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# **The Secret Chamber**

## **The Inner Workings of the U.S. Chamber of Commerce and the Hijacking of an Election**

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### **Executive Summary**

While many people perceive the U.S. Chamber of Commerce as an apolitical and innocuous business support organization, it is anything but. The U.S. Chamber of Commerce, often through its Institute for Legal Reform (ILR), is engaged in a largely covert effort to elect public officials and judges who reflect a strong political agenda of protecting corporations from liability and weakening the civil justice system.

It is generally hard to track in which races the U.S. Chamber/ILR gets involved, how much they spend, and what the outcomes are. Secrecy is a hallmark of the U.S. Chamber/ILR's strategy when getting involved in electoral races. It sometimes goes to great lengths to keep its involvement and funding a secret, hiding behind local front groups.

However, depositions and discovery documents obtained in a pending lawsuit surrounding the 2004 defeat of a pro-consumer candidate for Washington State Attorney General, Deborah Senn, illustrate just how organized, systematic, and aggressive the U.S. Chamber/ILR's operation is.

While the U.S. Chamber/ILR tries to disassociate its name from the negative campaigning conducted by the local groups it uses, it remains actively involved in these elections, from engaging in the initial selection process targeting states and candidates, to pursuing all the trimmings of a full-out political campaign in races in which it becomes involved – voter surveys, media consultants, opposition research, and fundraising.

In 2004, Senn was the subject of one such particularly orchestrated and vicious campaign instigated during the primary by the U.S. Chamber/ILR and conducted through its local front group, the "Voters Education Committee" (VEC). The candidacy of Senn, who had been comfortably ahead in the polls before the primary, was severely damaged by the Chamber's exceptionally nasty and expensive ad campaign against her during the primary. She then lost the general election.

The Chamber takes the position that its activities during state election campaigns constitute voter education and issue advocacy, not campaigning or political advocacy that can be regulated by election laws. However, in the Senn case, the Washington State Public Disclosure Commission determined that the Chamber's interpretation of the law was wrong, that its ads impugned the character of Deborah Senn and thus was "express advocacy" – not "issue advocacy." Final litigation surrounding this case is pending in Washington State.

It is difficult to know in what other elections the U.S. Chamber/ILR plans to involve itself because of its stealth approach. Perhaps as its tactics become more exposed, its actions will be further scrutinized and challenged.

# **The Secret Chamber**

## **The Inner Workings of the U.S. Chamber of Commerce and the Hijacking of an Election**

### **Introduction**

The Center for Justice & Democracy's 2005 report entitled, "Chamber of Horrors – The Hijacking of the 2004 Elections by the U.S. Chamber of Commerce" provided a detailed analysis of the U.S. Chamber's aggressive intrusion into the 2004 election campaigns. The report revealed that the U.S. Chamber, often through its Institute for Legal Reform (ILR), gets involved in races on every level, from state Attorney General to the United States presidential race. The Chamber and ILR pour millions of dollars into efforts to get public officials and judges elected whom they consider aligned with their "pro-business" agenda of protecting corporations from liability and weakening the civil justice system.

The U.S. Chamber and its ILR group use many tactics to achieve their goals, sometimes hiding behind local front groups in electoral races and not revealing their financial contributions. But in the 2004 Attorney General race in Washington State, the U.S. Chamber's behind the scenes tactics were eventually revealed and challenged – although only after contributing to the defeat of candidate Deborah Senn. This led to litigation stemming from that race.<sup>1</sup>

Documents made available through that litigation give us an up close picture of what happened in Washington State. This provides a unique glimpse into the inner workings of the U.S. Chamber's larger nationwide campaign to wipe out candidates that don't suit its purposes, with a growing influence over our democratic process that should concern everyone.

### **The Attack on Washington Attorney General Candidate Deborah Senn**

In early 2004, Deborah Senn, who was Washington State's insurance commissioner from 1993-2001, was planning her campaign for state Attorney General. She had been known as a pro-consumer commissioner, committed to protecting the rights of her state's policyholders. She was looking forward to continuing to look out for the citizens of Washington as their Attorney General. During that same time period, the U.S. Chamber of Commerce's Institute for Legal Reform (ILR) was deciding which elections around the country it wanted to infiltrate that year, putting various states into order of priority.<sup>2</sup>

The ILR gave Washington State "Tier One" priority, the highest ranking of importance for its target locations, with a focus on Deborah Senn's race.<sup>3</sup> Senn had angered some businesses with her tough approach when she was state insurance commissioner.<sup>4</sup> Indeed, some of the ILR members that were involved in prioritizing Washington as a Tier 1 state had employees in that state and some might have been insurance companies that Deborah Senn regulated as insurance commissioner.<sup>5</sup> In an email to a consultant dated September 10, 2004, ILR's Vice President of Political Affairs, Robert Engstrom, wrote, "being this aggressive and going after bullies like her is what makes us a player and is recognized and gets us respect."<sup>6</sup> Before beginning work at the

ILR in 2002, Robert Engstrom worked for House Speaker Newt Gingrich and then for the Republican National Committee in various capacities.<sup>7</sup>

Engstrom said, “Washington was a Tier 1 State, as I recall, because people viewed – people viewed Washington specifically. They wanted to highlight Deborah Senn’s anti-business record.”<sup>8</sup> According to Stan Anderson, Executive Vice President and Chief Legal Officer for the U.S. Chamber, “The State of Washington is an important State, a lot of our members do business there and the Attorney General race is an important race. All of those factors led to a determination that Washington should be rated a Tier 1 race.”<sup>9</sup> After the *Seattle Times* ran a column that stated “[Senn] is already talking about being ‘the people’s attorney general’ and going after the gasoline producers, drug companies and money lenders,”<sup>10</sup> Engstrom wrote an email dated June 30, 2004, stating, “This is exhibit A on why Washington State is a Tier I race.”<sup>11</sup>

Leading up to the September 2004 primary, Deborah Senn was “comfortably ahead of her primary opponent.”<sup>12</sup> Then, about a week and a half before the primary election, ads attacking her appeared on TV throughout Washington State. The ads were identified as paid for by the “Voters Education Committee” (VEC),<sup>13</sup> and nothing else.

The ads went after Senn on her strong suit of protecting consumers, essentially accusing her of mishandling a settlement with Prudential Insurance Co. of America by arranging to have the company cover “expenses the commissioner's office incurs in the process of seeking restitution for consumers who bought company insurance policies based on misrepresentations by its agents” and then covering up the agreement.<sup>14</sup>

According to Senn, the agreement with Prudential was not covered up and was announced in a press release from her office.<sup>15</sup> Senn says the settlement allowed her to hire staff to help 100,000 policyholders complete an extremely complicated process necessary to receive their restitution,<sup>16</sup> and that similar arrangements were being carried out in many other states.<sup>17</sup> In fact, Senn says she was so committed to making sure Washington consumers got their due that she had one new staff member stay permanently to look over the shoulder of Prudential agents as they processed the claims.<sup>18</sup>

The VEC reportedly spent \$1.4 million on the ads attacking Senn.<sup>19</sup> That ad buy was nearly double what Senn and the three other primary candidates spent collectively on broadcast advertising.<sup>20</sup> In fact, the VEC spent \$600,000 to run an ad in the Seattle market alone – about equal to the combined television budgets for Senn and her Democratic primary opponent, Mark Sidran.<sup>21</sup>

In response to the sudden and obviously expensive ad, the Washington State Public Disclosure Commission (PDC), which oversees campaign finance reporting, investigated and requested funding information from the VEC, the group with its name on the ads. The PDC asserted that groups spending that much money on campaign ads that close to the election were required to report it to the PDC within three days or twenty four hours, depending on the type of organization.<sup>22</sup>

The VEC initially refused to reveal its funding sources, claiming its ad was “issue advocacy” and therefore that the disclosure requirements did not apply.<sup>23</sup> The PDC disputed this and found that the ad was a personal attack on Senn and therefore “direct political advocacy” for a candidate.<sup>24</sup> The Executive Director of the PDC stated, “That’s an exhortation to vote against the candidate.”<sup>25</sup> A PDS staff memo stated, “We’re here because Deborah Senn’s character was attacked and as such we believe the ad constitutes express advocacy.”<sup>26</sup> The PDC found that the VEC had violated state disclosure rules by failing to register as a political action committee, failing to report contributions and expenditures, and concealing the amount and identity of its sources and its contribution recipients.<sup>27</sup>

The PDC referred the case to the Washington State Attorney General’s office.<sup>28</sup> Under this pressure, the VEC said it would comply with the PDC requirement to register as a political action committee and disclose the source of its funding.<sup>29</sup> The group revealed it had one single funder for the anti-Senn ads: The U.S. Chamber of Commerce.<sup>30</sup> On September 12, 2004 – two days before the primary election – the VEC filed information with the PDC revealing that on August 27, 2004, the U.S. Chamber made a \$1.5 million contribution to the VEC.<sup>31</sup> The ad was pulled off the air, and never ran with the U.S. Chamber/ILR’s funding revealed.

The VEC sued the state PDC claiming its First Amendment rights had been violated by the PDC’s findings against it and the PDC’s referral to the Attorney General’s office (the “VEC lawsuit”).<sup>32</sup> Deborah Senn intervened in the case.<sup>33</sup> A Superior Court judge ruled in August 2005 that the ads were “express advocacy” and therefore illegal, and that the VEC’s rights were not violated.<sup>34</sup> The VEC appealed and a judgment is currently pending in the Washington State Supreme Court.<sup>35</sup>

Deborah Senn managed to win the primary race, but by a much smaller margin than originally expected. By the time of the general election, the damage had been done. With an additional \$1.3 million spent in more ads attacking Senn during the general election campaign, she lost to her Republican opponent, Robert McKenna.<sup>36</sup> According to news reports, some observers “argued that the ads had lasting damage that hurt Senn against Republican McKenna, who won the general election.”<sup>37</sup> A member of Senn’s campaign staff wrote in a piece published in the *Los Angeles Times*, “She won the primary, barely. But the ads’ relentless negativity had battered our campaign. Our response was limited by time and our finances. We lost in the general election.”<sup>38</sup>

Indeed, after hearing the results of a poll taken during the general election campaign, the ILR’s Robert Engstrom boasted in an email to colleagues, “We got a poll out of the field today in Washington State. Deborah Senn is down 39-36. Her favorable rating is 27 and unfav is 24 ... Senn has been wounded as a result of the primary campaign, her negatives have been driven up and the Chamber remains strong.”<sup>39</sup> In fact, the ILR’s Robert Engstrom said he understood all along that the primary attack ads could have a lingering effect in the general election if they didn’t cause Senn to lose in the primary.<sup>40</sup>

The U.S. Chamber/ILR itself was not directly implicated in any of the legal action surrounding the Senn campaign until October, 2005, when consumer group Public Citizen, retired Justice Robert Utter, and Seattle University School of Law Assistant Professor Joaquin Avila filed a

petition with the PDC requesting an enforcement of state election laws against the U.S. Chamber/ILR and a finding that the U.S. Chamber/ILR violated Washington state law by failing to register with the PDC as an “out-of-state” political committee and not disclosing its funding or contributions to the anti-Senn ads.<sup>41</sup> The petition also claimed that the U.S. Chamber/ILR conspired with the VEC to broadcast anti-Senn media advertisements that the King County Superior Court in Washington State had found to be “express advocacy without complying with state public disclosure laws.”<sup>42</sup> That action is currently on hold, pending the outcome of the VEC lawsuit.

The attack against Deborah Senn was far from an isolated incident. The U.S. Chamber/ILR’s repeated intervention in political campaigns and judicial elections throughout the country has been known for years.<sup>43</sup> But what has become apparent from depositions and discovery in the VEC lawsuit is just how organized, systematic, and aggressive the U.S. Chamber/ILR’s operation is. It is a well-oiled machine that has been unnervingly successful.

### **The U.S. Chamber’s Nationwide Assault on Elections: Background**

At the time of the Senn campaign, an article in the *Wall Street Journal* observed about the U.S. Chamber of Commerce:

“The effort in Washington is only the tip of the iceberg. In about 25 states, the business-advocacy group is targeting candidates for attorney general and supreme court justice who are seen as opposed to legal overhaul or other business interests.”<sup>44</sup>

In the early 1990’s, a principal focus of the “tort reform” movement expanded from getting legislation enacted to include influencing the election process. Initially, the big businesses that were running “tort reform” groups like the American Tort Reform Association (ATRA) focused on the election of pro-industry, anti-consumer state judges. Their tactics included running issue ads, distributing biased evaluations of judges’ records and producing bogus studies.<sup>45</sup>

In 1998, the U.S. Chamber of Commerce created its affiliate, the “Institute for Legal Reform” (ILR), a 501(c)6 nonprofit tax exempt organization for business leagues,<sup>46</sup> to focus on the U.S. Chamber’s “tort reform” agenda. The ILR started its efforts to influence elections with judicial races and the deplorable practice of funding negative attack ads against judges, joining the growing movement by conservative, corporate think tanks and foundations to influence the judiciary and what should be the non-politicized election of judges.<sup>47</sup> By 2003, *Forbes* magazine called the effort a “secret war on judges now being waged by the chamber.”<sup>48</sup>

The vastness of the ILR’s mission and its strategy of influencing political elections is evident from its own statement on the U.S. Chamber’s website:

“Founded by the U.S. Chamber of Commerce in 1998 to address the country’s litigation explosion, ILR is the only national legal reform advocate to approach reform

comprehensively, not only through changing the laws, but also by changing the legal culture and the legislators and judges that create that culture.”<sup>49</sup>

One of the ILR’s stated missions is to “[p]romote the election or selection of pro-legal reform judges and other public officials.”<sup>50</sup> “Legal reform” is another term for so-called “tort reform,” the movement to take away people’s rights to hold negligent corporations accountable in court.

The ILR is incorporated separately from the U.S. Chamber, but it is fully integrated into the fabric of the U.S. Chamber, sharing activities, a website, and headquarters.<sup>51</sup> Membership is not made publicly available.<sup>52</sup> According to the ILR’s Robert Engstrom, there are 100 or more members of the ILR, which is separately funded from the U.S. Chamber.<sup>53</sup>

Over time, the U.S. Chamber/ILR’s interference in elections has expanded way beyond judicial races into elections at just about every level of government, including judicial, legislative (state and federal), and even presidential. It has become a major funnel for moving major industry money into election campaigns,<sup>54</sup> just like it did in Deborah Senn’s campaign.

It is generally hard to track in which races the U.S. Chamber/ILR gets involved, how much they spend, and what the outcomes are. The group sometimes refuses to disclose this information and “partners” with, or hides behind, local front groups. In 2004, ILR spokesman Sean McBride said, “We go into places where we can make a difference... It doesn’t help the purpose of our program to give too much information.”<sup>55</sup>

U.S. Chamber official Stan Anderson acknowledged that the U.S. Chamber’s “legal overhaul efforts” target mostly Democrats.<sup>56</sup> Anderson, who served as Henry Kissinger’s Deputy Assistant Secretary of State during the Nixon Administration,<sup>57</sup> once stated that getting a slate of “tort reform” friendly judges on the bench “is an example of what the business community can do.”<sup>58</sup> Anderson is also a partner at the law firm of McDermott Will & Emery,<sup>59</sup> which has provided legal services to the Republican Party.<sup>60</sup>

But even what is made public is daunting. In the Senn case, the ILR’s Robert Engstrom testified that he believed that the U.S. Chamber has spent about \$100 million on so-called legal reform “within a margin of error.”<sup>61</sup> Political Money Line reports that the U.S. Chamber and its ILR reported combined spending of \$53.38 million for lobbying the legislative and executive branches during 2004 alone.<sup>62</sup> The site reported, “This is the largest twelve-month amount reported spent by any group.”<sup>63</sup>

The U.S. Chamber “reported spending \$20,060,000 in the first six months of 2004 and \$8,780,000 in the last six months of 2004. It paid forty-five lobbyists in the last six months of 2004 to lobby on thirty-two issue areas.”<sup>64</sup> The ILR reported spending \$10,000,000 in the first half of 2004 and spending \$14,540,000 in the last six months of that year.<sup>65</sup> It had five lobbyists on the payroll for the last half of 2004 and worked on “tort reform” issues including class action legislation and asbestos injury legislation.<sup>66</sup>

Commenting in 2003 on the U.S. Chamber’s funding of various supreme court races around the country, U.S. Chamber President and CEO Tom Donohue reportedly said,

“we led, we succeeded,” and “[n]ow the money is rolling in from drug companies, heavy manufacturers, large retailers, insurance companies, even banks.”<sup>67</sup> Comparing the \$1.5 million the U.S. Chamber/ILR contributed to the VEC to attack Senn to what it was spending on other Attorney General and state supreme court races at the time, the U.S. Chamber’s Stan Anderson stated, “it is not the most nor is it the least,” declining to be more specific.<sup>68</sup>

In the November 2004 edition of its “Legal Reform News,” the ILR boasted: “Pro-legal reform candidates elected in 15 out of 16 states.”<sup>69</sup> The blurb described how the U.S. Chamber/ILR had recently worked closely with local chambers and other supporters on legal reform. The issue detailed key races and ballot initiatives that ILR supported.<sup>70</sup>

Excerpts from a December 6, 2004 letter from the U.S. Chamber’s President and CEO Tom Donohue to the U.S. Chamber’s Board of Directors about the U.S. Chamber’s success in the 2004 elections brings home the reach and impact of the ILR’s activities that year. Under a subheading entitled, “What the Elections Mean for Business,” Donohue wrote in that letter:

“During the Chamber board meeting on November 10, I reported that the elections of 2004 represented a landmark achievement for the Chamber’s political program and the voter education efforts of our Institute for Legal Reform (ILR).

To briefly recap, the Chamber put 215 people on the ground in 31 states; sent 3.7 million pieces of mail and more than 30 million e-mails; made 5.6 million phone calls; and enlisted hundreds of associations and companies in our web-based ‘VoteForBusiness.com’ program to educate and mobilize voters.

Combining these activities with ILR’s voter education efforts in 16 state Supreme Court and Attorney General contests, as well as our targeted campaign to make so-called ‘tort reform’ a factor in the presidential race, the Chamber invested up to \$30 million in the November 2<sup>nd</sup> elections.

What was the return on this investment?

In House and Senate races, the Chamber endorsed 269 candidates and 249 of them won. But the real story is what happened in the select number of close, very tough races that we targeted. In the House, we targeted 28 races and were successful in 20. We targeted nine Senate contests and were successful in seven – including John Thune’s win over Tom Daschle.”<sup>71</sup>

## **The U.S. Chamber/ILR’s Apparent Method of Operation**

### **Structure**

According to deposition testimony in the VEC lawsuit from the ILR’s Robert Engstrom, the ILR puts together “aggressive voter education programs in States, where, you know, business wanted

to assert its right to engage in the public debate.”<sup>72</sup> He described these programs: “mainly it is educating the citizens of a particular State about problems with their legal system or issues that are important to business.”<sup>73</sup>

Engstrom testified that he would work with field teams of consultants who monitor activity in states throughout the country. There would be conference calls with the field consultants once a week to discuss the “issue environment” and the “current state of affairs” in the states. The consultants would provide updates and inform the ILR, for example, if a bill was moving in the state legislature. At the time Engstrom joined the ILR in 2002, field team consultants were assigned to West Virginia, Texas, Ohio, Illinois, Florida, Alabama, Louisiana, and Mississippi.<sup>74</sup>

Engstrom also testified that there was a “Task Force” in the ILR made up of a group of its members. The Task Force would have periodic conference calls with ILR and U.S. Chamber officials to give advice about where and how “voter education” programs should be carried out; about 10-20 people would be on the calls. Engstrom would run the calls, ILR President Lisa Rickard would generally attend, and sometimes U.S. Chamber official Stan Anderson would participate. ILR Task Force members were required to contribute to the ILR. The highest contribution was one million dollars.<sup>75</sup>

According to Engstrom, the Task Force would prioritize potential election races for the U.S. Chamber/ILR to target using a tier system. The races would be categorized into Tier 1, 2, and 3 levels of importance.<sup>76</sup> Tier 1 was a priority, Tier 2 was a priority needing more information, and Tier 3 was not a priority.<sup>77</sup> Washington State was determined to be of Tier 1 importance in 2004 in order to focus on Deborah Senn’s record.<sup>78</sup>

Engstrom testified about several steps the U.S. Chamber/ILR would take before deciding whether to take action in particular states. It would conduct a thorough legal analysis of the state’s laws, an exhaustive process requiring several meetings. It would determine relevant issues in the state and conduct research regarding a candidate’s position on business issues and legal reform. The U.S. Chamber/ILR would also do polling or surveys to determine the public’s views on specific issues. It would then identify like-minded groups that wanted to engage in “voter education” and speak out on specific issues, and “partner” with and donate money to them.<sup>79</sup>

Deposition testimony from U.S. Chamber/ILR consultant Ann McCord describing events concerning the Senn campaign reveals that the U.S. Chamber/ILR officials would also confer with their lawyers to discuss the relevant state law regarding “issue advocacy.”<sup>80</sup> McCord testified that this included learning what they could and could not say in their ads in order to have the ads considered “issue advocacy” and thereby avoid disclosing their identity and funding.<sup>81</sup> She said the issue advocacy campaigns “were designed to highlight records as well as to – you know, speak to pieces of legislation pending in a particular state to educate the public on the legal reform environment in a state.”<sup>82</sup> The records of public officials would be highlighted through radio, television, and direct mail.<sup>83</sup>

## Election Ads and Advocacy

As the Senn case illustrates, the Chamber takes the position that its activities during state election campaigns constitute voter education and issue advocacy, not campaigning or political advocacy that can be regulated by election laws<sup>84</sup> (even though the U.S. Chamber's Stan Anderson testified, "I'm not going to say that I don't believe that our voter education activity might not impact how a particular voter votes one way or the other."<sup>85</sup>).

An internal U.S. Chamber document written to prepare U.S. Chamber President/CEO Tom Donohue for a *Wall Street Journal* interview reveals how the Chamber tries to perpetuate this view with the media and the public. The ILR's Robert Engstrom testified that the "answers" in this document were accurate.<sup>86</sup> Below are excerpts:

"Q: What are your voter education campaigns in state Supreme Court and/or Attorney General elections all about?

A: Informing citizens about the records of common sense judges who seek to limit the spread of liability is essential to ending the lawsuit happy culture that is a \$233 billion a year drag on our economy.[<sup>87</sup>]We need more judges who are fair to both plaintiffs and defendants."

"Q: What are voter education campaigns?

A: Our voter education campaigns in Supreme Court and Attorneys General races are conducted by the U.S. Chamber Institute for Legal Reform. ILR does not endorse candidates, and we don't give campaign contributions to candidate committees. We don't advocate the election or defeat of specific candidates. Our voter education campaigns are designed to educate voters on where the candidates stand on vital issues.

Our voter education efforts are governed by and comply with state election and campaign finance laws."<sup>88</sup>

In the Senn race, U.S. Chamber/ILR consultant Ann McCord described a conference call she had prior to the primary election involving ILR's president, Lisa Rickard; the ILR's Robert Engstrom; the VEC's Director and managing agent, Bruce Boram; the VEC's counsel John White; and the U.S. Chamber's counsel Steve Bokar.<sup>89</sup> They discussed how they would have to phrase the anti-Senn ads to be considered "issue advocacy." McCord said, "My understanding was there couldn't be any express advocacy used and – and the magic words could not be used."<sup>90</sup> She described the "magic words" as "Vote For," "Vote Against," and "Support."<sup>91</sup>

However, in the Senn case, the Washington state Public Disclosure Commission (PDC) determined that the Chamber's interpretation of the law was wrong. Despite the fact that the Chamber claimed to be doing issue education, the PDC found that the VEC's ad violated a state election law requiring registration with the PDC if an ad supports or opposes a candidate.<sup>92</sup> A

PDC staff memo stated that the VEC ad impugned the character of Deborah Senn and thus was “express advocacy” – not “issue advocacy.”<sup>93</sup> In fact, despite the fact that the ILR’s primary focus is the “issue” of “legal reform,” the U.S. Chamber/ILR’s polling showed that “legal reform” had “NO place in this debate.”<sup>94</sup>

In addition to the PDC ruling, the notion that the ILR was interested only in educating voters on issues is belied by the degree of correspondence within the ILR about the election results, evidencing its significant investment in the outcome of this election. Shortly after the primary vote, as Senn was winning, Engstrom wrote to his superiors, “I think at this point, with 54% of the vote reporting, we are down 54-46%. I think it will tighten up a bit, but it is unlikely that we can pull it out.”<sup>95</sup> In connection with the general election, Engstrom wrote his bosses, “A poll was released in WA today that has McKenna up 46-42. Senn is wounded.”<sup>96</sup>

Leading up to the general election, after the heated public controversy over the U.S. Chamber/ILR’s involvement in the anti-Senn primary ad, Robert Engstrom wrote to the ILR’s Task Force:

“This morning, we received a poll from Washington State. Deborah Senn, the subject of our issue advocacy campaign in the primary, now trails the Republican Rob McKenna 39%-36%. This is consistent with other public polls taken over the last week. Senn’s favorable rating is now 27 Fav, 24 Unfav, a significant change from her 35 Fav, 12 Unfav before our campaign began.

The U.S. Chamber retains a strong image, 55% FAV to 16% UNFAV. There is still certainly a long way to go in this effort, but I thought this information would be helpful.

As mentioned on the last call, please keep this information very close and call with any questions, thank you.”<sup>97</sup>

## **Secrecy and Fronts**

Secrecy is a hallmark of the U.S. Chamber/ILR’s strategy when getting involved in electoral races. It sometimes goes to great lengths to keep its involvement and funding a secret. This position was clearly stated by the U.S. Chamber’s Stan Anderson in the VEC lawsuit: “[I]t is a longstanding policy of the chamber that we don’t discuss how much money was raised, where the money was spent, what the size of our budgets are, and I’m not going to discuss those issues today.”<sup>98</sup> The ILR’s Robert Engstrom testified in that suit that he believed that in recent campaigns that the ILR got involved in where a candidate ran for office, the ILR did not put its name on the ads.<sup>99</sup>

As shown earlier, the U.S. Chamber/ILR, in its “voter education” campaigns, will fund attack ads but hide behind local groups that will put their name on ads and conduct other campaign activities in their names. The U.S. Chamber/ILR funnels funds into these local groups, like the Voter Education Committee (VEC) in the Senn case. Deborah Senn’s attorney, Mike Withey, called the VEC a “‘sleeper cell’ used by the chamber of commerce to manipulate the election.”<sup>100</sup>

It appears that the VEC was a group that had lain dormant and was actually brought to life for the purpose of attacking Deborah Senn. VEC custodian of records Valerie Huntsberry testified that the VEC was not in existence until August 26 or 27, 2004, when she filed the start-up papers for the group with the IRS, changing the name of a committee that had already existed with a tax I.D. number and had sat dormant.<sup>101</sup>

During the Deborah Senn campaign, it was Ann McCord, the U.S. Chamber/ILR consultant, who put the ILR in touch with the VEC's Bruce Boram, in Washington State.<sup>102</sup> McCord had formerly worked with the Republican National Committee (RNC) as well as the National Republican Congressional Committee, and, according to her testimony, could have worked on over 20 "issue advocacy campaigns" with the U.S. Chamber since 2002.<sup>103</sup>

Bruce Boram had worked for the Washington State Republican Party and on Republican campaigns.<sup>104</sup> He and Valerie Huntsberry, the VEC's other principal, were executives of United for Washington, which the *Spokesman Review* called "a pro-business organization" and "one of the state's biggest lobbying groups."<sup>105</sup> The *Spokesman Review* stated, "Boram has also been involved in setting up dozens of independent expenditure campaign committees that funnel money into state races from different business groups. Those groups usually have innocuous-sounding names like 'Concerned Citizens for Good Government.'"<sup>106</sup> The VEC's lawyer, John White, was also the attorney for the Washington state GOP.<sup>107</sup> Boram stated, "[W]hen you have anybody with a record of heavy-handed regulation like was evident in Deborah's record, business groups as a rule are going to not be supportive of that kind of activity."<sup>108</sup>

In the Senn campaign, the U.S. Chamber/ILR made it clear that it did not want to be identified on any ads.<sup>109</sup> In fact, the anti-Senn effort was the first time since 2000 that the U.S. Chamber/ILR had been publicly outed as being behind a local group in state races.<sup>110</sup> The U.S. Chamber's Stan Anderson testified that he believed that other than U.S. Chamber/ILR employees and members, vendors hired for the anti-Senn project, and the VEC, no one else was notified that the U.S. Chamber/ILR funded the ads.<sup>111</sup>

Below are additional proposed questions and answers in the internal U.S. Chamber document referred to above, prepared for U.S. Chamber President and CEO Tom Donohue in anticipation of a *Wall St. Journal* interview. They reveal a strong emphasis on secrecy.

“Q: How much money will the Chamber spend on Supreme Court races this year?

A: We do not discuss how much we spend on our voter education activity.

Q: How much money has the Chamber spent on Supreme Court races since 2000?

A: We do not discuss how much we spend on our voter education activity.

Q: Where is the Chamber conducting voter education programs this year?...

A: ... We typically don't offer a lot of details on what races we are involved in because the well-funded trial bar doesn't hesitate to file retaliatory restraining orders or civil lawsuits against the chamber or its member companies.

Q: Your voter education efforts are often in collaboration with other national or in-state groups such as the Law Enforcement Alliance or the Voters Education Committee, why?

A: I'm not going to discuss specifically which groups we do or don't work with but our voter education efforts in the states are done in the name of the U.S. Chamber or in partnership with local business groups or non-profit organizations in a state (note: ILR has never acknowledged the names of any third party partner organizations.)<sup>112</sup>

In the Senn case, even the groups and vendors working with the U.S. Chamber/ILR focused on secrecy. In correspondence between the VEC's Bruce Boram and Ken Hoffman, who created a website about Senn, Hoffman wrote, "If I host with godaddy.com instead of my server and we do a private registration, the site [sic] nearly untraceable."<sup>113</sup> Boram replied, "Lets go with godaddy.com."<sup>114</sup> An email from ad producer Bob Doyle to the VEC's Bruce Boram and U.S. Chamber/ILR consultant Ann McCord said, "I just got a call from a reporter with the Seattle Times who said she understood my agency did the ads for VEC ... don't know how she found that out... trying to find out from my buyer right now. I, obviously disengaged, said I had no comment and referred the reporter to VEC."<sup>115</sup>

Often the U.S. Chamber/ILR gets away with hiding its involvement. But sometimes, like in Deborah Senn's and a 2000 Ohio judicial race, it doesn't. In the Ohio case, attack ads against sitting Supreme Court Justice Alice Resnick backed by the U.S. and local Chambers resulted in the Ohio Elections Commission declaring the ads to be false, finding that illegal corporate money had been used, and finding a failure to register or disclose funding sources as required.<sup>116</sup> Resnick won the election despite the ads. We are yet to see the final outcome of the Deborah Senn matter.

### **Steering the Attacks from Behind the Scenes**

Despite the fact that the U.S. Chamber/ILR deliberately disassociates its name from the negative campaigning conducted by the local groups it uses, it remains actively involved and pursues all the trimmings of a full-out political campaign – voter surveys, media consultants, opposition research, and fundraising. In the Senn case, the U.S. Chamber/ILR played an active role in the planning, drafting, reviewing, researching and implementation of the anti-Senn ads and the decision not to disclose U.S. Chamber/ILR's participation or register with the PDC.<sup>117</sup>

The ILR – not the VEC – directly paid outside groups to conduct voter surveys, do background research on Senn, and track the ads that were run.<sup>118</sup> The ILR paid for three separate voter surveys, paying as much as \$75,000 for them.<sup>119</sup> One reason for one of those surveys was to gauge the effect of the media campaign against Senn.<sup>120</sup> The U.S. Chamber/ILR was also kept apprised of the VEC's fundraising efforts.<sup>121</sup> The U.S. Chamber/ILR's counsel, as well as

outside counsel and counsel to the VEC, all reviewed the ads for legality, concluding that the law did not require the U.S. Chamber/ILR to identify itself on the ads.<sup>122</sup> The U.S. Chamber/ILR was the only source of funds for the primary anti-Senn ads aired in September 2004.<sup>123</sup>

The ILR was directly kept apprised of polling results. Public Opinion Strategies (POS), the group the U.S. Chamber hired to do the polling on Senn, sent an email to the ILR before the primary election saying, “It looks like we have helped create a situation where the race will be very close.”<sup>124</sup> POS also sent its memo summarizing the pre-general election poll results directly to the ILR.<sup>125</sup> It included the finding that “[W]hile positive messages about McKenna help move voters, as we saw in our previous Democratic primary work, the knock-out really comes in eroding the foundation of Senn’s record.”<sup>126</sup>

A series of emails shows that the ILR was also kept apprised of the VEC’s efforts to solicit funding for ad buys and participated in ad strategy. U.S. Chamber/ILR consultant Ann McCord wrote to ad producer Bob Doyle, ILR official Robert Engstrom, and VEC’s Bruce Boram, “I agree with moving to Spokane broadcast. Bruce, any chance your donors might come up with the \$15k.”<sup>127</sup> Boram responded, “I just got off the phone w/Premera [insurance company]. I am 90% sure I will have \$15,000 from them soon. Whats my deadline.”<sup>128</sup> The \$15,000 never came through.<sup>129</sup>

In another note from Bob Doyle to Boram, McCord, and Engstrom dated September 7, 2004, Doyle wrote, “Today must be decision-making day about adding anything to finish this week’s Seattle cable buy. \$63,924 is needed to fully fund, but we can spend anything you can muster.”<sup>130</sup> Boram replied, “I still have some calls out and will see some potential donors today so I will let you know. We have got some attention in the press so this may be too hot. I have received a lot [sic] moral support and thanks from the business community but so far that is all.”<sup>131</sup>

In contrast to the U.S. Chamber/ILR’s active behind the scenes role in the ad campaign, the VEC – the group with its name on the attack ads – was kept out of the loop about various important matters. Bruce Boram was not told such basic information as where the U.S. Chamber/ILR got funding for the ad project; the name of the organization that did the testing, polling, or research on the ad copy; the costs of and who paid for polling or testing research; and why the U.S. Chamber and not the VEC paid for the research.<sup>132</sup>

### **Alienating Local Chambers of Commerce**

The public and the PDC were not the only ones kept in the dark about the ILR/U.S. Chamber’s attack on Deborah Senn. When the ILR’s funding of the VEC’s attack ad became public, local chambers of commerce and business groups were outraged, claiming they had not been informed or consulted with about the ad. The groups protested that the secretly funded ads presented serious credibility problems for them and diverted the public’s attention from the records of the candidates.<sup>133</sup> The VEC’s Bruce Boram said he was told not to contact any of the local chambers about his work.<sup>134</sup>

Renee Sinclair, in charge of the U.S. Chamber's Northwestern Regional Office in Seattle, wrote an email to Robert Engstrom on September 15, 2004, including the following:

“What about all the smaller chambers we offended? And the 250 or so contacts the Seattle Chamber has gotten on this issue...and the more than 180 calls I've taken on it. Do we have a plan for outreach to our other chambers and the media (which, when I left Seattle at 6:00 am, was still denigrating our “deplorable” and “illegal” campaign activities). It is not my intention to be difficult about this, I just want you to understand the gravity of the situation.”<sup>135</sup>

In an email from ILR official Robert Engstrom to other U.S. Chamber staff, he writes about Renee Sinclair, “She was a bit frustrated that she didn't know about the voter education plan and I began to explain it to her and how our program works and that we normally don't disclose our activity.”<sup>136</sup>

Steve Leahy, president and CEO of the Greater Seattle Chamber of Commerce, reportedly said that state business groups wanted to object to the “likely counterproductive result” of the Chamber's anti-Senn campaign and the “bone-headed practices” of trying to hide its funding sources.”<sup>137</sup> Leahy wrote a note to his members, including the following:

“This is a follow-up to my message of last week regarding the anti-Deborah Senn TV ads that were funded by the Institute for Legal Reform, a political affiliate of the US Chamber of Commerce. As I explained to you, the Greater Seattle Chamber of Commerce was not involved with those ads and we neither engage in nor approve of negative campaigns or covert funding tactics that avoid our state's Public Disclosure Commission requirements.... Chamber leaders around the state and the Association of Washington Business decided that our communication with the US Chamber of Commerce would have more potency if we crafted a joint letter to Thomas Donahue, President & CEO of the US Chamber in Washington, DC, expressing our strong disdain for this type of political activity, the circumvention of state PDC requirements, and the failure to communicate with local chambers.”<sup>138</sup>

The joint letter referred to in Leahy's note was, indeed, written to Mr. Donohue, signed by The Greater Seattle Chamber, The Association of Washington Business, The Spokane Regional Chamber, The Kelso Longview Chamber, The Bellevue Chamber, and The Tacoma-Pierce County Chamber. It read as follows:

“Dear Tom:

As chambers of commerce in Washington, we work collaboratively to strengthen our state's economy and to represent business interests at the local, regional and state levels. We have also worked successfully with the U.S. Chamber of Commerce over the years on national business priorities such as trade policy and transportation funding. Continuing our good working relationship is jeopardized by the recent revelations that the U.S. Chamber's Institute for Legal Reform dumped \$1.5 million into the “Anti-Deborah Senn Ad Campaign” without our prior knowledge and, more

importantly, without any attempt to consult us about the wisdom of such an effort. In the final analysis, disclosure of the funding source for this ad campaign, only after legal action was threatened, became the singular focus of our print and electronic media, completely diverting the public's attention that would otherwise have been focused on the different attributes and records of the two Democratic candidates for Washington state Attorney General.

The events of last weekend, when disclosure of the ad funding source was made public, presented serious credibility problems for those of us who have tried to be good partners with the U.S. Chamber of Commerce and are working very hard to brand the chamber name as a positive force for change in our communities, state and region. We believe business has an important and legitimate role to play in the formulation of public policy. It should be done in a forthright, public and transparent manner that enhances rather than undermines the legitimacy of our democratic process.

We have developed some solid grassroots, public policy and political action programs, which are having a positive impact in a traditionally very independent and populist state where citizens and voters measure us closely by what we say and do.

Washingtonians don't like surprises or what they perceive as outside interference. Unfortunately that is what happened with this ill-advised ad campaign.

Therefore, we want to register our strong dissatisfaction with the campaign itself as well as the complete lack of consultation and communications with us on behalf of the U.S. Chamber of Commerce. We insist that you include us in the decision-making process when it comes to state and local issues just as we work with you on issues at the federal level which are vital to our state, region, and national competitiveness and survival.

Through our signatures on this letter, you will see it as an opportunity to strengthen our relationship and realize that a good partnership requires recognition that we have vital roles in the effort to strengthen our chamber federation.

Finally, we request a meeting with you to discuss ways in which we can develop a more viable partnership in the future for the benefit of the business community we serve.

Thank you and we look forward to your response and plan to remedy this serious and troubling situation.<sup>»139</sup>

## WHAT'S NEXT?

The U.S. Chamber and its Institute for Legal Reform continue to stay active in influencing elections, attacking trial lawyers, and fighting for so-called “tort reform.” As of early June 2006, the U.S. Chamber’s website listed its “accomplishments” so far in 2006, boasting that “with strong chamber backing, Rep. Henry Cuellar (D-TX) won a primary race against Ciro Rodrigues in Texas’ 28<sup>th</sup> District. Cuellar was one of the chamber’s key Democratic allies during his first term in Congress...”<sup>140</sup>

It is difficult to know what other political activities the U.S. Chamber/ILR is involved in and planning because of its stealth approach. Perhaps as its tactics become more exposed, its actions will be further scrutinized and challenged. What is clear is that while many people perceive the U.S. Chamber of Commerce as an apolitical and innocuous business support organization, it is anything but. It is a powerful, well-funded, and aggressive force dipping its hand into just about every level of electoral politics – indeed, into the very foundations of our democratic process.

## NOTES

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<sup>1</sup> *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, Complaint for Declaratory Judgment and for Injunctive Relief (Wash. Super. Ct., Sept. 10, 2004).

<sup>2</sup> Deposition of Robert Engstrom at 86 (*Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, (Wash. Super. Ct., Jan. 11, 2005)).

<sup>3</sup> Deposition of Stan Anderson at 54-55 (*Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, (Wash. Super. Ct., Jan. 11, 2005)); Engstrom Dep. at 81.

<sup>4</sup> John R. Wilke, “Chamber of Commerce Targets State Races,” *The Wall Street Journal*, September 16, 2004.

<sup>5</sup> Engstrom Dep. at 82-83.

<sup>6</sup> Email from Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, to Scott Reed, Chairman of Chesapeake Enterprises (Sept. 10, 2004, 8:06 EST).

<sup>7</sup> Engstrom Dep. at 14.

<sup>8</sup> Engstrom Dep. at 81.

<sup>9</sup> Deposition of Stan Anderson at 55 (*Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, (Wash. Super. Ct. Civ. R. 1. Jan. 11, 2005)).

<sup>10</sup> Bruce Ramsey, “Senn for Attorney General?,” *The Seattle Times*, June 30, 2004 (included in email from Robert Engstrom (ILR) to Lisa Rickard (President, ILR) and Judy Shaffer (Director of Operations, ILR) (June 30, 2004, 14:41 EST)).

<sup>11</sup> Email from Robert Engstrom (ILR) to Lisa Rickard (President, ILR) and Judy Shaffer (Director of Operations, ILR) (June 30, 2004, 14:41 EST).

<sup>12</sup> Michael Cuddy, “The U.S. Chamber of Stealth,” *Los Angeles Times*, April 22, 2006.

<sup>13</sup> Draft of ad copy entitled, “Better – B” – 30 second TV” signed by the VEC’s Bruce Boram; Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005, at 3.

<sup>14</sup> Bert Caldwell, “West Challenges Terms of Insurance Settlement,” *Spokesman Review*, February 21, 1997; The ad said the following: “Who is Deborah Senn looking out for? As Insurance Commissioner, Senn suspended most of a \$700,000 fine against an insurance company ... in exchange for the company’s agreement to pay for four new staff members in Senn’s own office. Senn even tried to cover up the deal from State Legislators; Draft of ad copy entitled, “Better – B” – 30 second TV” signed by the VEC’s Bruce Boram; Chris McGann, “Anti-Senn ad group fails to disclose,” *Seattle Post-Intelligencer*, September 10 2004.

<sup>15</sup> Jim Camden, “Ad political, group must file financial disclosures,” *Spokesman Review*, September 8, 2004; News Release from office of Deborah Senn, Washington Insurance Commissioner, entitled, “Washington State Reaches Settlement With Prudential; 100,000 Policyholders Receiving Options by Mail,” (November 7, 1996).

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- <sup>16</sup> Telephone conversation between Deborah Senn and Laurie Beacham, Center for Justice & Democracy, May 23, 2006. Notes on file with the Center for Justice & Democracy.
- <sup>17</sup> Telephone conversation between Deborah Senn and Laurie Beacham and Joanne Doroshov, Center for Justice & Democracy, July 6, 2006. Notes on file with the Center for Justice & Democracy.
- <sup>18</sup> Telephone conversation between Deborah Senn and Laurie Beacham, Center for Justice & Democracy, May 23, 2006. Notes on file with the Center for Justice & Democracy.
- <sup>19</sup> Boram Dep. at 103-104; McGann, *supra* note 14.
- <sup>20</sup> Detailed expenditures made by candidates and political committees, filed with the Washington state Public Disclosure Commission, *available at* <http://www.pdc.wa.gov/servlet/ExpenseServlet>.
- <sup>21</sup> Beth Kaiman, "Group running anti-Senn ad told to register," *Seattle Times*, September 8, 2004.
- <sup>22</sup> Rebecca Cook, "State to Investigate '527' Group's Ads Attacking Candidate," *The Associated Press*, Sept. 3, 2004.
- <sup>23</sup> Seattle Times staff and news reports (Beth Kaiman and The Associated Press), "Group running Senn attack ads agrees to register," *The Seattle Times*, September 10, 2004.
- <sup>24</sup> Kaiman, *supra* note 21; Kaiman, *supra* note 23; McGann, *supra* note 14.
- <sup>25</sup> Michelle Esteban, "Anti-Senn Ads Break the Rules," *komotv.com*, *available at* <http://www.komotv.com/news/printstory.asp?id=32973>.
- <sup>26</sup> Memorandum from Susan Harris, Assistant Director, State of Washington Public Disclosure Commission, to Members, Public Disclosure Commission, Re: Voters Education Committee, Bruce Boram, Valerie Huntsberry and other Unknown Agents – Apparent Failure to Register and Report as a Political Committee, (September 9, 2004); Michelle Esteban, "Anti-Senn Ads Break the Rules," *komotv.com*, *available at* <http://www.komotv.com/news/printstory.asp?id=32973>.
- <sup>27</sup> *In Re Compliance with RCW 42.17, Voters Educ. Comm., Bruce Boram, Valerie Huntsberry and other Unknown Agents, Public Disclosure Commission*, Case No. 05-027, Order of Referral to the Washington State Attorney General's Office; McGann, *supra* note 14.
- <sup>28</sup> *Washington State Pub. Disclosure Comm'n v. Voters Educ. Comm.*, No. 04-2-01845-2, Complaint for Civil Penalties and for Injunctive Relief for Violations of Chapter 42.17 RCW (Wash. Super. Ct., Sept. 10, 2004); Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005, at 3-4.
- <sup>29</sup> Kaiman, *supra* note 23.
- <sup>30</sup> Jake Ellison, "Source of anti-Senn attack ads revealed," *Seattle Post-Intelligencer*, Sept. 13, 2004.
- <sup>31</sup> C3 Cash Receipts/Monetary Contributions form filed with the Washington state Public Disclosure Commission on September 12, 2004; Chris McGann, "U.S. Chamber tells why it paid for anti-Senn ads," *Seattle Post-Intelligencer*, September 14, 2004.
- <sup>32</sup> *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, No. 04-2-23551-1, (Wash. Super. Ct., Sept. 10, 2004).
- <sup>33</sup> David Postman, "Chamber told to name donors to anti-Senn ads," *Seattle Times*, Aug. 16, 2005.
- <sup>34</sup> Verbatim Report of Proceedings, *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, No. 04-2-23551-1, (Wash. Super. Ct., Aug. 12, 2005).
- <sup>35</sup> Notice of Appeal to Supreme Court, *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, No. 04-2-23551-1, (Wash. Super. Ct., September 26, 2005).
- <sup>36</sup> "Senn foes begin ad blitz," *Associated Press*, October 22, 2004 ("The Republican State Leadership Committee, based in Washington, D.C., has bought \$1.3 million in ad time to target Senn. Contributors to the group include the American Tort Reform Association, the National Rifle Association, drug and tobacco interests, ExxonMobil and the U.S. Chamber of Commerce.")
- <sup>37</sup> Brad Shannon, "Ads that hit Senn prompt legal step; U.S. Chamber of Commerce targeted," *The Olympian*, October 12, 2005.
- <sup>38</sup> Cuddy, *supra* note 12.
- <sup>39</sup> Email from Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, to J.P. Moery and Allie Williams, U.S. Chamber of Commerce (September 30, 2004).
- <sup>40</sup> Engstrom Dep. at 347.
- <sup>41</sup> Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners (October 11, 2005).
- <sup>42</sup> *Id.*
- <sup>43</sup> *See*, Center for Justice & Democracy, *Chamber of Horrors*, 2005

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- <sup>44</sup> Wilke, *supra* note 4.
- <sup>45</sup> See, Center for Justice & Democracy, *Chamber of Horrors*, 2005.
- <sup>46</sup> <http://www.instituteforlegalreform.org/about/index.html>
- <sup>47</sup> See, Center for Justice & Democracy, *Chamber of Horrors*, 2005
- <sup>48</sup> Robert Lenzer & Matthew Miller, “Buying Justice,” *Forbes*, July 21, 2003, available at [http://www.forbes.com/free\\_forbes/2003/0721/064.html](http://www.forbes.com/free_forbes/2003/0721/064.html).
- <sup>49</sup> <http://www.instituteforlegalreform.com/about/>
- <sup>50</sup> <http://www.instituteforlegalreform.com/about/index.php?p=mission>
- <sup>51</sup> <http://www.corporatepolicy.org/issues/ChamberILR.htm>
- <sup>52</sup> <http://www.uschamber.com/about/faqs/default#10>
- <sup>53</sup> Engstrom Dep. at 363-364.
- <sup>54</sup> See, Center for Justice & Democracy, *Chamber of Horrors*, 2005.
- <sup>55</sup> Emily Heller, “Judicial Races Get Meaner,” *The National Law Journal*, October 25, 2004.
- <sup>56</sup> Wilke, *supra* note 4.
- <sup>57</sup> <http://www.uschamber.com/press/releases/2003/february/03-19.htm>
- <sup>58</sup> Emily Heller, “Chamber Scores Big in Judicial Elections,” *The National Law Journal*, November 8, 2004.
- <sup>59</sup> <http://www.mwe.com>
- <sup>60</sup> <http://www.crp.org/parties/expenddetail.asp?txtName=MCDERMOTT+WILL+%26+EMERY&Cmte=RPC&cycle=2006> (showing the payments to the law firm from the Republican Party for legal services rendered).
- <sup>61</sup> Engstrom Dep. at 70-73.
- <sup>62</sup> [http://www.sourcewatch.org/index.php?title=U.S.\\_Chamber\\_of\\_Commerce](http://www.sourcewatch.org/index.php?title=U.S._Chamber_of_Commerce) (citing <http://www.politicalmoneyline.com>).
- <sup>63</sup> Id.
- <sup>64</sup> Id. (citing [http://sopr.senate.gov/cgi-win/opr\\_gifviewer.exe?/2005/01/000/031/000031109\138](http://sopr.senate.gov/cgi-win/opr_gifviewer.exe?/2005/01/000/031/000031109\138)).
- <sup>65</sup> Id. (citing [http://sopr.senate.gov/cgi-win/opr\\_gifviewer.exe?/2005/01/000/031/000031095\13](http://sopr.senate.gov/cgi-win/opr_gifviewer.exe?/2005/01/000/031/000031095\13)).
- <sup>66</sup> Id.
- <sup>67</sup> Robert Lenzer & Matthew Miller, “Buying Justice,” *Forbes*, July 21, 2003, available at [http://www.forbes.com/free\\_forbes/2003/0721/064.html](http://www.forbes.com/free_forbes/2003/0721/064.html).
- <sup>68</sup> McGann, *supra* note 31.
- <sup>69</sup> “Legal Reform News, An Exclusive Service of the U.S. Chamber Institute for Legal Reform,” November 4, 2004 (included in Email from U.S. Chamber Institute for Legal Reform to Lisa Rickard, President, U.S. Chamber Institute for Legal Reform).
- <sup>70</sup> Id.
- <sup>71</sup> Letter from U.S. Chamber President and CEO Tom Donohue to U.S. Chamber Board of Directors, *President’s Update - Elections 2004*, December 6, 2004, on file with the Center for Justice & Democracy, originally cited at <http://www.smartbrief.com/hosted/c100/c100-president-letter-pdf>. See, also, U.S. Chamber of Commerce, *Chamber Highlights Successful Pro-Business Election Effort, Business Drive to Get-out-the-Vote behind Election Victories*, November 3, 2004, available at <http://www.uschamber.com/press/releases/2004/november/04-142.htm>.
- <sup>72</sup> Engstrom Dep. at 16.
- <sup>73</sup> Engstrom Dep. at 24.
- <sup>74</sup> Engstrom Dep. at 19-24.
- <sup>75</sup> Engstrom Dep. at 79-80, 82-84, 98, 113-114.
- <sup>76</sup> Anderson Dep. at 54-55; Engstrom Dep. at 76-78.
- <sup>77</sup> Engstrom Dep. at 78.
- <sup>78</sup> Engstrom Dep. at 81; Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005 at 9.
- <sup>79</sup> Engstrom Dep. at 137-140; Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005 at 10.
- <sup>80</sup> Deposition of Ann McCord at 56-57 (*Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, (Wash. Super. Ct., Jan. 11, 2005)).
- <sup>81</sup> McCord Dep. at 55-63.
- <sup>82</sup> McCord Dep. at 35-36.
- <sup>83</sup> McCord Dep. at 37.
- <sup>84</sup> See, e.g. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- <sup>85</sup> Anderson Dep. at 78.

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<sup>86</sup> Engstrom Dep. at 51.

<sup>87</sup> It should be noted that the \$233 billion figure is completely bogus, based on a 2003 report by Tillinghast-Towers Perrin, an insurance industry-consulting firm. *See*, Tillinghast-Towers Perrin, “U.S. Tort Costs: 2003 Update, Trends and Findings on the Costs of the U.S. Tort System.” The firm later admitted, in connection with an updated study, that the analysis it used when reaching its figure had nothing to do with the costs of litigation, courts, or the legal system, which it does not even examine. The firm bases its amounts on figures generated from the wasteful and inefficient insurance industry, even going so far as to include its administrative costs in this widely-inflated figure. *See, also*, Center for Justice & Democracy, “*Tillinghast Finally Admits Tort System Cost Figures ‘Do Not Reflect Costs Of The Legal System,’*” January 13, 2005, <http://www.centerjd.org/press/release/TillinghastRel.pdf>.

<sup>88</sup> U.S. Chamber of Commerce, Internal Document, *Possible Q&A* (DRAFT-Not for Distribution), on file with the Center for Justice & Democracy.

<sup>89</sup> McCord Dep. at 50-54.

<sup>90</sup> McCord Dep. at 56.

<sup>91</sup> *Id.*

<sup>92</sup> *In Re Compliance with RCW 42.17, Voters Educ. Comm., Bruce Boram, Valerie Huntsberry and other Unknown Agents, Public Disclosure Commission*, Case No. 05-027, Order of Referral to the Washington State Attorney General’s Office.

<sup>93</sup> Memorandum from Susan Harris, Assistant Director, State of Washington Public Disclosure Commission, to Members, Public Disclosure Commission, Re: Voters Education Committee, Bruce Boram, Valerie Huntsberry and other Unknown Agents – Apparent Failure to Register and Report as a Political Committee, (September 9, 2004).

<sup>94</sup> Memorandum from Bill McInturff and Lori Wiegel, Public Opinion Strategies, to Institute for Legal Reform, Re: Key Findings from Democrat Primary Voters Survey Statewide in Washington, (Aug. 16, 2004).

<sup>95</sup> Email from Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, to Stan Anderson, Executive Vice President and Chief Legal Officer, U.S. Chamber of Commerce, and Lisa Rickard, President, U.S. Chamber Institute for Legal Reform (Sept. 15, 2004).

<sup>96</sup> Email from Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, to Stan Anderson, Executive Vice President and Chief Legal Officer, U.S. Chamber of Commerce, and Lisa Rickard, President, U.S. Chamber Institute for Legal Reform (Sept. 23, 2004).

<sup>97</sup> Email from Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, to Election Task Force Members (Sept. 30, 2004, 10:03 EST).

<sup>98</sup> Anderson Dep. at 93.

<sup>99</sup> Engstrom Dep. at 114.

<sup>100</sup> David Postman, “Chamber told to name donors to anti-Senn ads,” *The Seattle Times*, August 16, 2005.

<sup>101</sup> Deposition of Valerie Huntsberry at 15-18 (*Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, (Wash. Super. Ct. Civ. R. 1. Jan. 11, 2005)).

<sup>102</sup> McCord Dep. at 43-45.

<sup>103</sup> McCord Dep. at 8-9, 25-26, 35-36.

<sup>104</sup> Deposition of Bruce Boram at 16, 18-20. (*Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, No. 04-2-23551-1, (Wash. Super. Ct., Jan. 11, 2005)).

<sup>105</sup> Camden, *supra* note 15.

<sup>106</sup> *Id.*

<sup>107</sup> Beth Kaiman, “Group relents; anti-Senn ad to be pulled,” *The Seattle Times*, September 11, 2004.

<sup>108</sup> Boram Dep. at 97.

<sup>109</sup> Boram Dep. at 82; McCord Dep. at 92.

<sup>110</sup> Engstrom Dep. at 110-111.

<sup>111</sup> Anderson Dep. at 183-185.

<sup>112</sup> U.S. Chamber of Commerce, Internal Document, *Possible Q&A* (DRAFT-Not for Distribution), on file with the Center for Justice & Democracy.

<sup>113</sup> Email from Ken Hoffman, Owner, Xperis (web design company), to Bruce Boram, Director and Managing Agent, Voters Education Committee (Aug. 26, 2004, 15:43 EST).

<sup>114</sup> Email from Bruce Boram, Director and Managing Agent, Voters Education Committee, to Ken Hoffman, Owner, Xperis (web design company) (Aug. 26, 2004, 19:20 EST).

<sup>115</sup> Email from Bob Doyle, Founder and President, Sutter’s Mill Fundraising and Strategy, to Bruce Boram, Director and Managing Agent, Voters Education Committee, and Ann McCord, Political Consultant, McCord & Company.

<sup>116</sup> James Nash, “Anti-Resnick TV Ad Ruled False,” *Columbus Dispatch*, November 11, 2005.

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<sup>117</sup> See, e.g., Email from Robert Engstrom (ILR) to Steve Bokat (U.S. Chamber) and Judy Richmond (Sept. 30, 2004 10:41 AM) (discussing polls in connection with “our issue advocacy campaign); Email from Ann McCord (U.S. Chamber/ILR consultant) to Bob Doyle (ad producer), Robert Engstrom (ILR), and Bruce Boram (VEC) (August 30, 2004 2:48 P.M.) (discussing ad placement strategy); Engstrom Dep. at 207-208 (discussing Engstrom’s review of the ads); Engstrom Dep. at 213-216 (discussing Engstrom’s script suggestions); McCord Dep. at 42 (discussing McCord’s review of ad scripts); Boram Dep. at 151-153 (discussing lawyers’ decision to not disclose U.S. Chamber of Commerce/ILR’s name on ad).

Boram Dep. at 92-95, 162-168, 172-175.

<sup>118</sup> Engstrom Dep. at 155-167.

<sup>119</sup> Engstrom Dep. at 162-163, 166-167; Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005 at 10.

<sup>120</sup> Engstrom Dep. at 173-174; Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005 at 10.

<sup>121</sup> See, e.g., email from Bruce Boram, Director and Managing Agent, Voters Education Committee, to Ann McCord, Political Consultant, McCord & Company, and Bob Doyle, Founder and President, Sutter’s Mill Fundraising and Strategy, and Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform (Aug. 30, 2004, 19:01 EST).

<sup>122</sup> Engstrom Dep. at 151-153.

<sup>123</sup> Jake Ellison, “Source of anti-Senn attack ads revealed,” *Seattle Post-Intelligencer*, Sept. 13, 2004; Engstrom Dep. at 207-208.

<sup>124</sup> Email from Alex Bellone, Public Opinion Strategies, to Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, and Ann McCord, Political Consultant, McCord & Company (Sept. 13, 2004).

<sup>125</sup> Memorandum from Bill McInturff and Lori Wiegel to Institute for Legal Reform, Re: Key Findings from a Survey of Washington Voters, (Oct. 1, 2004).

<sup>126</sup> Id.

<sup>127</sup> Email from Ann McCord, Political Consultant, McCord & Company, to Bob Doyle, Founder and President, Sutter’s Mill Fundraising and Strategy, Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, and Bruce Boram, Director and Managing Agent, Voters Education Committee (Aug. 30, 2004, 2:48 P.M.)

<sup>128</sup> Email from Bruce Boram, Director and Managing Agent, Voters Education Committee, to Ann McCord, Political Consultant, McCord & Company, and Bob Doyle, Founder and President, Sutter’s Mill Fundraising and Strategy, and Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform (Aug. 30, 2004, 19:01 EST); See also, Engstrom Dep. at 232.

<sup>129</sup> Engstrom Dep. at 232-233.

<sup>130</sup> Email from Bob Doyle, Founder and President, Sutter’s Mill Fundraising and Strategy, to Bruce Boram, Director and Managing Agent, Voters Education Committee, and Ann McCord, Political Consultant, McCord & Company, and Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform (Sept. 7, 2004).

<sup>131</sup> Email from Bruce Boram, Director and Managing Agent, Voters Education Committee, to Bob Doyle, Founder and President, Sutter’s Mill Fundraising and Strategy, and Ann McCord, Political Consultant, McCord & Company, and Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform.

<sup>132</sup> Boram Dep. at 92, 95, 114-115, 164; Certification and Complaint to the Washington State Public Disclosure Commission, Justice Robert Utter, Assistant Professor Joaquin Avila, and Public Citizen, Petitioners, October 11, 2005 at 6.

<sup>133</sup> Letter from The Greater Seattle Chamber, The Association of Washington Business, The Spokane Regional Chamber, The Kelso Longview Chamber, The Bellevue Chamber, and The Tacoma-Pierce County Chamber to Thomas J. Donohue, President and CEO U.S. Chamber of Commerce (Sept. 16, 2004), on file with the Center for Justice & Democracy.

<sup>134</sup> Boram Dep. at 114.

<sup>135</sup> Email from Renee Sinclair, Executive Director of Northwest Regional Offices, United State Chamber of Commerce, to Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform (Sept. 15, 2001, 21:56 EST).

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<sup>136</sup> Email from Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform, to Douglas Loon, Vice President of Regional Affairs, United States Chamber of Commerce (Sept. 13, 2004, 22:48 EST).

<sup>137</sup> David Postman, "Chamber Ads Rile State Groups," *The Seattle Times*, September 22, 2004.

<sup>138</sup> Included in email from Renee Sinclair, Executive Director of Northwest Regional Offices, United States Chamber of Commerce to Robert Engstrom, Vice President of Political Affairs, U.S. Chamber Institute for Legal Reform (Sept. 21, 2004, 17:37 EST).

<sup>139</sup> Letter from The Greater Seattle Chamber, The Association of Washington Business, The Spokane Regional Chamber, The Kelso Longview Chamber, The Bellevue Chamber, and The Tacoma-Pierce County Chamber to Thomas J. Donohue, President and CEO U.S. Chamber of Commerce (Sept. 16, 2004), on file with the Center for Justice & Democracy.

<sup>140</sup> <http://www.uschamber.com/issues/accomplishments/default.ne>