



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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September 6, 2011

ROSEANNE LASATER  
1717 S EVERGREEN RD  
SPOKANE VALLEY WA 99037

Subject: Complaint filed against Al French – PDC Case 11-038

Dear Ms. Lasater:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint against Al French, received on December 16, 2010, alleging that Mr. French sponsored political advertising in the 2010 race for Spokane County Commissioner that falsely claimed the endorsement of individuals who had not in fact endorsed him, an alleged violation of RCW 42.17.530(1)(c).

In your complaint, you alleged that a list of supporters posted to Mr. French's Web site included your name, and the names of other individuals who had not in fact endorsed him in his 2010 campaign for Spokane County Commissioner. You stated that in an email sent October 26, 2010 and a voice message left October 27, 2010, you asked Mr. French to remove your name from his list of campaign supporters. You stated that later on October 27, 2010, Mr. French returned your call, stating that he was unaware how your name came to be included on the list of supporters posted to his Web site. You stated that he promised to immediately remove your name from this list of supporters, but after this conversation, failed to honor his promise. Based on Mr. French's alleged knowledge of the underlying matter, you alleged that the claim of your endorsement, posted to his Web site, constituted a false statement made with actual malice.

PDC staff reviewed your allegations in light of the following statutes:

**RCW 42.17.020(38)** defines "political advertising" as "*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.*"

**RCW 42.17.530** states, in part, *“(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances...*

*(c) Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.”*

**RCW 42.17.020(1)** defines “actual malice” as to act with knowledge of falsity or with reckless disregard as to truth or falsity.

PDC staff reviewed your complaint, and the list of claimed supporters posted to Mr. French’s campaign Web site. After Mr. French’s campaign Web site was taken offline, we accessed an archived copy of the site. Staff reviewed Mr. French’s formal response to the complaint. Finally, staff reviewed applicable statutes, rules, and formal Public Disclosure Commission guidance regarding political advertising and Internet campaign activity. As a result of our review, we found the following:

- As of the date of your December 15, 2010 complaint, and 50 days after you requested that Al French remove your name from his campaign Web site, Mr. French’s site still contained a statement that directly implied your support. Specifically, the site directly implied your support by listing you as a “Supporter.” (During the course of staff’s investigation the site was taken offline; however, an archived copy of the “Supporters” page was accessed and maintained by PDC staff.)
- In his response to the complaint, Mr. French acknowledged your request to have your name removed from his Web site. He stated that he eventually complied.
- Mr. French stated that the list of “Supporters” posted to his web site was taken directly from the list of individuals and groups that had chosen to “like” or “friend” his campaign on Facebook. He stated that your name came to be posted on the “Supporters” page in the same manner, because you “liked” his campaign.
- Mr. French stated that in posting a list of “Supporters” to his campaign Web site, he was careful not to describe the listed individuals and groups as actual endorsers, because he understood that “liking” or “friending” a campaign on a social networking site does not constitute a formal statement of endorsement. Nevertheless, Mr. French stated that he felt comfortable identifying you as an individual who “liked,” and therefore supported, his campaign.

In your complaint, you characterized Mr. French’s Web site as political advertising, and it is clear that the site was used to appeal for support for Mr. French in his election

campaign. However, statements indicating that a candidate enjoys the support of persons or groups are subject to RCW 42.17.530 only if they are included in political advertising or electioneering communications as defined in RCW 42.17.020. An "electioneering communication" as defined in RCW 42.17.020(20) is limited to communications made in specific media: broadcast, cable, or satellite television or radio transmissions, United States postal service mailings, billboards, newspapers, or periodicals. The definition therefore excludes communications made via email or the Web. "Political advertising" as defined in RCW 42.17.020(38) 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 for votes or for financial or other support or opposition in any election campaign. (Emphasis added.)

In PDC Interpretation 07-04, *Campaign Activities on the Internet* (copy enclosed), the Public Disclosure Commission recognized that the use of Internet is a unique and evolving method of campaigning, and that a restrained approach to regulating such activity is warranted at this time. The Commission described the Internet as the modern-day town square or common, the primary place of citizen-to-citizen public discourse. Because campaign activity through email or Web sites is often conducted at little or no cost, the Commission compared such activity to the small contributions from individuals that the Public Disclosure Law seeks to encourage.

Interpretation 07-04 places emphasis on the effect of payment in creating disclosure requirements for the sponsors of political advertising. Accordingly, with the notable exception of paid political advertising placed on a Web site, the Interpretation exempts much campaign activity conducted on the Internet from the disclaimer and disclosure requirements of RCW 42.17.

While Interpretation 07-04 addresses disclaimer and disclosure requirements for campaign activity conducted via the Internet, it does not state whether, regardless of the level of expenditures involved, such activity is still a "means of mass communication" under the definition of "political advertising" in RCW 42.17.020(38), and therefore subject to the prohibition against false claims of endorsement in RCW 42.17.530(1)(c).

Without guidance from the Commission concerning the general applicability of RCW 42.17.020(38) to campaign Web sites, and the specific applicability of RCW 42.17.530 to Internet-based forms of campaigning, PDC staff will not charge a violation of RCW 42.17.530(1)(c) regarding the inclusion of your name in a list of campaign supporters posted to Mr. French's Web site. For this reason, and with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Al French. However, the circumstances surrounding your complaint may guide the Commission in its approach to future rulemaking or Interpretations of the law.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will

Roseanne Lasater  
Complaint filed against Al French  
Page 4

contribute to better public disclosure of important campaign information and better awareness of the Public Disclosure Law.

If you have questions, you may contact Phil Stutzman at (360) 664-8853, toll-free at 1-877-601-2828, or by e-mail at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Ellis", with a large, stylized flourish at the end.

Doug Ellis  
Interim Executive Director

Enclosure

c: Al French