

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 02CF2451

CHARLES CHVALA,

Defendant.

STATE'S SENTENCING MEMORANDUM

INTRODUCTION

The State urges this court to impose a sentence requiring defendant Charles Chvala to serve six months in jail. To allow defendant Chvala to walk away from justice without suffering the punitive sanction of incarceration would unduly depreciate the seriousness of his offenses. Moreover, in sentencing this defendant, the court will be sending a message to other elected officials. The sentence must include incarceration in order to deter similar abuses of political power.

PUBLIC POLICY CONCERNS

When evaluating the seriousness of defendant Chvala's crimes, the court should be mindful of the important public policies underlying this prosecution. Two policy interests are chiefly implicated. First, when defendant Chvala demanded individuals and corporations contribute massive sums to his sham organizations, Independent Citizens for Democracy (ICD) and Independent Citizens for Democracy-Issues, Inc. (ICD-Issues), he fostered a milieu for legislative corruption. Second, by running partisan election campaigns with Senate Democratic Caucus (SDC) resources, defendant Chvala was effectively using the People's tax monies to tell the People how to vote. These public policy concerns are more fully articulated by the below authorities.

I. Secretive funding of election campaigns fosters legislative corruption.

In section 11.001(1) of Wisconsin Statutes, our legislature declared the State of Wisconsin has a compelling interest in transparent election campaign financing.

The legislature finds and declares that our democratic system of government can be maintained only if the electorate is informed. It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters. One of the most important sources of information to the voters is available through the campaign finance reporting system. Campaign reports provide information which aids the public in fully understanding the public positions taken by a candidate or political organization. When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate. (Emphasis added).

Thus, the legislature warns that secret funding of election campaigns invites legislative corruption.

The United States Supreme Court similarly recognized the need for public reporting of campaign finances. In Buckley v. Valeo, 424 U.S. 1 (1976), the Court reviewed the constitutionality of the Federal Elections Campaign Act of 1971, and upheld those portions of the Act requiring limits on, and disclosure of, campaign contributions. In doing so, the Court affirmed the government's compelling interest in combating legislative corruption.

...[Campaign finance report] disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may

discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in *Burroughs v. United States*, 290 U.S. at 548, Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." (Emphasis added; footnotes omitted). *Id.* at 57.

Public campaign finance disclosure serves to discourage legislative corruption.

Section 11.38, Wis. Stats., codifies a related public policy of forbidding corporations from contributing to candidates. Whether or not corporate contributions involve outright pay-offs, the impact of such contributions is inherently corrupting. This danger is amplified when the corporate contributions are not publicly reported. In an affidavit (Attachment A) submitted in Wisconsin Realtors Association, et al. v. Ponto, et al., Case No.02-C-0424, U.S. District Court for the Western District of Wisconsin, defendant Chvala himself quoted Governor Robert LaFollette's 1905 State of the State speech on the anti-democratic influence of corporate money in elections.

I believe it to be vitally important that corporations should be prohibited by law from contributing money for political purposes. Individuals may properly contribute to pay the legitimate expenses of conducting political campaigns. Money so contributed is given with the personal responsibility of the individual making the contribution. But when corporations can furnish money from corporate treasuries to carry elections individual free will and responsibility is gone. Should the custom of the corporation contributions to campaigns grow broad enough, the whole character of the government would be changed, and corporations not men would rule. (Emphasis added).

This public policy concern still holds true, notwithstanding defendant Chvala's repudiation by unlawfully operating ICD-Issues.

2. The democratic process is undermined when incumbents use state resources to gain unfair advantage over nonincumbent opponents.

Section 11.001(2), Wis. Stats., further states a public policy of prohibiting elected officials from misappropriating state resources for their own reelection campaigns.

This chapter is also intended to ensure fair and impartial elections by precluding officeholders from utilizing the perquisites of office at public expense in order to gain an advantage over nonincumbent candidates who have no perquisites available to them.

In other words, co-opting state resources for partisan election campaigns denies other candidates a level playing field. The practice skews the electoral process.

During interlocutory litigation of the present case, our Court of Appeals observed that using state resources to conduct partisan election campaign is anti-democratic.

...[T]hese allegations show political campaign activity of the most basic type: the preparation and dissemination of campaign literature, political fundraising efforts on behalf of a number of candidates for the Wisconsin Senate, campaign data management on state computers, daily monitoring of campaign progress by Chvala, development and implementation of campaign strategy and debriefing of the 2000 election cycle on state time in state offices. The result is public financing of private campaigns without the public's permission. There is no reasonable argument that this activity serves any legitimate legislative duty or purpose. No statute, rule or policy sanctions this behavior. (Emphasis added). State v. Chvala, 271 Wis.2d 115, 162 (Ct. App. 2004).

When an incumbent uses state resources for reelection, challengers are unfairly denied equal access to the democratic process.

In James A. Gardner, Article: *The uses and abuses of incumbency: People v. Ohrenstein and the limits of inherent legislative powers*, 60 Fordham L. Rev. 217, 221 (1991), Professor Gardner puts the harm in even more striking terms.

The second principal form of incumbency abuse occurs when officials use the governmental resources at their disposal for the purpose of maintaining themselves in power. In extreme cases this type of abuse might take the form of outlawing political dissent altogether or stealing elections through vote fraud. Other examples might include using

government property -- cars, planes, employees, etc. -- as private campaign resources. Of course this type of abuse is related to the first: one cannot plunder the public till or dispense patronage unless one holds office. Still, in our society this politically oriented type of incumbency abuse is often viewed as worse than the private enrichment type because it deprives individuals of their most basic liberty, the right of self-government.

A fundamental aspect of American societal self-understanding is that the choice of who shall govern, and on what terms, is one for the people, and not for the government; indeed, as Jefferson wrote, whenever a government becomes unsatisfactory, "it is the right of the people to alter or to abolish it." When the government uses its power to dictate or to improperly influence decisions about who gets to hold office, this basic right of political self-determination is undermined. Madison viewed the overcoming of this dilemma as the central problem of constitutional craftsmanship: "you must first enable the government to control the governed; and in the next place oblige it to control itself." For the political heirs of men who pledged their "lives, [their] fortunes, and [their] sacred honour" to the pursuit of political freedom and self-determination, there can be little doubt that the government's abuse of the powers of incumbency for the purpose of perpetuating its own power is one of the worst possible offenses against the polity. (Emphasis added).

Professor Gardner views incumbency abuse in terms of basic democratic rights. He properly invokes the ideals of our founding fathers in emphasizing the seriousness of what is at stake.

FACTS

As the criminal complaint recites, defendant Chvala abused his public power in an intentional and systematic manner. His violations were not *de minimis* or unmindful. Rather, defendant Chvala decided the ends justified the means. In order to maintain control of the State Senate, defendant Chvala chose to violate the law and abuse his public trust.

1. Defendant Chvala's illicit campaign coordination was willfull.

In his guilty plea hearing on October 25, 2005, defendant Chvala's chief of staff, Douglas Burnett, told the court that he conspired with defendant Chvala to engage in unlawful campaign coordination. Mr. Burnett's voice quivered with emotion as he acknowledged the misconduct:

...[I]n our zeal to win elections, Senator Chvala and I crossed the line and we broke the law. We knew we were crossing the line when we did it, and we did it anyways, because we thought the ends justified the means.

A full copy of Mr. Burnett's allocution is appended as Attachment B. In earlier statements to investigators, Mr. Burnett described in still greater detail how he and defendant Chvala schemed to unlawfully coordinate ICD and ICD-Issues with senate candidate campaigns. Criminal Complaint, paras. 238 and 250.

In marked contrast, defendant Chvala denies he knew the law forbade his collusion between ICD and senate candidate campaigns. Defendant Chvala claims ignorance of the law. He refuses to acknowledge his corrupt intent. *Rather than mitigating defendant Chvala's crimes, this denial shows he is unremorseful. It is a highly aggravating factor for sentencing.*

Defendant Chvala may wish to rationalize away his moral failure, but the damning facts remain. Mr. Burnett was not currying favor with the State when he described his conspiracy with defendant Chvala. Speaking after the prosecutor already made his sentencing recommendation, Mr. Burnett had no motive to lie. He simply spoke the truth.

Further, the secretive manner in which defendant Chvala operated ICD and ICD-Issues shows defendant Chvala's consciousness of guilt. Defendant Chvala hid behind unwitting intermediaries, such as Tom Boeder and Scott McCormick, because defendant Chvala knew he was violating the law. And like a mafia don, defendant Chvala insulated himself by directing his criminal activities through a single trusted accomplice, Mr. Burnett.

Moreover, defendant Chvala was on notice that he was unlawfully coordinating between ICD and senate candidate campaigns. In 1998, defendant Chvala set up another bogus "independent" expenditure group, Future Wisconsin. Future Wisconsin operated in an identical fashion as ICD. Defendant Chvala used SDC caucus staff to manage senate candidate Brian Manthey's campaign against opponent Mary Lazich, while simultaneously, he used Future Wisconsin to bolster that same candidate. Senator Lazich filed a complaint with the State Elections Board alleging unlawful campaign

coordination, and the press began calling defendant Chvala's front man, Tom Boeder. See Attachment C. Defendant Chvala responded, not by acknowledging his role and defending its legality, but by directing Mr. Burnett to assure Mr. Boeder was "well scripted" when he talked to the press. Criminal Complaint, para. 255.

Finally, despite defendant Chvala's feigned misunderstanding of campaign coordination law, the core rule is clear. Attachment D is an excerpt from the State Senate Democratic Committee (SSDC) plan for the Fall 2000 election campaign. As Senate Democratic Majority Leader, defendant Chvala certainly would have reviewed and approved this plan. The plan provides a straightforward warning against coordinating candidate campaigns with independent expenditures. That warning includes the following admonishment: "*Prima facie* evidence of collusion would be the same person acting as an agent for both groups during a single campaign cycle, such as making media buys or investigating opposition research." Defendant Chvala cannot credibly claim ignorance of this simple rule.

2. Defendant Chvala's illicit campaign coordination denied the public's right to know how election campaigns were being funded.

As section 11.001(1), Wis. Stats., declares, the public has a compelling right to know who is funding a candidate's election campaign. In contravention of this policy, defendant Chvala misled the public as to the source and extent of Senate candidates' financial support in the 2000 election campaign. Defendant Chvala set up ICD in a manner which circumvented campaign finance disclosure laws and contribution limits. On its face, ICD was independent of any candidate campaign. But behind the veil, defendant Chvala used ICD as a second bank account to directly finance candidate campaigns. Because of this deception, the public could not know that contributors to ICD were effectively giving straight to candidate campaigns.

After the 2000 campaign, defendant Chvala went still further in subverting campaign finance disclosure laws by setting up a bogus "issue advocacy" group. Groups which engage in "express advocacy," such as ICD, are subject to

Chapter 11. They must file campaign finance reports. They are subject to contribution limits. They may not accept corporate contributions. They are limited to accepting what is known as “hard money” contributions. In contrast, “issue advocacy” groups are not subject to Chapter 11. Issue advocacy groups may accept unlimited corporate contributions and are not required to publicly disclose such “soft money.” Because of these advantages, defendant Chvala unlawfully set up his funding mechanism for the 2002 election, ICD-Issues, in the guise of an issue advocacy group.

ICD-Issues, however, was not an independent issue advocacy group. Defendant Chvala conspired to operate ICD-Issues in coordination with candidate campaigns just as he had operated ICD. Defendant Chvala knowingly used this sham to circumvent campaign financial disclosure laws. Since ICD-Issues purported to be an “issue advocacy” group, it avoided filing CFRs. Consequently, the public had no way of knowing how much money defendant Chvala raised through the group. Prosecutors were able to uncover the scale of ICD-Issues illicit campaign fundraising only by means of John Doe subpoenas of ICD-Issues’ bank account records.

3. Defendant Chvala’s illicit campaign coordination involved hundreds of thousands of dollars.

The massive scope of defendant Chvala’s unlawful campaign coordination is aggravating. The attached campaign finance report (CFR) shows defendant Chvala unlawfully expended **\$557,568.73** through ICD during election year 2000. Attachment E. ICD spent large sums on television advertisements in unlawful coordination with campaigns for Senate Districts 10, 30 and 32. Defendant Chvala’s unlawful expenditures may well have decided election outcomes in these districts.

Bank account statements for ICD-Issues (Attachment F) show that, by June 30, 2002, defendant Chvala amassed **\$643,008.26** for the purpose of unlawful coordinated campaigning. ICD-Issues’ bank records further show defendant Chvala was squeezing corporations which had special interest

legislation pending before the legislature. Criminal Complaint, paras. 194, 195 and 202. The sums which defendant Chvala extracted from these corporations are obscene: \$125,000 from Dominion Assets Services LLC, \$75,000 from the Distilled Spirits Council, \$75,000 from Madison Gas and Electric Company, \$50,000 from Wisconsin Energy Corporation, \$25,000 from Pacific Gas and Electric Energy Group, \$20,000 from Phillip Morris Management Corp., and numerous other large corporate payments. Attachments G-O. Such huge secret payments carry the stench of rank corruption.

4. Defendant Chvala's conducted his illicit campaign coordination with great premeditation and deliberation.

Defendant Chvala carefully orchestrated ICD's coordination with senate candidate campaigns. The coordinated assistance ICD gave to candidate Dave Hansen's campaign in 30th Senate District provides a particularly informative example. In Attachment P, Mr. Burnett describes how he and defendant Chvala planned ICD television expenditures to supplement candidate Hansen's campaign for Senate District 30. Mr. Burnett states

Sen. Chvala said to me (and I am paraphrasing) that the Hansen campaign would be unable to respond to the Drzewiecki tax ad, because Hansen TV buys were being spent on the "Tall Tales" and Lambeau ads, leaving no funds for the Hansen campaign to respond to the Drzewiecki attack."

Defendant Chvala then directed Mr. Burnett to have ICD produce a televised response. Defendant Chvala reviewed both the script and final videotape, and told Mr. Burnett "to notify Tom Boeder that the ad should be shipped to the stations and substituted as soon as possible for the 'Wisconsin Original' ad." Attachment P.

The above example underscores defendant Chvala's high level of planning and premeditation. He purposefully controlled both SDC staff managing senate candidate campaigns and ICD efforts to elect those same candidates. The two efforts were part of a unified plan. Defendant Chvala carefully considered what he was doing, and this deliberateness is an aggravating factor for sentencing.

5. Defendant oversaw a systematic abuse of Senate Democratic Caucus resources.

Although defendant Chvala stipulated to a limited factual basis for his guilty plea to Count 9, Misconduct in Public Office, the court is free to consider the entire circumstances surrounding the crime. Those circumstances involved defendant Chvala supervising a systematic misappropriation of state resources for election campaigns. Defendant Chvala ran the SDC as a partisan election campaign machine.

Perhaps the best informed assessments of the SDC abuse are the statements of the former SDC directors. Defendant Chvala appointed Joanna Richard to serve as SDC director from 1995 through 1998. Below is a verbatim excerpt from a law enforcement report of an interview with Ms. Richard.

...[T]here was a dramatic increase in Chvala's involvement in campaigns during the 1998 election cycle. Chvala would call her several times a day on her state phone and would question every judgment that was made on campaigns. In addition, Chvala would have to approve all the campaign plans for the candidates. The SDC staff member assigned to run the campaign would create a campaign plan, and she would edit it and come up with a final version. She would give her finalized version to Chvala who would revise and edit it before giving his final approval of the plan. When she discussed campaign plans with Chvala, they did discuss which members of the SDC staff would be running the particular campaigns. (Emphasis added). (Attachment Q at pg. 2).

Ms. Richards also testified under oath, during the John Doe hearing, that defendant Chvala had authority over hiring and compensating SDC employees. Attachment R.

Andrew Gussert served as SDC director from 1999 to 2000. Mr. Gussert similarly described defendant Chvala's systematic use of SDC resources and staff for campaign work. The following are two particularly pointed excerpts from Mr. Gussert's statement to law enforcement authorities.

He [Gussert] recalls being at a meeting in July or August of 2000 with Chvala, Clausing, Carrie Lynch, Julia Sherman, Rebecca Holter and Christie Gwitt where they discussed Clausing's campaign. The meeting took place in the SDC conference room. At the meeting, Chvala defined each person's role on the campaign...(Attachment S at pgs. 4-5)

Mr. Gussert also stated that defendant Chvala routinely used SDC graphics resources to produce campaign literature.

Chvala would call him [Gussert] on a regular basis to discuss campaign literature and to make edits to particular pieces. Maracek also told him that Chvala had called her and made various edits to the literature so she changed it to reflect Chvala's changes. Chvala micro-managed the way the literature was written and scrutinized the language that was used in the pieces. He knows that Maracek was working on these campaign pieces on state time because often times Chvala would call with multiple edits and Maracek would make the changes and turn out the final product that same day. (Emphasis added)(Attachment S at pg. 6)

Defendant Chvala well knew that SDC employees were using state time and resources to do the campaign work which he directed.

Mr. Gussert's statements are corroborated by SDC documents which pre-date the criminal investigation. For example, Attachment T is an organizational chart for the Alice Clausing's campaign which Mr. Gussert prepared in 2000. That chart places defendant Chvala in a supervisory role, with SDC employees Carrie Lynch, Mike Tierney, Andy Gussert, Branda Weix, and Rachel Roller performing the various component tasks for the campaign.

Darcy Luoma was the next potential SDC director. After firing Mr. Gussert, defendant Chvala tried to recruit Ms. Luoma. To acquaint Ms. Luoma with SDC operations, defendant Chvala brought her to an SDC staff meeting. The meeting was held from 10:00 am to noon on Tuesday, January 16, 2001 in an SDC conference room – ie. during business hours in state office space. The entire meeting was a debriefing of SDC employees work on the Fall 2000 senate campaigns. Defendant Chvala facilitated the meeting, and thanked SDC employees for their campaign work. Remarkably, Ms. Luoma took *contemporaneous* notes of the meeting. Her notes record detailed discussions of specific senate campaigns, campaign budgets, campaign literature strategies, broadcast media plans, political attack advertisements, and campaign fundraising. Attachment U.

Finally, defendant Chvala not only applied SDC resources to his colleagues' election campaigns. He also used these state resources for his own

reelection. Two documents provide compelling proof. Attachment V is a “Friends of Chuck Chvala” campaign fundraising solicitation which Wisconsin State Crime Lab analysts forensically recovered from computer resources seized from the SDC. Attachment W is a two page excerpt from the business records of printing company, Visuality, Inc. Page one is a job order for the “Chvala Campaign” submitted by “Cindy/Mike Brown.” Cindy Maracek was the graphics design artist at the SDC. Mike Brown was an SDC analyst (and subsequently a legislative staffer for defendant Chvala). The buyer’s telephone number is listed as “284-8482.” That number was a State of Wisconsin telephone assigned to the SDC offices. Page two is the item Visuality Inc. printed: a football schedule bearing text “Re-Elect Chuck Chvala State Senator” and “Paid for by the Friends of Chuck Chvala.”

6. The court should consider all counts not dismissed with prejudice.

When sentencing defendant Chvala, the court should consider all counts which were not dismissed with prejudice. In State v. Elias, 93 Wis.2d 278, 284 (1979), the Wisconsin Supreme Court emphasized that, in sentencing a defendant

...the trial court can consider other unproven offenses, since those other offenses are evidence of a pattern of behavior which is an index of the defendant’s character, a critical factor in sentencing.

The court further instructed that trial courts have a responsibility “to acquire full knowledge of the character and behavior pattern of the convicted defendant before imposing sentence” and that responsibility includes assessing dismissed charges. Id. at 285. In support of this holding, the Wisconsin Supreme Court quoted United States v. Majors, 490 F.2d 1321, 1324 (10th Cir.1974 with approval.

...The dismissed indictment and the charge contained in it are within the kind of information which a court may properly consider in passing sentence. The plea bargain and the indictment dismissal resulting from it did not and, indeed, could not, deprive the judge of the right and probably the duty of giving consideration to it...(emphasis added). Elias at 285.

To the extent the present court finds the dismissed counts credible, the court should rely on them in evaluating defendant Chvala's character and in determining an appropriate sentence.

The plea agreement also specifically contemplates that the court will assess the conduct underlying dismissed counts 1, 3, and 5. Paragraph 4 of the agreement provides "[t]he Defendant continues to deny each of the allegations contained in those counts, but acknowledges that each side may comment on such charges as part of sentencing." Notwithstanding defendant Chvala's denial, he did commit extortion as alleged in the Criminal Complaint.

Documentary evidence corroborates each of the extortion allegations. As to count 2, the Black Point Estate extortion, lobbyist William Peterson wrote a letter (Attachment X) to his client, William Peterson, recounting defendant Chvala's continuing demand for campaign contributions to senate candidates Rodney Moen and Kimberly Plache. Within one week, Mr. Peterson wrote \$500 checks (Attachments Y and Z) to those candidates, even though neither represented the senate district where Black Point Estate was located. As to count 4, defendant Chvala's extortion from the Wisconsin Realtors Association, the procedural history of AB 334 convincingly links to the timing of the realtors' campaign contributions. Three days after the pay-offs were made, defendant Chvala scheduled AB 334 for vote. Attachment AA is a timeline of this sequence of events. As to count 6, defendant Chvala's extortionate threats to the Wholesale Beer Distributors Association, legislative drafting records show defendant Chvala carried through on his threats. Notations on a drafting request (Attachment BB) in the handwriting of Douglas Burnett, defendant Chvala's chief of staff, direct the surgical excision of four provisions of critical interest to the Wholesale Beer Distributors Association. All of this evidence, together with that described in the Criminal Complaint, show the victims' accusations to be credible.

SENTENCE

For the above reasons, and pursuant to the plea agreement, the State recommends the court concurrently adjudge the following sentences as to both

Counts 9 and 11. The court should impose and stay a sentence at the court's discretion, place defendant Chvala on two years probation, and require he serve six months in the Dane County Jail with Huber privileges as a condition of probation. The State further requests the court order a fine of \$5,500. This amount equals the pay-offs, which defendant Chvala extracted in Counts 1 and 3, from William Peterson (\$1000), the Wisconsin Realtors Association (\$3,000), and the Madison Realtors Association (\$1,500).

The State is fully aware defendant Chvala has suffered significant punishment apart from any sentence this court may impose. He left public office in disgrace. As a convicted felon, defendant Chvala is ineligible to hold "any office of trust, profit or honor in this state unless pardoned of the conviction." Wis. Const. art. XIII, section 3. He may not vote in state or federal elections until he completes his sentence. Wis. Const. art. III, section 2. Defendant Chvala may well lose his license to practice law for violating SCR 20:8.4 by committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer..." and by engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." The costs of litigating the present case must have been an enormous drain on defendant Chvala's personal fortune. However, defendant Chvala brought all these consequences down upon his own head. He must bear them together with the sentence of this court.

RESTITUTION

The State is unable to make a recommendation as to restitution for defendant Chvala's misappropriation of State of Wisconsin resources. At a restitution hearing, the State bears "the burden of demonstrating by the preponderance of the evidence the amount of loss sustained by the victim..." Section 973.20(14)(a), Wis. Stats. It is impossible to reasonably determine the amount of state time which SDC employees spent on elections. SDC employees all assert they worked long hours during fall election seasons. Some portion of that time was devoted to campaign work and some to legitimate legislative work. No employee can state, with any certainty, the exact split. No reliable work

records exist to conduct an accounting of the hours of state time which SDC employees spent on campaigning.

Had this case gone to trial, the prosecution would have focused on SDC employees using the state resources of office space, computers, telephones, fax machines, and graphics printers. The State would not have attempted to account for state time versus personal time spent on campaign work. Under these facts, the State cannot prove a specific restitution figure.

In efforts parallel to the present prosecution, the State is acting to recoup the monies which defendant Chvala unlawfully raised for ICD-Issues. Attorneys representing ICD-Issues agreed to hold these funds in escrow until the prosecution of defendant Chvala was completed. On last accounting, \$448,520.42 remained frozen. The State has now reached an agreement with ICD-Issues' attorneys, in principle, wherein ICD-Issues shall forfeit the funds to the state school fund. However, should negotiations founder, the State shall seize and forfeit the ICD-Issues funds under sections 973.075 and 973.076, Wis. Stats.

Respectfully submitted this ____ day of December, 2005,

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