

Memo

To: Commissioners

From: Wayne Barnett

Date: April 27, 2012

Re: Ruling in *Family PAC v. McKenna*

Background

As the Commission discussed a few months ago, in December 2011 the Ninth Circuit Court of Appeals affirmed a District Court opinion holding that Washington State's \$5,000 cap on contributions in the final 21 days before an election was unconstitutional. The Court ruled that the restriction was not "closely drawn to provide voters with information they need to make informed choices."

Since the Commission's discussion, the State has elected not to appeal the Ninth Circuit's decision to the Supreme Court. At its April 26 meeting, the Public Disclosure Commission voted to add the following paragraph to Interpretation 96-04:

RCW 42.17A.420(1) prohibits a candidate for statewide office from receiving aggregate contributions exceeding \$50,000 within 21 days of a general election and all other candidates and political committees from receiving aggregate contributions exceeding \$5,000 within 21 days of a general election. By law, this prohibition does not apply to contributions made by or accepted from a bona fide political party's state committee. **The prohibition also no longer applies to ballot measure committees, pursuant to the federal court ruling in Family PAC v. McKenna et al., 9th Circuit Court of Appeals Nos. 10-35832 and 10-35893 (Dec. 29, 2011) (Emphasis added.)**

Issue

SMC 2.04.265.B is based on Washington State law, and reads: "It is a violation of this chapter for any person to make or for any candidate or political committee to accept from any one (1) person contributions reportable under this chapter in the aggregate exceeding \$5,000 within the 21 days before a primary, general, or special election in which the candidate or ballot proposition appears on the ballot.

In light of the *Family PAC* decision, I believe that any effort on the part of the SEEC to enforce SMC 2.04.265.B would subject the City to suit for violating a contributor's constitutional rights. I would like the Commission to direct me to post on the Commission's web site, and to communicate to ballot measure committees that organize in the coming months, that the SEEC will not enforce SMC 2.04.265.B against ballot measure committees. I would also like the Commission to recommend that I ask the City Council to amend SMC 2.04.265 to bring Seattle's code into compliance with the *Family PAC* ruling.