

**BEFORE THE
KENTUCKY REGISTRY OF ELECTION FINANCE**

REPUBLICAN PARTY OF KENTUCKY

COMPLAINANT

V.

**BLUEGRASS FREEDOM FUND
AND
BESHEAR/MONGIARDO CAMPAIGN**

RESPONDENTS

COMPLAINT

Comes the Republican Party of Kentucky (RPK) and for its Complaint against the Bluegrass Freedom Fund (BFF) and the Beshear/Mongiardo Campaign (Beshear Campaign), hereby states the following:

The BFF engaged in express advocacy in its television advertisements aiding Steve Beshear's candidacy, resulting in independent expenditures which did not comply with Kentucky campaign reporting requirements. Moreover, the BFF and the Beshear Campaign violated Kentucky campaign finance laws by engaging in cooperation, coordination, or consultation, resulting in prohibited contributions made to the BFF and prohibited expenditures made by the BFF in contravention and circumvention of state campaign contribution limits. In short, as explained below, the BFF was simply a front-organization used to thwart Kentucky's statutory campaign contribution limits and supplement the Beshear Campaign.

I. JURISDICTION

- A. This complaint is filed with the Kentucky Registry of Election Finance (KREF) in accordance with the provisions of 32 KAR 2:030 in the belief that the BFF and the

Beshear Campaign violated the provisions of the Kentucky Campaign Finance Regulations, as amended, KRS 121.005, *et seq.*

- B. The BFF's address is 974 Breckenridge Lane #156, Louisville, Kentucky 40207.
- C. According to the BFF's website, www.bluegrassfreedom.org, the BFF is an independent political organization falling under Section 527 of the Internal Revenue Code.
- D. The Beshear Campaign's physical address is 106C St. James Court Frankfort, Kentucky 40601. The Beshear Campaign's mailing address is Post Office Box 4227 Frankfort, Kentucky 40604.

II. BFF'S TELEVISION ADVERTISEMENTS ATTACKING ERNIE FLETCHER'S CHARACTER WERE THE FUNCTIONAL EQUIVALENT OF EXPRESS ADVOCACY, RESULTING IN INDEPENDENT EXPENDITURES WHICH DID NOT COMPLY WITH KENTUCKY CAMPAIGN REPORTING REQUIREMENTS.

A. Legal Standard and Relevant Kentucky Statutes

- 1. The U.S. Supreme Court has provided guidance regarding how to determine whether television advertisements are the functional equivalent of express advocacy and, therefore, not barred under the First Amendment from regulation by the government. In *Federal Election Commission v. Wisconsin Right to Life ("WRTL")* 127 S.Ct. 2652 (2007), Chief Justice Roberts issued the principal opinion in which he articulated the functional-equivalent of express advocacy standard, as follows:

“[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” because:

(a) The ad “content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter.”

(b) The ads “**do not mention an election, candidacy, political party, or challenger;**” and

(c) The ads “**do not take a position on a candidate’s character, qualifications, or fitness for office.**” *WRTL* [insert cite p. 16 of slip. Op.] (Emphasis added.)

2. An advertisement which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, even if made without the coordination, consultation, or cooperation with any candidate, slate of candidates or campaign committee, is an “independent expenditure.” KRS 121.015(12).

3. KRS 121. 150(1) states that “Any person making an independent expenditure shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500) in the aggregate in any one (1) election, on a form provided or using a format approved by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.”

4. Any person who knowingly violates the provisions of KRS 121.150 shall, for each offense, be guilty of a Class D felony. KRS 121.990(3).

B. BFF’S television advertisement entitled “Lessons” constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an “independent expenditure” which failed to comply with the reporting requirements mandated by Kentucky law.

1. The script of BFF’s television advertisement, which is entitled “Lessons,” is as follows:

Announcer: "We teach our children right from wrong, that actions have consequences.

"But what lessons do our public officials teach? Ernie Fletcher was indicted for criminal conspiracy.

"Twenty -eight of his appointees and aides were indicted on 85 counts — 23 of them felonies. Fletcher pardoned 27 of them.

"If our children know right from wrong, shouldn't Kentucky's government officials?

Go to Bluegrassfreedom.org and sign the petition for real ethics reform." (*Courier-Journal* article, dated September 21, 2007, attached as Exhibit 1).

2. The *Courier-Journal* noted that, "Although classified as an 'issue ad' that doesn't advocate for or against a particular candidate, this is really a campaign ad meant to help Democrat Steve Beshear." (See Exhibit 1.)
 3. The "Lessons" advertisement not only mentions Ernie Fletcher by name, it also "attacks Fletcher for his role in the merit hiring scandal that saw him and others close to him indicted for violating the merit law." (See Exhibit 1.)
 4. The *Courier-Journal* also stated that the advertisement failed to mention that the charges against Fletcher were eventually dropped. (See Exhibit 1.)
 5. The "Lessons" advertisement, which must be viewed in its entirety in order to understand the full nature of its express attack on Ernie Fletcher and his character, is available for viewing at www.bluegrassfreedom.org/ads.asp.
 6. This advertisement, under the most liberal interpretation of the standard set forth by the United States Supreme Court in the *WRTL* case, constitutes the functional equivalent of express advocacy, resulting in an "independent expenditure" which must be regulated by Kentucky law.
 7. The BFF failed to report this independent expenditure exceeding \$500 on a form provided or approved by KREF as mandated by KRS 121.150(1).
 8. The BFF further violated KRS 121.150(1) by failing to sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the Beshear Campaign on whose behalf it was made.
 9. As the BFF failed to meet the reporting requirements for an "independent expenditure" as set forth in KRS 121.150(1), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).
- C. BFF'S television advertisement entitled "Tolls" constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an "independent expenditure" which failed to comply with the reporting requirements mandated by Kentucky law.
1. The script of BFF's television advertisement, which is entitled "Tolls," is as follows:

Announcer: "Every year, it's a new scandal in Kentucky.

"Gov. Fletcher indicted, along with many of his aides and appointees. 85 criminal counts. 23 felonies.

"\$1.9 million of your tax dollars spent on high price lawyers to defend the Fletcher administration.

"Tired of your money being spent to defend scandals and corruption? Go to bluegrassfreedom.org and sign the petition for real ethics reform." (*Courier-Journal* article, dated September 30, 2007, attached as Exhibit 2).

2. The *Courier-Journal* recognized the express advocacy of this advertisement, stating, "...don't be mistaken. This ad is intended to help Democrat Steve Beshear beat Gov. Ernie Fletcher in November." (See Exhibit 2.)
 3. The "Tolls" advertisement not only mentions Ernie Fletcher by name, but "as all of the ads Bluegrass Freedom Fund has run" it also "focused on the merit hiring scandal that plagued the Fletcher administration for two years." (See Exhibit 2.)
 4. The *Courier-Journal* also stated that the advertisement fails to explain what is meant by the words "a new scandal every year." (See Exhibit 2.)
 5. The "Tolls" advertisement, which must be viewed in its entirety in order to understand the full nature of its express attack on Ernie Fletcher and his character, is available for viewing at www.bluegrassfreedom.org/ads.asp.
 6. This advertisement, under the most liberal interpretation of the standard set forth by the United States Supreme Court in the *WRTL* case, constitutes the functional equivalent of express advocacy, resulting in an "independent expenditure" which must be regulated by Kentucky law.
 7. The BFF failed to report this independent expenditure exceeding \$500 on a form provided or approved by KREF as mandated by KRS 121.150(1).
 8. The BFF further violated KRS 121.150(1) by failing to sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the Beshear Campaign on whose behalf it was made.
 9. As the BFF failed to meet the reporting requirements for an "independent expenditure" as set forth in KRS 121.150(1), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).
- D. BFF'S television advertisement entitled "Light" constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an "independent

expenditure” which failed to comply with the reporting requirements mandated by Kentucky law.

1. The script of BFF’s television advertisement, which is entitled “Light,” is as follows:

Ernie Fletcher: "If we light our way with whatever is true, whatever is honest ..."

Announcer: "Gov. Fletcher. Indicted."

(Words appear on screen: "Fletcher indicted for criminal conspiracy.")

Fletcher: "I'm surrounding myself with women and men of integrity, character."

Announcer: "Fletcher aides indicted."

(Words appear on screen: "Fletcher aides indicted.")

Fletcher: "That is how to create an ethical government."

Announcer: "Eighty-five criminal counts."

(The words appear: "85 criminal counts.")

Fletcher: "We will restore hope."

Announcer: "Twenty-three felonies."

(The words appear: "23 felonies.")

Announcer: "It's time for true ethics reform." (*Courier-Journal* article, dated October 12, 2007, attached as Exhibit 3).

2. The *Courier-Journal* recognized the express advocacy of this advertisement, stating, “The Bluegrass Freedom Fund is classified as an issue advocacy group and theoretically isn't allowed to run ads supporting any particular candidate. The purported issue here is ethics reform, and the ad urges people to sign a petition for such reform. **But there is little doubt the ad is meant to help elect Democrat Steve Beshear as governor.** (See Exhibit 3) (Emphasis added.)
3. The *Courier-Journal* also stated that the advertisement leaves out some “key details,” such as the fact that “almost all of those felony charges [mentioned in the advertisement] were against one Transportation Cabinet employee.” (See Exhibit 3.)

4. The "Light" advertisement, which must be viewed in its entirety in order to understand the full nature of its express attack on Ernie Fletcher and his character, is available for viewing at www.bluegrassfreedom.org/ads.asp.
 5. This advertisement, under the most liberal interpretation of the standard set forth by the United States Supreme Court in the *WRTL* case, constitutes the functional equivalent of express advocacy, resulting in an "independent expenditure" which must be regulated by Kentucky law.
 6. The BFF failed to report this independent expenditure exceeding \$500 on a form provided or approved by KREF as mandated by KRS 121.150(1).
 7. The BFF further violated KRS 121.150(1) by failing to sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the Beshear Campaign on whose behalf it was made.
 8. As the BFF failed to meet the reporting requirements for an "independent expenditure" as set forth in KRS 121.150(1), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).
- E. BFF'S television advertisement entitled "Call to Action 2" constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an "independent expenditure" which failed to comply with reporting requirements mandated by Kentucky law.
1. The script of BFF's television advertisement, which is entitled "Call to Action 2" is as follows:

Announcer: "It's time.

"After years of scandals, Kentucky needs real ethics reform.

"Ernie Fletcher and 28 of his aides and appointees were indicted on 85 criminal counts. 23 were felonies.

"Fletcher pleaded the Fifth Amendment and pardoned 27 aides and appointees.

"Please join our fight to urge Ernie Fletcher and the legislature to pass real ethics reform. Go to bluegrassfreedom.org today and sign the petition." (Advertisement available for viewing in its entirety at www.bluegrassfreedom.org/ads.asp).

2. The foregoing advertisement mentions Ernie Fletcher by name and cites “years of scandals,” indictments, felonies and pardons in an attempt to impugn his character.
 3. As in the previous advertisement, “Call to Action 2” fails to mention that almost all the felony charges were against one Transportation Cabinet employee.
 4. The “Call to Action 2” advertisement, which must be viewed in its entirety in order to understand the full nature of its express attack on Ernie Fletcher and his character, is available for viewing at www.bluegrassfreedom.org/ads.asp.
 5. This advertisement, under the most liberal interpretation of the standard set forth by the United States Supreme Court in the *WRTL* case, constitutes the functional equivalent of express advocacy, resulting in an “independent expenditure” which must be regulated by Kentucky law.
 6. The BFF failed to report this independent expenditure exceeding \$500 on a form provided or approved by KREF as mandated by KRS 121.150(1).
 7. The BFF further violated KRS 121.150(1) by failing to sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the Beshear Campaign on whose behalf it was made.
 8. As the BFF failed to meet the reporting requirements for an “independent expenditure” as set forth in KRS 121.150(1), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).
- F. BFF’S television advertisement entitled “Call to Action” constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an “independent expenditure” which failed to comply with reporting requirements mandated by Kentucky law.

1. The script of BFF’s television advertisement, which is entitled “Call to Action ” is as follows:

Announcer: "Scandals. Indictments. Criminal Counts. Felonies. Pardons.

"Tell the Governor and the legislature to pass real ethics reform.

“Go to bluegrassfreedom.org today and sign the petition. (Advertisement available for viewing in its entirety at www.bluegrassfreedom.org/ads.asp).

2. The foregoing advertisement mentions scandals, indictments, criminal counts, felonies and pardons while flashing pictures of Ernie Fletcher's face in an attempt to impugn his character.
 3. As in the previous advertisement, "Call to Action" fails to mention that almost all the felony charges were against one Transportation Cabinet employee, and that the charges against Governor Fletcher were eventually dropped.
 4. The "Call to Action" advertisement, which must be viewed in its entirety in order to understand the full nature of its express attack on Ernie Fletcher and his character, is available for viewing at www.bluegrassfreedom.org/ads.asp.
 5. This advertisement, under the most liberal interpretation of the standard set forth by the United States Supreme Court in the *WRTL* case, constitutes the functional equivalent of express advocacy, resulting in an "independent expenditure" which must be regulated by Kentucky law.
 6. The BFF failed to report this independent expenditure exceeding \$500 on a form provided or approved by KREF as mandated by KRS 121.150(1).
 7. The BFF further violated KRS 121.150(1) by failing to sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the Beshear Campaign on whose behalf it was made.
 8. As the BFF failed to meet the reporting requirements for an "independent expenditure" as set forth in KRS 121.150(1), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).
- G. BFF'S television advertisement entitled "Ernie 180" constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an "independent expenditures" which failed to comply with reporting requirements mandated by Kentucky law.

1. The script of BFF's television advertisement, which is entitled "Ernie 180" is as follows:

Announcer: "Meet Ernie 180.

"He's king of pulling the 180.

"Sometimes poor Ernie can't tell if he's coming or going.

“First, Ernie said he’d clean up state government and do away with the good old boy politics.

“But old habits die hard. (background voice: “There he goes!”)

“Ernie was indicted on three (3) criminal counts along with 28 of his aides, sticking taxpayers with millions in legal bills.

“Ernie said he would improve our schools, but then Ernie 180 went and slashed the funding for our universities.

“Ernie said he’d balance the state budget, but Ernie 180 has saddled Kentucky with record-breaking debt for the last three (3) years.

“Then there’s Ernie’s latest 180 on casino gambling.

“For years, Ernie supported the idea that people should decide whether casino gambling was right for Kentucky.

“But in June, Ernie changed his mind. (background voice: “There he goes again!”)

“Say no to a casino referendum...so much for letting you decide.

“Tell Ernie Fletcher Kentucky needs better schools, a balanced budget and less corruption.

“For more information on Ernie’s 180’s, go to bluegrassfreedom.org. (Advertisement available for viewing in its entirety at www.bluegrassfreedom.org/ads.asp).

2. It cannot be disputed that the foregoing advertisement attacks Ernie Fletcher’s character by calling him a derogatory name, showing the then-Governor as a cartoon character being chased by a police officer with a siren blaring in the background.
3. Unlike the previous advertisements, this advertisement does not ask the viewer to sign a petition; in fact, it directs the viewer to the BFF website “for more information on Ernie’s 180s.”
4. The “Ernie 180” advertisement, which must be viewed in its entirety in order to understand the full nature of its express attack on Ernie Fletcher and his character, is available for viewing at www.bluegrassfreedom.org/ads.asp.
5. This advertisement, under the most liberal interpretation of the standard set forth by the United States Supreme Court in the *WRTL* case, constitutes the functional equivalent of express advocacy, resulting in an “independent expenditure” which must be regulated by Kentucky law.

6. The BFF failed to report this independent expenditure exceeding \$500 on a form provided or approved by KREF as mandated by KRS 121.150(1).
7. The BFF further violated KRS 121.150(1) by failing to sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the Beshear Campaign on whose behalf it was made.
8. As the BFF failed to meet the reporting requirements for an “independent expenditure” as set forth in KRS 121.150(1), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).

III. BFF MADE A PROHIBITED IN-KIND CONTRIBUTION IN EXCESS OF \$1,000 TO THE BESHEAR CAMPAIGN BY SOLICITING CONTRIBUTIONS AND MAKING EXPENDITURES IN COOPERATION, COORDINATION, OR CONSULTATION WITH THE BESHEAR CAMPAIGN.

A. Legal definitions and relevant Kentucky statutes

1. A “contribution” means any

- (a) “Payment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his agent, a slate of candidates, its authorized agent, a committee, or contributing organization.” KRS 121.015(6)(a).
 - (b) “Goods, advertising, or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are furnished to a candidate, slate of candidates, committee, or contributing organization or for inauguration activities without charge, or at a rate which is less than the rate normally charged for the goods or services.” KRS 121.015(6)(c).
2. No candidate shall accept a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election. KRS 121.150(6).
 3. No person, permanent committee, or contributing organization shall contribute more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf in any one (1) election. KRS 121.150(6).
 4. “An in-kind contribution is a non-monetary contribution consisting of goods or services, offered free or at less than the usual charge. Similarly, when a person pays for services on the candidate’s behalf, the payment is an in-kind contribution.

An expenditure made in cooperation, coordination, or consultation with or at the request or suggestion of the campaign is also considered an in-kind contribution to the candidate.

In-kind contributions are treated as any other contribution and are subject to the same contribution limits and reporting requirements.” Kentucky Registry of Election Finance, “Candidate Guide to Campaign Finance,” p. 28, (August 2005).

5. Any person who knowingly violates the provisions of KRS 121.150 shall, for each offense, be guilty of a Class D felony. KRS 121.990(3).

B. The Beshear Campaign’s connection to the BFF’s single largest contributor

1. The BFF’s largest single contributor was William Yung, president of Northern Kentucky-based development company Columbia Sussex, which owns several casinos and hotels, including the Tropicana Hotel and Resort in Atlantic City, New Jersey and the Aztar in Evansville, Indiana. (*Herald-Leader* article, dated February 2, 2008, attached as Exhibit 4.)
2. Steve Beshear “ran on a platform” advocating for the expansion of gambling in Kentucky including the amendment of Kentucky’s Constitution to allow for casinos in the Commonwealth. (See Exhibit 4.)
3. The BFF was formed in 2007 to “encourage a public discussion about education and the schools, economy and job, health care, retirement and pension security, and other issues affecting the citizens of Kentucky.” (www.bluegrassfreedom.org.)
4. The BFF’s mission later shifted focus toward encouraging the passage of “ethics reform” and “anti-corruption” legislation, including “ending pardon abuse” and “protecting whistleblowers.” (www.bluegrassfreedom.org.)
5. During Beshear’s gubernatorial campaign, casino owner Yung donated \$1 million to the BFF, constituting roughly one-third of all the contributions reported by the BFF on December 31, 2007. (BFF Finance Report, attached as Exhibit 5).
6. Despite his million dollar contribution to the BFF advocating “ethics reform,” Yung has stated that his only interest is “making money.” (*Herald-Leader* article, dated February 10, 2008, attached as Exhibit 6.)
7. Beshear has stated that his campaign had “no connection with [the BFF]” because “legally we [the Beshear campaign] can’t.” (See Exhibit 4.)

8. However, BFF's largest donor, Yung, admitted meeting with Beshear on at least two occasions during Beshear's campaign and once again on election night. (See Exhibit 4.)
9. Beshear also admits he met with the BFF's largest donor twice, "probably at the headquarters of Yung's Columbia Sussex company near Covington," (*Herald-Leader* article, dated February 12, 2008, attached as Exhibit 7) despite his claims that his campaign had "no connection with [the BFF]." (See Exhibit 4.)
10. Yung has stated, "I make no apologies for **helping get Steve Beshear elected**. I've got a First Amendment right to spend my money any way I want to spend it." (*Herald-Leader* article, dated February 23, 2008, attached as Exhibit 8) (Emphasis added).
11. Yung later donated \$10,000 to Steve Beshear's inaugural fund. (*Herald-Leader* article, dated January 9, 2008, attached as Exhibit 9.)
12. Subsequent to his \$1 million dollar donation to the BFF and \$10,000 contribution to Beshear's inaugural fund, Yung met privately with Beshear's casino task force. (See Exhibit 4.)
13. After his meeting with Beshear's casino task force, Yung paid \$7 million for a site in Northern Kentucky to build a casino. (See Exhibit 9.)
14. Beshear's consultations with Yung, the BFF's single largest donor by far, during the gubernatorial campaign, Beshear's advocacy of casino gambling which coordinates to Yung's business interests, Yung's unapologetic and proud admissions that he cooperated in helping get Steve Beshear elected, Yung's private meetings with Beshear's casino task force and his subsequent purchase of \$7 million in real estate for a casino site provide overwhelming evidence of Beshear's cooperation, coordination and consultation with the BFF's single largest donor.
15. Yung's admission that his money helped "get Steve Beshear elected" shows that his \$1 million donation to the BFF was meant for that express purpose.
16. The *Courier-Journal* categorized the BFF as "an organization that bought advertising last fall **in support on Beshear's campaign...**" (*Courier Journal* article, dated February 12, 2008, attached as Exhibit 10) (Emphasis added.)
17. The BFF's expenditures of this \$1 million contribution, derived from the donor's cooperation, coordination and consultation with Beshear, must be viewed as an "in-kind contribution" subject to Kentucky's campaign contribution limits. Kentucky Registry of Election Finance, "Candidate Guide to Campaign Finance," p. 28, (August 2005).

18. In-kind contributions are treated as any other contribution and are subject to the same contribution limits and reporting requirements.” Kentucky Registry of Election Finance, “Candidate Guide to Campaign Finance,” p. 28, (August 2005).
 19. KRS 121.150(6) prohibits candidates from accepting a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election.
 20. KRS 121.150(6) further prohibits a person, permanent committee, or contributing organization from contributing more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf in any one (1) election.
 21. BFF’s contributions totaled \$3,150,125 and its expenditures totaled \$3,018,439, proving almost all of Yung’s \$1 million contribution was spent. (See Exhibit 5.)
 22. The expenditure of Yung’s \$1 million contribution was certainly in excess of the statutory contribution limits required of an in-kind contribution. (See Exhibit 5.)
 23. Therefore, BFF and the Beshear Campaign violated campaign finance laws by acting in cooperation, coordination, or consultation, resulting in prohibited contributions made to the BFF and prohibited expenditures made by the BFF in contravention and circumvention of state campaign contribution limits.
 24. As the BFF and the Beshear Campaign’s actions circumvented and violated the provisions of KRS 121.150(6), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).
- C. The Beshear Campaign’s Connection to the Democratic Governors Association (DGA), the BFF’s second single largest donor
1. The DGA contributed \$50,000 to the BFF on July 17, 2007. (See Exhibit 5.)
 2. The DGA contributed \$50,000 to the BFF on July 21, 2007. (See Exhibit 5.)
 3. The DGA made two contributions of \$250,000 totaling \$500,000 to the BFF on August 20, 2007. (See Exhibit 5.)
 4. The DGA was the second-largest single contributor to the BFF, with contributions totaling \$600,000. (See Exhibit 5.)
 5. In an interview with the *Herald-Leader* regarding the DGA contributions to the BFF, DGA spokesman Brian Namey stated, “We’re intent on doing everything we can to **support Steve Beshear.**” (*Herald-Leader* article, dated August 27, 2007, attached as Exhibit 11.) (Emphasis added.)

6. In the same *Herald-Leader* article, Namey also stated, “This time the Kentucky race represents the best pick-up opportunity for Democrats this year.” (See Exhibit 11.)
7. The BFF was formed in 2007 to “encourage a public discussion about education and the schools, economy and job, health care, retirement and pension security, and other issues affecting the citizens of Kentucky.” (www.bluegrassfreedom.org.)
8. The BFF’s mission later shifted focus toward encouraging the passage of “ethics reform” and “anti-corruption” legislation, including “ending pardon abuse” and “protecting whistleblowers.” (www.bluegrassfreedom.org.)
9. Admittedly, the DGA’s contribution was made in cooperation with Steve Beshear’s campaign to assist his candidacy, not to facilitate discussion regarding the aforementioned issues.
10. BFF’s contact person and custodian of records is Craig Varoga. (See Exhibit 5.)
11. Craig Varoga also managed several DGA independent expenditures in 2006 (*Hotline* article, dated November 9, 2006, attached as Exhibit 12.)
12. The cooperation, coordination and consultation between BFF and DGA may be established by the fact that the BFF’s contact person and custodian of records and the DGA’s manager of independent expenditures are one in the same.
13. The BFF’s expenditures of the DGA’s \$600,000 contribution, derived from the donor’s cooperation, coordination and consultation with Beshear’s campaign, must be viewed as an “in-kind contribution” subject to Kentucky’s campaign contribution limit. Kentucky Registry of Election Finance, “Candidate Guide to Campaign Finance,” p. 28, (August 2005).
14. In-kind contributions are treated as any other contribution and are subject to the same contribution limits and reporting requirements.” Kentucky Registry of Election Finance, “Candidate Guide to Campaign Finance,” p. 28, (August 2005).
15. KRS 121.150(6) prohibits candidates from accepting a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election.
16. KRS 121.150(6) further prohibits a person, permanent committee, or contributing organization from contributing more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf in any one (1) election.
17. BFF’s contributions totaled \$3,150,125 and its expenditures totaled \$3,018,439, proving almost all of the DGA’s \$600,000 contribution was spent. (See Exhibit 5.)

18. The expenditure of the DGA's \$600,000 contribution was certainly in excess of the statutory contribution limits required of an in-kind contribution. (See Exhibit 5.)
19. Therefore, BFF and the Beshear Campaign violated campaign finance laws by acting in cooperation, coordination, or consultation, resulting in prohibited contributions made to the BFF and prohibited expenditures made by the BFF in contravention and circumvention of state campaign contribution limits.
20. As the BFF and the Beshear Campaign's actions circumvented and violated the provisions of KRS 121.150(6), the BFF and its directors should be subject to the penalties as set forth in KRS 121.990(3).

WHEREFORE, RPK respectfully requests that the Kentucky Registry of Election Finance (KREF) adhere to the principles set forth by the United States Supreme Court in the *WRTL* case, find that the BFF engaged in express advocacy in its television advertisements, and determine that these advertisements were "independent expenditures" which failed comply with Kentucky campaign reporting requirements. Further, RPK respectfully requests that KREF launch an immediate investigation into whether the BFF and the Beshear campaign violated Kentucky campaign finance laws by engaging in cooperation, coordination, or consultation, resulting in prohibited contributions made to the BFF and prohibited expenditures made by the BFF in contravention and circumvention of state campaign contribution limits. Finally, RPK respectfully requests that KREF impose all the proper penalties allowed for under the law, and refer any criminal wrong-doing to the proper law enforcement and prosecutorial authorities.

Respectfully submitted:

REPUBLICAN PARTY OF KENTUCKY

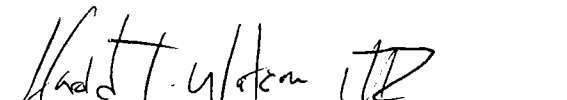


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Commonwealth of Kentucky

County of Franklin

Sworn to and acknowledged before me by Steve Robertson, Chairman of the Republican Party of Kentucky, on this the 3 day of March, 2008.



Notary Public

My commission expires: 4/20/09