), 336–49.
- Fournier, Susan (1998), "Consumers and Their Brands: Developing Relationship Theory in Consumer Research," *Journal of Consumer Research*, 24 (3), 343–73.
- Fraenkel, Béatrice (1992), *La signature: Genèse d'un signe*, Paris: Gallimard, Bibliothèque des Histoires.
- Gao, Leilei, S. Christian Wheeler, and Baba Shiv (2009), "The 'Shaken Self': Product Choices as a Means of Restoring Self-View Confidence," *Journal of Consumer Research*, 36 (1), 29–38.
- Gecas, Viktor, and Peter J. Burke (1995), "Self and Identity," in *Sociological Perspectives in Social Psychology*, ed. Karen S. Cook, Gary A. Fine, and James S. House, Needham Heights, MA: Allyn & Bacon, 41–67.
- Gibson, James J. (1977), "The Theory of Affordances," in *Perceiving, Acting, and Knowing: Toward an Ecological Psychology*, ed. Robert Shaw and John Bransford, Hillsdale, NJ: Erlbaum, 67–82.
- Greeno, James G. (1994), "Gibson's Affordances," *Psychological Review*, 101 (2), 336–42.
- Guinote, Ana (2008), "Power and Affordances: When the Situation Has More Power over Powerful than Powerless Individuals," *Journal of Personality and Social Psychology*, 95 (2), 237–52.
- Hamilton, James C. and Tammy R. Shuminsky (1990), "Self-Awareness Mediates the Relationship between Serial Position and Item Reliability," *Journal of Personality and Social Psychology*, 59 (6), 1301–7.
- Harris, Roy (2000), *Rethinking Writing*, London: Athlone Press.
- Harvey, O. L. (1934), "The Measurement of Handwriting as a Form of Expressive Movement," *Character and Personality*, 2 (4), 310–21.
- Hong, Ying-Yi, Veronica Benet-Martinez, Chi-Yue Chiu, and Michael W. Morris (2003), "Boundaries of Cultural Influence: Construct Activation as a Mechanism for Cultural Differences in Social Perception," *Journal of Cross-Cultural Psychology*, 34 (3), 453–64.
- Howard, Judith A. (2000), "Social Psychology of Identities," *Annual Review of Sociology*, 26, 367–93.
- Hughes, David C., Brian Keeling, and Bryan F. Tuck (1983), "Effects of Achievement Expectations and Handwriting Quality on Scoring Essays," *Journal of Educational Measurement*, 20 (1), 65–70.
- Jackson, Robert H. and Franklin D. Roosevelt (1953), "A Presidential Legal Opinion," *Harvard Law Review*, 66 (8), 1353–61.
- James, William (1890), *The Principles of Psychology*, Vol. 1, New York: Holt.
- Jorgenson, Dale O. (1977), "Signature Size and Dominance: A Brief Note," *Journal of Psychology*, 97 (2), 269–70.
- Kam, Moshe, Kishore Gummadidala, Gabriel Fielding, and Robert Conn (2001), "Signature Authentication by Forensic Document Examiners," *Journal of Forensic Sciences*, 46 (4), 884–88.
- Kay, Aaron C., S. Christian Wheeler, John A. Bargh, and Lee D. Ross (2004), "Material Priming: The Influence of Mundane Physical Objects on Situational Construal and Competitive Behavioral Choice," *Organizational Behavior and Human Decision Processes*, 95 (1), 83–96.
- King, Roy N. and Derek J. Koehler (2000), "Illusory Correlations in Graphological Inference," *Journal of Experimental Psychology: Applied*, 6 (4), 336–48.
- Kleine, Susan Schultz, Robert E. Kleine III, and Chris T. Allen (1995), "How Is a Possession 'Me' or 'Not Me'? Characterizing Types and an Antecedent of Material Possession Attachment," *Journal of Consumer Research*, 22 (December), 327–43.
- Knapp, Charles L., Nathan M. Crystal, and Harry G. Prince (2003), *Problems in Contract Law: Cases and Materials*, 5th ed., New York: Aspen Publishing.
- LaFave, Wayne R. and Frank J. Remington (1964), "Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions," *Michigan Law Review*, 63 (6), 987–1027.
- Lemert, Edwin M. (1958), "The Behavior of the Systematic Check Forger," *Social Problems*, 6 (2), 141–49.
- Lewicki, Pawel (1984), "Self-Schema and Social Information Processing," *Journal of Personality and Social Psychology*, 47 (6), 1177–90.
- Lubow, R. E. and Ofer Fein (1996), "Pupillary Size in Response to a Visual Guilty Knowledge Test: New Technique for the Detection of Deception," *Journal of Experimental Psychology: Applied*, 2 (2), 164–77.
- Mann, Traci (1994), "Informed Consent for Psychological Research: Do Subjects Comprehend Consent Forms and Understand Their Legal Rights?" *Psychological Science*, 5 (3), 140–43.
- Markus, Hazel (1977), "Self-Schemata and Processing Information about the Self," *Journal of Personality and Social Psychology*, 35 (1), 63–78.
- Markus, Hazel and Ziva Kunda (1986), "Stability and Malleability of the Self-Concept," *Journal of Personality and Social Psychology*, 51 (4), 858–66.
- Markus, Hazel, and Elissa Wurf (1987), "The Dynamic Self-Concept: A Social Psychological Perspective," *Annual Review of Psychology*, 38, 299–337.
- Mazar, Nina, On Amir, and Dan Ariely (2008), "The Dishonesty of Honest People: A Theory of Self-Concept Maintenance," *Journal of Marketing Research*, 45 (6), 633–44.
- McCabe, Donald L. and Linda K. Trevino (1993), "Academic Dishonesty: Honor Codes and Other Contextual Influences," *Journal of Higher Education*, 64 (5), 522–38.
- (1997), "Individual and Contextual Influences on Academic Dishonesty: A Multicampus Investigation," *Research in Higher Education*, 38 (3), 379–96.
- McCabe, Donald L., Linda K. Trevino, and Kenneth D. Butterfield (1996), "The Influence of Collegiate and Corporate Codes of Conduct on Ethics-Related Behavior in the Workplace," *Business Ethics Quarterly*, 6 (4), 461–76.
- Mnookin, Jennifer L. (2001), "Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability," *Virginia Law Review*, 87 (8), 1723–1801.
- North, Adrian C., David J. Hargreaves, and Jennifer McKendrick (1997), "In-Store Music Affects Product Choice," *Nature*, 390 (1), 132.
- Oyserman, Daphna (2009), "Identity-Based Motivation: Implications for Action-Readiness, Procedural-Readiness, and Consumer Behavior," *Journal of Consumer Psychology*, 19 (3), 250–60.
- Parizeau, Marcel, and Réjean Plamondon (1989), "What Types of Scripts Can Be Used for Personal Identity Verification?" in *Computer Recognition and Human Production of Handwriting*

- ing, ed. Réjean Plamondon, Ching Y. Suen, and Marvin L. Simmer, Hackensack, NJ: World Scientific, 77–90.
- Pratto, Felicia and Margaret Shih (2000), “Social Dominance Orientation and Group Context in Implicit Group Prejudice,” *Psychological Science*, 11 (6), 515–18.
- Rafaeli, Anat, and Richard J. Klimoski (1983), “Predicting Sales Success through Handwriting Analysis: An Evaluation of the Effects of Training and Handwriting Sample Content,” *Journal of Applied Psychology*, 68 (2), 212–17.
- Reed, Americus, II (2004), “Activating the Self-Importance of Consumer Selves: Exploring Identity Salience Effects on Judgments,” *Journal of Consumer Research*, 16 (2), 286–95.
- Risinger, D. Michael, Mark P. Denbeaux, and Michael J. Saks (1989), “Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification ‘Expertise,’” *University of Pennsylvania Law Review*, 137 (3), 731–92.
- Roberts, Brent W. and Eileen M. Donahue (1994), “One Personality, Multiple Selves: Integrating Personality and Social Roles,” *Journal of Personality*, 62 (2), 199–218.
- Rochberg-Halton, Eugene (1984), “Object Relations, Role Models, and Cultivation of the Self,” *Environment and Behavior*, 16 (3), 335–68.
- Rogers, Richard W., JoEllen S. Rogers, Jon S. Bailey, William Runkle, and Bernie Moore (1988), “Promoting Safety Belt Usage among State Employees: The Effects of Prompting and a Stimulus-Control Intervention,” *Journal of Applied Behavior Analysis*, 21 (3), 263–69.
- Rudman, Laurie A., Matthew C. Dohn, and Kimberly Fairchild (2007), “Implicit Self-Esteem Compensation: Automatic Threat Defense,” *Journal of Personality and Social Psychology*, 93 (5), 798–813.
- Schwarzwald, Joseph, Aharon Bizman, and Moshe Raz (1983), “The Foot-in-the-Door Paradigm: Effects of a Second Request Size on Donation Probability and Donor Generosity,” *Personality and Social Psychology Bulletin*, 9 (3), 443–50.
- Segal, Zindel V. (1988), “Appraisal of the Self-Schema Construct in Cognitive Models of Depression,” *Psychological Bulletin*, 103 (2), 147–62.
- Sela, Aner and Baba Shiv (2009), “Unraveling Priming: When Does the Same Prime Activate a Goal versus a Prime?” *Journal of Consumer Research*, 36 (3), 418–33.
- Shih, Margaret, Todd L. Pittinsky, and Nalini Ambady (1999), “Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance,” *Psychological Science*, 10 (1), 80–83.
- Smeesters, Dirk, Vincent Y. Yzerbyt, Olivier Corneille, and Luk Warlop (2009), “When Do Primes Prime? The Moderating Role of the Self-Concept in Individuals’ Susceptibility to Priming Effects on Social Behavior,” *Journal of Experimental Social Psychology*, 45 (2), 211–16.
- Snyder, C. R. and Howard L. Fromkin (1977), “Abnormality as a Positive Characteristic: The Development and Validation of a Scale Measuring Need for Uniqueness,” *Journal of Abnormal Psychology*, 86 (5), 518–27.
- Spears, Russell, Edwin Gordijn, Ap Dijksterhuis, and Diederik A. Stapel (2004), “Reaction in Action: Intergroup Contrast in Automatic Behavior,” *Personality and Social Psychology Bulletin*, 30 (5), 605–16.
- Stapel, Diederik A., and Hart Blanton (2004), “From Seeing to Being: Subliminal Social Comparisons Affect Implicit and Explicit Self-Evaluations,” *Journal of Personality and Social Psychology*, 87 (4), 468–81.
- Staw, Barry M. (1974), “Attitudinal and Behavioral Consequences of Changing a Major Organizational Reward: A Natural Field Experiment,” *Journal of Personality and Social Psychology*, 29 (6), 742–51.
- Stevens, Marguerite M., Ardis L. Olson, Cecilia A. Gaffney, Tor D. Tosteson, Leila A. Mott, and Pamela Starr (2002), “A Pediatric, Practice-Based, Randomized Trial of Drinking and Smoking Prevention and Bicycle Helmet, Gun, and Seatbelt Safety Promotion,” *Pediatrics*, 109 (3), 490–97.
- Tajfel, Henri (1974), “Social Identity and Intergroup Behavior,” *Social Science Information*, 13 (2), 65–93.
- Thoits, Peggy A. (1983), “Multiple Identities and Psychological Well-Being: A Reformulation and Test of the Social Isolation Hypothesis,” *American Sociological Review*, 48 (2), 174–87.
- Tyebjee, Tyzoon T. (1979), “Response Time, Conflict, and Involvement in Brand Choice,” *Journal of Consumer Research*, 6 (3), 295–304.
- Tyler, Tom R., and Steven L. Blader (2003), “The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior,” *Personality and Social Psychology Review*, 7 (4), 349–61.
- Ureda, John R. (1980), “The Effect of Contract Witnessing on Motivation and Weight Loss in a Weight Control Program,” *Health Education Behavior*, 7 (1), 163–85.
- Vallerand, Robert J., Céline Blanchard, Geneviève A. Mageau, Richard Koestner, Catherine Ratelle, Maude Léonard, Marylène Gagné, and Josée Marsolais (2003), “Les passions de l’âme: On Obsessive and Harmonious Passion,” *Journal of Personality and Social Psychology*, 85 (4), 756–67.
- Warner, Rebecca M. and David B. Sugarman (1986), “Attributions of Personality Based on Physical Appearance, Speech, and Handwriting,” *Journal of Personality and Social Psychology*, 50 (4), 792–99.
- Weinberg, John A. (2003), “Accounting for Corporate Behavior,” *Federal Reserve Bank of Richmond Economic Quarterly*, 89 (3), 1–20.
- Wheeler, Mary E. and Susan T. Fiske (2005), “Controlling Racial Prejudice: Social-Cognitive Goals Affect Amygdala and Stereotype Activation,” *Psychological Science*, 16 (1), 56–62.
- Wheeler, S. Christian and Jonah Berger (2007), “When the Same Prime Leads to Different Effects,” *Journal of Consumer Research*, 34 (October), 357–68.
- Wheeler, S. Christian and Richard E. Petty (2001), “The Effects of Stereotype Activation on Behavior: A Review of Possible Mechanisms,” *Psychological Bulletin*, 127 (November), 797–826.
- White, Katherine, and Darren W. Dahl (2007), “Are All Out-Groups Created Equal? Consumer Identity and Dissociative Influence,” *Journal of Consumer Research*, 34 (3), 525–36.
- Williams, Bernadette R., Janet Bezner, Steven B. Chesbro, and Ronnie Leavitt (2005), “The Effect of a Behavioral Contract on Adherence to a Walking Program in Postmenopausal African American Women,” *Topics in Geriatric Rehabilitation*, 21 (4), 332–42.
- Zweigenhaft, Richard L. (1977), “The Empirical Study of Signature Size,” *Social Behavior and Personality*, 5 (1), 177–85.
- Zweigenhaft, Richard L. and David Marlowe (1973), “Signature Size: Studies in Expressive Movement,” *Journal of Consulting and Clinical Psychology*, 40 (3), 469–73.