

Washington State Democrats

Dwight Pelz, Chair

April 26, 2006

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

MUR # 5736

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COUNSEL
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Dear Mr. Norton:

I write to file a complaint against Senate candidate Mike McGavick, who has received payments from Safeco Corporation, a prohibited source under 2 U.S.C. § 441b, through an arrangement made with Safeco after Mr. McGavick announced his candidacy for the U.S. Senate in the state of Washington. Because Safeco deviated from its formal policy and altered the terms of Mr. McGavick's compensation after his candidacy for office began, yielding Mr. McGavick millions of dollars he would have otherwise forfeited, Mr. McGavick appears to have acted in violation of federal campaign finance law. The Commission must investigate whether Mr. McGavick has committed a knowing and willful violation of the prohibition against contributions to candidates for personal use. *See* 11 C.F.R. § 113.1(g). Because the payment in violation of the personal use restrictions has been made from a prohibited source, the Commission must also treat any violation arising from this payment as an illegal corporate contribution, in violation of 2 U.S.C. § 441b.

A. Federal Law Prohibits Corporate Contributions to Federal Candidates, Including for "Personal Use."

Federal campaign finance law prohibits the conversion of campaign funds to any "personal use." 2 U.S.C. § 439a. Under the Commission regulations implementing this section of the Act, a third party's payment of a candidate's expenses that would otherwise be deemed "personal use" expenses under section 439a(b)(2) is considered a contribution by the third party unless the payment would have been made "irrespective of the candidacy." 11 C.F.R. § 113.1(g)(6). The regulations further provide that certain types of employment-related compensation are considered to be payments made "irrespective of the candidacy:"

(iii) Payments for that expense were made by the person making the payment before the candidate became a candidate. Payments that are compensation **shall be considered contributions** unless –

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(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

11 C.F.R. § 113.1(g)(6)(iii). Safeco's payments to Mr. McGavick do not meet any of these legal standards. The corporation's "sweetening of the deal" for Mr. McGavick after he became a candidate was a blatant violation of federal law.

B. After Mr. McGavick Became a Candidate, Safeco Altered the Formal Policy for Mr. McGavick's Employment and Severance Package To Yield Him Millions of Dollars that He Would Not Otherwise Have Been Entitled to Receive, in Violation of 2 U.S.C. §§ 441b, 439a and 11 C.F.R. § 113.1(g).

On July 26, 2005, Mr. McGavick announced that he was establishing an exploratory committee and considering running for the U.S. Senate. On October 26, 2005, he announced his candidacy. Shortly thereafter, Mr. McGavick's employer, Safeco Corporation, superseded the employment agreement that had been in effect prior to Mr. McGavick's candidacy. Rather than adhere to the formal written policy set forth in the earlier employment agreement, dated January 5, 2005, Safeco chose to alter the terms of Mr. McGavick's severance, including to permit the "accelerated" vesting of Mr. McGavick's unvested options to purchase 210,298 shares of Safeco stock. Assuming a \$57.10 share price,¹ this acceleration permitted Mr. McGavick to receive approximately \$4.5 million in stock that he would not have been entitled to receive under the terms of the employment agreement in effect before he became a federal candidate.

(<http://www.sec.gov/Archives/edgar/data/86104/000119312505238392/d8k.htm>, see **Item 1.02**)

In addition to the \$4.5 million described above, Safeco has taken steps since Mr. McGavick's announcement of his candidacy to ensure that Mr. McGavick can acquire more than twice that amount of money. Mr. McGavick continued to be on the payroll for Safeco through February 28, 2006, despite his representations to the press that he was a "full-time candidate." Matthew Daly, *Cantwell Retains Big Lead in Race for Senate Cash*, Associated Press, Feb. 2, 2006. By remaining on Safeco's payroll, Mr. McGavick retained rights to another \$9.8 million in options in late January 2006 that he would have otherwise had to forfeit. (<http://www.sec.gov/Archives/edgar/data/86104/000103221002000400/ddef14a.htm>,

¹ \$57.10 is the share price used in Safeco's Form 8-K.

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p. 17) He also retained the rights to over \$2.9 million in restricted stock awards by remaining on Safeco's payroll through February 2006.²

According to Safeco's SEC filings, Mr. McGavick also became eligible for a lump-sum distribution or an annuitized payment from the Safeco Employees' Cash Balance Plan (the "Cash Balance Plan"), a benefit that only fully vests after five years of service. Mr. McGavick's employment at Safeco began in January 2001, so by remaining on Safeco's payroll well beyond becoming an active candidate, Mr. McGavick was able to secure financial benefits he would have otherwise forfeited.

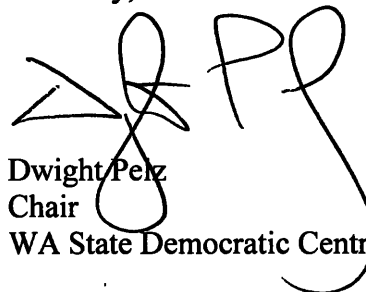
(<http://www.sec.gov/Archives/edgar/data/86104/000119312506062031/ddef14a.htm>, p. 24)

Above and beyond the \$4.5 million, the \$9.8 million, the \$2.9 million and the funds from the Cash Balance Plan described above, SEC filings show that on February 15, 2006, Safeco chose to award Mr. McGavick a 2005 bonus of \$2,314,180. The Commission should investigate whether the amount is consistent with what Mr. McGavick would have received irrespective of his candidacy, or if it too constitutes another flouting of the personal use and corporate prohibitions set forth in 2 U.S.C. §§ 441b, 439a and 11 C.F.R. §113.1(g).

(<http://www.sec.gov/Archives/edgar/data/86104/000119312506062031/ddef14a.htm>, p. 24)

For these reasons, the Commission should immediately investigate Mr. McGavick. It should seek the highest civil penalties available under the law, and take whatever other action it deems necessary or appropriate under the law.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.P.' or 'DP', with a large, stylized flourish extending from the bottom right.

Dwight Pelz
Chair
WA State Democratic Central Committee

² This calculation is based on a share price of \$57.10, used in Safeco's Form 8-K. See also 2003 Proxy Statement, p. 20, n.6; 2004 Proxy Statement, p. 21, n.6; 2005 Proxy Statement, p. 24, n.3; and 2006 Proxy Statement, p. 24.

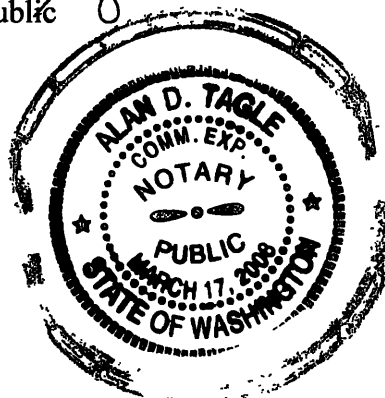
STATE OF Washington)
County of King)

SUBSCRIBED AND SWORN to before me this 25th day of April, 2006.

Alan D. Tagle
Notary Public

My Commission Expires:

07-27-2008 (DT)



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