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(Via Email: pdc@pdc.wa.gov)

Ms. Evelyn Fielding Lopez
Executive Director
Washington State Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: Larry Wasserman, Strategies 360, Inc., and Dennis McLerran
Complaint re Unregistered Grass Roots Lobbying

Dear Ms. Lopez:

Please accept this letter as a complaint regarding unregistered grass roots lobbying conducted by Larry Wasserman, Strategies 360, Inc., and Dennis McLerran. Mr. Wasserman is an employee of the Swinomish Indian Tribal Community whose business address is 11404 Moorage Way, La Conner, WA 98257-0817. Strategies 360, Inc., is a public affairs consulting firm with offices at 1505 Westlake Avenue North, Suite 1000, Seattle, WA 98109. Mr. McLerran is the Region 10 Administrator for the Environmental Protection Agency whose business address is the US EPA Region 10, Mail Stop RA-210, 1200 6th Avenue, Suite 900, Seattle, WA 98101.

This complaint is submitted on behalf of Save Family Farming, a Washington non-profit organization formed in 2016 to respond to misrepresentations and attacks on farming generated in a grass roots campaign led by Mr. Wasserman and Strategies 360 with funding and direction through Mr. McLerran.

The people of the state of Washington and supporters of Save Family Farming are entitled to disclosure of grass roots campaigns and the funding of those campaigns. As recently stated by Attorney General Bob Ferguson, "Washington's campaign disclosure laws demand transparency and accountability. Washington elections, including the financial forces that drive them, will take place in the clear light of day." (Attorney General's Press Release, Aug. 15, 2016.) These values are no less applicable to the disclosure of grass roots lobbying efforts. It should have been disclosed to the people of Washington years ago that Mr. Wasserman and EPA were intending to deploy \$655,000 in federal grant funding on a grass roots campaign to enact new laws and regulations in our state.

Washington law specifically requires a campaign to register as a grass roots lobbying effort when it has made expenditures exceeding one thousand dollars within a three-month period or more than five hundred dollars within any one-month period "presenting a program to the public, a substantial portion of which is intended, designed, or calculated

primarily to influence legislation.” RCW 42.17A.640(1). The law requires such a campaign to register as a grass roots lobbying campaign within thirty days after becoming a sponsor of a grass roots campaign. RCW 42.17A.640(2).

There is little doubt that the fundamental goal of the Wasserman campaign was to develop a coalition and public support for new legislation and rules. Mr. Wasserman made this explicit in his 2012 work plan for the campaign where the “outputs” for the effort included:

Distribution of written educational materials and use of other media describing regulatory deficiencies and **recommended measures** needed to adequately protect water quality and salmon habitat; educational meetings with local and **regional stakeholders and decision makers; and public meetings to develop support for changes in regulatory and enforcement measures.**

(Ex. A, Fiscal Year 2011 Swinomish Indian Tribal Community Non-Point Pollution Public Information Education Initiative – Year 2, at 4.)(Emphasis added.)

There is also doubt that this effort was primarily political and intended to sway elected officials in this state to enact new laws and regulations sought by Mr. Wasserman. This is reflected in polling that was conducted by or through Strategies 360 in 2012 and 2014. (Exs. B and C.) The 2014 polling specially screened out potential participants in the polling on the basis of whether they were registered voters, voted in the 2012 general election and were likely to vote in the 2014 general election. Question 6 asked the respondent’s age and whether they were registered to vote. If the respondent was not old enough to vote or not registered, the survey was terminated. (Ex. C, at 1.) Question 7 asked whether the respondent was able to vote in the 2012 general election. (*Id.*) Question 8 asked whether the respondent was likely to vote in the 2014 general election. If the respondent did not answer that they were “almost certain” or “probably” going to vote, the survey was terminated. (*Id.*) The following is from the Strategies 360 2014 poll:

[Question] 8 As you may know, there will be an election in November of this year for several federal and state offices including US Congress and state legislature. I know that’s a long time from now, but how likely is it that you will vote in this election? Is it... (**READ LIST**)

Almost certain.....	93%
Probably.....	7
About 50-50.....	Terminate
Not very likely.....	Terminate
Not likely at all.....	Terminate
DK/NA/REFUSED.....	Terminate

**IF DIDN’T VOTE IN 2012 AND NOT CERTAIN TO VOTE
IN 2014, THANK AND TERMINATE**

The poll and thus the Wasserman campaign with EPA funding was clearly intended to develop messages that would be persuasive for likely voters and therefore support legislative efforts. As such, a substantial portion of the Wasserman and EPA campaign from its inception was designed and intended to primarily influence legislation within the meaning of RCW 42.17A.640.

Mr. Wasserman made this intent clear to EPA Region 10 staff in 2015 when questions were raised for the first time by EPA staff about the accuracy of allegations made by Mr. Wasserman in his campaign and legality of the campaign focus on changing state law. On May 19, 2015, EPA staff contacted the Northwest Indian Fisheries Commission regarding Fiscal Year 2014 Proposal by Mr. Wasserman to use EPA funds for his campaign. (Ex. D.) In that communication, EPA staff raised specific concerns about the grass roots lobbying described in the Wasserman proposal as raising “awareness in both the public and decision makers about accountability in the agriculture industry...” (*Id.*) Despite EPA staff concerns, Mr. Wasserman was adamant that he was authorized to pursue his campaign using the EPA funds. In an email message to EPA on June 4, 2015, Mr. Wasserman was reported as demanding to know “the legal and contractual grounds for why he can’t” use EPA funds for grass root lobbying. (Ex. E.)

Mr. McLerran appears to have had a fundamental and direct role in allowing Mr. Wasserman and Strategies 360 to proceed with the grass roots lobbying campaign unabated by EPA staff concerns. Mr. McLerran met with Mr. Wasserman and his attorney by telephone on July 16, 2015. (Ex. F.) EPA staff noted this meeting internally on July 27, 2015. (Ex. G.) Thereafter it appears, from documents released by EPA to Save Family Farming under the Freedom of Information Act, the EPA staff concerns about the accuracy and legality of the campaign disappeared.

EPA staff subsequently provided comments on a proposed update to the campaign website, whatsupstream.com, but those comments were largely ignored in the final version of the updated website presented to EPA by email on September 16, 2015, by Marty Loesch, who at the time was the Chief Operating Officer and Legal Counsel for Strategies 360. (Ex. H.)

The revised website which went online in late October 2015 more directly focused the campaign on influencing legislation. The revised website included a “Take Action!” hyperlink that led to a form letter that would be sent to a person’s state legislators calling for “attention for the Legislature” for the establishment of streamside buffers. (Ex. I.) The letter on the website was accompanied by a promise that it would be sent to “various Washington senators whose votes we hope to influence.” (*Id.*)

In addition to the campaign website, Mr. Wasserman and Strategies 360 ran sponsorships on KUOW radio, placed internet ads on sites such as Facebook.com, ran ads on buses, and placed billboard advertising in Bellingham and Olympia. (Ex. J.)

During the last quarter of 2015, at the same time the website was updated with the call to action and letter to legislators, Mr. Wasserman was active in promoting specific

legislation to implement minimum buffer requirements. House Bill 2352 was introduced on January 11, 2016, and sponsored by Representatives Stanford, Fitzgibbon, Ryu, Peterson, Riccelli and Tarleton. (Ex. K.) HB 2352 would have required any conservation project associated with agricultural salmon habitat to “restore or provide **riparian buffers consistent with the national marine fisheries service buffer guidance.**” (Ex. K, HB 2352, Sec. 1(10)(e))(emphasis added). These are the same buffers long advocated by Mr. Wasserman’s employer (Ex. L) and the bedrock of the grass roots lobbying campaign reflected on the website whatsupstream.com.

It was reported that the prime sponsor of this legislation, Rep. Derek Stanford, “worked for many months on the proposal” with Mr. Wasserman. (Ex. M.) That timing would have corresponded directly with the revamped campaign on the whatsupstream.com website, billboard and bus advertising, the radio sponsorship and advertising ads from the fall of 2015.

EPA funding of the grass roots lobbying campaign was suspended in the spring of 2016 after two Congressional inquiries and the launch of an EPA Office Inspector General investigation into the unlawful use of federal funds for this campaign. (Exs. N, O and P.) EPA Administrator Gina McCarthy testified before Congress that she was “distressed” by the use of funds by Mr. McLerran, Mr. Wasserman and Strategies 360 to influence state law. While the EPA funding has been suspended, the whatsupstream.com campaign website remains active although it has been modified to remove the “Take Action!” hyperlink.

For the purposes of your information and investigation in this matter additional information is available in the quarterly progress reports on the campaign that were submitted by Mr. Wasserman to the Northwest Indian Fisheries Commission. The reports are available online at: <http://blogs.nwifc.org/psp/tribal-project-updates/swinomish-tribe>. These reports further detail Mr. Wasserman’s public campaign and the substantial intent from the beginning of the campaign to influence and direct legislation.

Save Family Farming urges the Public Disclosure Commission to take aggressive enforcement action against this blatant disregard of state law. The actions by Mr. Wasserman, Mr. McLerran and Strategies 360 violate the basic policy of the public disclosure law under Ch. 42.17A RCW. The Declaration of Policy in the act expressly provides:

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.

....

(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.

RCW 42.17A.001.

The Act further calls on the PDC to liberally construe the statute to meet these policy declarations:

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to ensure that the information disclosed will not be misused for arbitrary and capricious purposes and to insure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed.

RCW 42.17A.001.

The violations of RCW 42.17A.640 began when Mr. Wasserman and Strategies 360 commenced expenditures of EPA funds in 2011. The intent of the campaign from its initiation, through voter contact, building a coalition and the original website, was to achieve new regulations and laws on stream buffers. This effort was only more focused in 2015, with the apparent support and direction of Mr. McLerran, when the campaign updated its website, placed ads, radio sponsorships and developed specific legislation.

The length of the violations is not excused by the absence of specific legislation until the 2016 session of the Legislature. Nor are the violations excused if the 2016 HB 2352 is not somehow associated with Mr. Wasserman's campaign. The only reason for the campaign, the website, the polling, the coalition building, advertising, and radio sponsorships was to influence the legislature. The PDC has long found this kind of campaign unlawful unless it is registered as a grass roots lobbying campaign. PDC Declaratory Order No. 12 (May 24, 1994.)

Mr. Wasserman, Strategies 360 and Mr. McLerran have violated the law for failing to register the campaign in 2011 and for each month thereafter by failing to file monthly reports with the PDC. The monthly violations since 2011 include the specific failure to report monthly expenditures and monthly contributions. These violations are continuing even though EPA has suspended grant funding. The campaign website whatsupstream.com

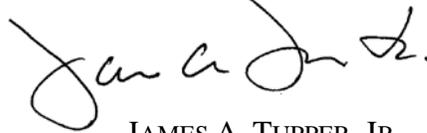
remains active and continues to disclose EPA participation in the campaign and continues to call for new state laws regarding streamside buffers.

Save Family Farming urges the PDC to take immediate enforcement action against Mr. Wasserman, Strategies 360, Inc., and Mr. McLerran to register their campaign and file the required reporting as well as penalties and sanctions for these blatant violations of state law. Save Family Farming requests that the PDC require Mr. Wasserman, Strategies 360, Inc., and Mr. McLerran to immediately register their grass roots lobbying campaign, file delinquent monthly reports and otherwise fully and completely disclose contributions to the campaign including and in addition to EPA funding and expenditures on a monthly basis since the initiation of the campaign.

Save Family Farming requests that it be advised by the actions of the PDC in investigating this matter and that it be provided an opportunity to review and respond to any information provided by Mr. Wasserman, Strategies 360 or Mr. McLerran in defense of their actions.

Save Family Farming appreciates your consideration of this complaint and is available at your convenience to answer any questions or provide additional information in this matter. We have an ongoing FOIA request to EPA and anticipate supplementing this complaint with new information as it is released by the federal agency.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Tupper, Jr.", with a stylized flourish at the end.

JAMES A. TUPPER, JR.

Attachments