State of Wisconsin\Government Accountability Board

Post Office Box 7984
212 East Washington Avenue, Third Floor
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
http://gab.wi.gov

JUDGE GERALD C. NICHOL
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

July 24, 2015 Hand Delivered

The Honorable David Craig
State Representative, 83rd State Assembly District
Room 127 West, State Capitol
Madison, WI 53702

Dear Representative Craig:

I am glad to respond to your public records request and also to your questions, but I vehemently disagree with the accusations in your public statement of July 10, 2015, regarding G.A.B. contacts with the Internal Revenue Service and how our agency conducts its business. You stated, "It is disturbing that the GAB hid behind the law when shielding John Doe investigation documents from legislators and the Legislative Audit Bureau, all the while sharing information with an unrelated federal agency that has nothing to do with the administration of elections." You then launch a guilt-by-association accusation about my contacts with Ms. Lerner without any basis in the facts.

Your statement is inaccurate in two respects. The G.A.B. has followed the law, not hid behind it, in abiding by the confidentiality statutes which regulate our investigations and advisory opinions. Attorney General Van Hollen confirmed that the G.A.B. could not share such confidential records with legislators or the Legislative Audit Bureau, and that doing so would risk criminal penalties for our staff. *See* OAG 03-14. "By imposing criminal penalties for a violation of Wis. Stat. § 12.13(5), the legislature emphasized the confidentiality of GAB's investigative records even more than in most other statutes addressing confidentiality. It is hard to imagine a more powerful way of saying 'and we really mean what we say about confidentiality' than imposing criminal penalties for improper disclosure." OAG 03-14, ¶11. That guidance led to the passage of 2015 Act 2 which allows us to share confidential records only with the Audit Bureau; however, the LAB must still treat the confidential information with the same restrictions as does our staff.

The Legislature has the power to change the law to permit public disclosure of confidential investigation records. If it chooses to do so, we would be glad to share more complete information regarding the evidence reviewed by our agency and the analysis of our staff and Board. Until then, it is grossly unfair for legislators, who do not face the same criminal sanctions, to criticize staff of the G.A.B. for following the requirements of the Statutes.

Second, your statement incorrectly alleges that the G.A.B. shared information with the IRS, and that the IRS is not involved with the administration of elections. As the enclosed documents show, we did not share information with the IRS specific to the G.A.B.'s investigation. The IRS certainly has a role in regulating nonprofit organizations which engage in political speech, giving the Board good reason to consult with the IRS regarding general

issues of campaign finance regulation in the same way that we consult with the Federal Election Commission.

As part of your request you asked for an explanation as to "why a state agency charged with 'oversight of Wisconsin's campaign finance, elections, ethics and lobby laws' would have any reason to contact the IRS related to state business." The answer is simple: to serve our customers.

Agency staff receives numerous inquiries concerning laws regulating political activity. In the course of sorting out what we can and should answer, it is important to be aware of other areas of regulation so we can direct our customers to another source if necessary. This applies to a customer's need to obtain certain tax information (employer identification number) when setting up a bank account for a political entity. We also need to know when to advise someone to contact the IRS for information on the nature of regulation of various entities engaged in political activity, for example 501(c)4 and 501(c)6 non-profit organizations, and 527 groups organized to influence elections.

In addition, when crafting administrative rules or responding to legislative inquiries about the regulation of political activity, it is important to have a base level knowledge of other regulatory sources. This enables agency staff to direct inquiries to more appropriate sources as well as focus on the parameters of state regulation of political activity. The G.A.B. has legitimate business purposes for maintaining professional relationships with the IRS in the same way that the DNR has with the Environmental Protection Agency or the Wisconsin DOT has with US DOT.

In the future I would ask that you consider giving me the courtesy of picking up the phone and allowing me to answer your questions before issuing such an uninformed public statement. I believe that is the least I can ask when an elected official seeks to impugn my personal and professional integrity without any basis.

Enclosed please find all documents responsive to your recent public records request. You will note there is very little material that is responsive to your request. That is because there was very little contact with the IRS by agency staff. You will also note the vast majority of the documents reflect a professional friendship that goes back almost 25 years and does not relate to any regulatory activity.

If you have additional questions please contact me.

Government Accountability Board

Kevin J. Kennedy
Director and General Counsel

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Friday, February 05, 2010 11:25 AM
To: Kennedy, Kevin - GAB
Subject: Your Call

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

Thanks--I was thinking the same thing--guess I'd have had to stay at your house! My luck would be that I got stuck at the Chicago airport. Am leaving now to beat the snow. Enjoy and pray we don't lose power!

Lois G. Lerner
Director, Exempt Organizations

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Monday, May 24, 2010 11;12 AM
To: Kennedy, Kevin - GAB
Subject: FW: Trip next week

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

Lois G. Lerner
Director, Exempt Organizations

From: Douglas Akaisha
Sent: Monday, May 24, 2010 11:59 AM
To: Lerner Lois G
Subject: RE: Trip next week

The Palmer House Hilton
17 East Monroe Street
Chicago, IL 60603
312-726-7500

Confirmation # 3393003842

From: Lerner Lois G
Sent: Monday, May 24, 2010 11:57 AM
To: Douglas Akaisha
Subject: Trip next week

Can you send me hotel address for Chicago please

Lois G. Lerner
Director, Exempt Organizations

Kennedy, Kevin - GAB

From: Smithson, Charlie [IECD] <CHARLIE.SMITHSON@iowa.gov>
Sent: Wednesday, June 02, 2010 11:57 AM
To: lois.g.lerner@irs.gov; Kennedy, Kevin - GAB
Subject: FW: [EL] 501(c)(4) v 527

Do either of you still have this power point that I could access? Thank you.

Charlie Smithson
Director & Legal Counsel
Iowa Ethics & Campaign Disclosure Board
510 E. 12th Street, Suite 1A
Des Moines, Iowa 50319
(515) 281-3489
(515) 281-4073 (fax)
www.iowa.gov/ethics
http://twitter.com/ethicsbdcharlie

From: Eric Hallstrom [mailto:eric.hallstrom@gmail.com]
Sent: Wednesday, June 02, 2010 11:54 AM
To: Smithson, Charlie [IECD]
Subject: Fwd: [EL] 501(c)(4) v 527

Mr. Smithson:

I received a very useful power point (with handy chart) at the last COGEL conference from Louis Lerner at the IRS.

lois.g.lerner@irs.gov

It was actually forwarded to me by a Kevin Kennedy from Wisconsin (Kevin.Kennedy@Wisconsin.gov).

I work at the FEC for Vice Chair Bauerly (and I'm an Iowa law grad). If you can't get the power point from either Kevin or Louis, I'll see if I can find my copy and forward it to you.

Cheers,
Eric Hallstrom

On Wed, Jun 2, 2010 at 12:31 PM, Smithson, Charlie [IECD] <CHARLIE.SMITHSON@iowa.gov> wrote:

Can anyone point me to a useful document that as much as possible contains concise/plain on a 501(c)(4) organization versus a 527 committee? Preferably something that I could post on my Web site and could send to people to coach them up instead of taking my time trying to explain it to them.

Thank you all.

Charlie Smithson

Director & Legal Counsel

Iowa Ethics & Campaign Disclosure Board

510 E. 12th Street, Suite 1A

Des Moines, Iowa 50319

(515) 281-3489

(515) 281-4073 (fax)

www.iowa.gov/ethics

http://twitter.com/ethicsbdcharlie

--
Eric Hallstrom
(202) 486-2441

Kennedy, Kevin - GAB

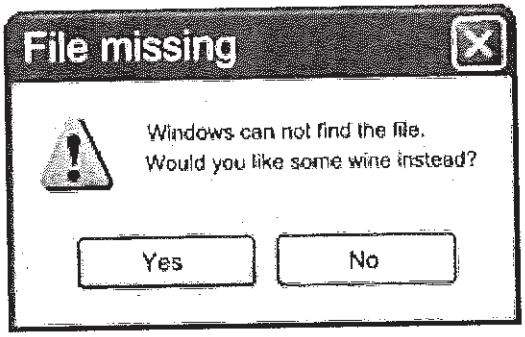
From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Monday, June 14, 2010 6:32 PM
To: Kennedy, Kevin - GAB
Subject: FW: Cracked me u

Follow Up Flag: Follow up
Flag Status: Flagged

Lois G. Lerner
Director, Exempt Organizations

From: Lerner,Leslie R. [mailto:LLERNER@travelers.com]
Sent: Monday, June 14, 2010 3:13 PM
To: Lerner Lois G; Garrabrant,Donna L; Havens,Dorothy Anne; Taylor,Donna L; Kopp,Kathy; 'Chris Buck'; Kruse,Judith A; Herche,Kimberly A; Clarke,Juliet P; Moccio,John J; Best,Gaston; Stevenson,James R; 'Terry Novy'; 'hersheya@aol.com'; 'Nancy Walz'; 'KernsN'; 'Gosselin, Nikki'; 'ruth clifford'; 'Ruth Rossini'; 'Traczyk, Julie'
Subject: Cracked me u

Now, finally, a computer error message I can understand



Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Tuesday, June 15, 2010 11:53 AM
To: Kennedy, Kevin - GAB
Subject: RE: c4 rev rule

Follow Up Flag: Follow up
Flag Status: Flagged

Kindell

Lois G. Lerner
Director, Exempt Organizations

From: Kennedy, Kevin - GAB [mailto:Kevin.Kennedy@Wisconsin.gov]
Sent: Tuesday, June 15, 2010 10:56 AM
To: Lerner Lois G
Subject: Re: c4 rev rule

Lois

Thank you. What is Judy"s last name?

Enjoy Italy!

Kevin

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
To: Kennedy, Kevin - GAB
Sent: Tue Jun 15 08:43:57 2010
Subject: FW: c4 rev rule

Link to rev.rule below. Judy's number is 202 283-8964. Good luck!

Lois G. Lerner
Director, Exempt Organizations

From: Fish David L
Sent: Monday, June 14, 2010 8:41 PM
To: Lerner Lois G; Miller Thomas J; Kindell Judith E

Cc: Choi Robert S; Letourneau Diane L
Subject: RE: c4 rev rule

http://www.irs.gov/pub/irs-tege/rr2004_6.pdf

From: Lerner Lois G
Sent: Monday, June 14, 2010 7:37 PM
To: Miller Thomas J; Fish David L; Kindell Judith E
Cc: Choi Robert S; Letourneau Diane L
Subject: c4 rev rule
Importance: High

Does anyone know the number of the c4 rev.rule we did a few years back on what is political intervention? A friend of mine who works for a state government says his legislature is trying to tighten up on political spending and wants c4s that put out communications within 60 days of an election to report them. the c4s are arguing that because the state is characterizing them as "political" they will get in trouble with the IRS even though they don't think it is "political." I explained that what we are talking about is campaign intervention rather than political activity. His question was who decides if it is intervention and I said the IRS. So, he wanted our regs on what is intervention---ha-ha! I suggested I'd send the rev. rule, which might help. Judy, I'm also giving him your name and number, so he can call you with a million questions when you return!

Lois G. Lerner
Director, Exempt Organizations

Kennedy, Kevin - GAB

From:	Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent:	Tuesday, June 15, 2010 8:44 AM
To:	Kennedy, Kevin - GAB
Subject:	FW: c4 rev rule
Follow Up Flag:	Follow up
Flag Status:	Flagged
Categories:	Green Category

Link to rev.rule below. Judy's number is 202 283-8964. Good luck!

Lois G. Lerner
Director, Exempt Organizations

From: Fish David L
Sent: Monday, June 14, 2010 8:41 PM
To: Lerner Lois G; Miller Thomas J; Kindell Judith E
Cc: Choi Robert S; Letourneau Diane L
Subject: RE: c4 rev rule

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Sent: Monday, June 14, 2010 7:37 PM
To: Miller Thomas J; Fish David L; Kindell Judith E
Cc: Choi Robert S; Letourneau Diane L
Subject: c4 rev rule
Importance: High

Does anyone know the number of the c4 rev.rule we [illegible] is political intervention? A friend of mine who works for [illegible] legislature is trying to tighten up on political spending [illegible] communications within 60 days of an election to [illegible] because the state is characterizing them as "political" [illegible] even though they don't think it is "political." I explained [illegible] campaign intervention rather than political activity. His [illegible] intervention and I said the IRS. So, he wanted our [illegible] suggested I'd send the rev. rule, which might help. [illegible] name and number, so he can call you with a million questions [illegible]

Lois G. Lerner
Director, Exempt Organizations

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Wednesday, June 30, 2010 6:05 PM
To: Kennedy, Kevin - GAB
Subject: FW: Fwd: This Year's Sand Castles

Follow Up Flag: Follow up
Flag Status: Flagged

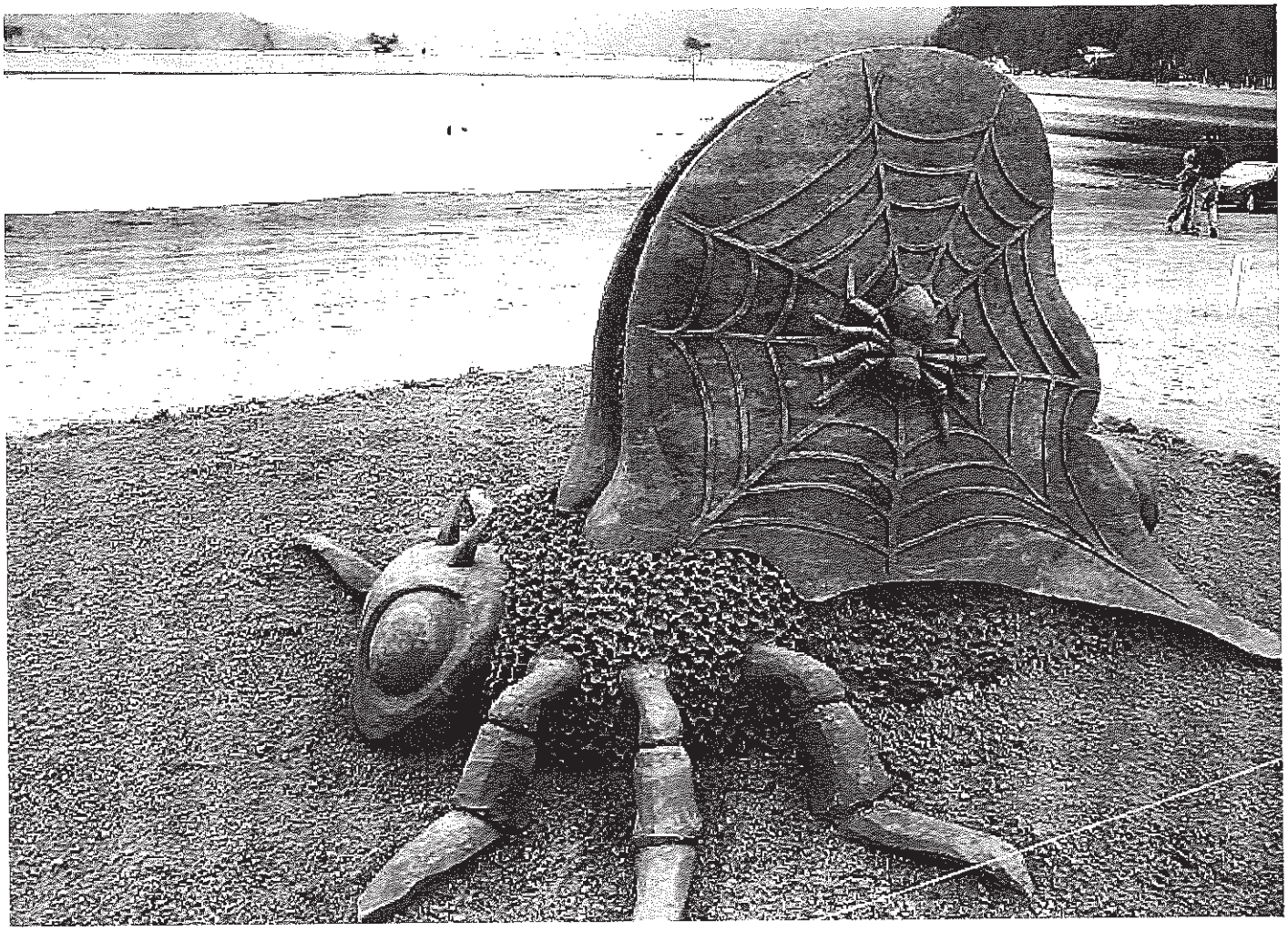
AMAZING!

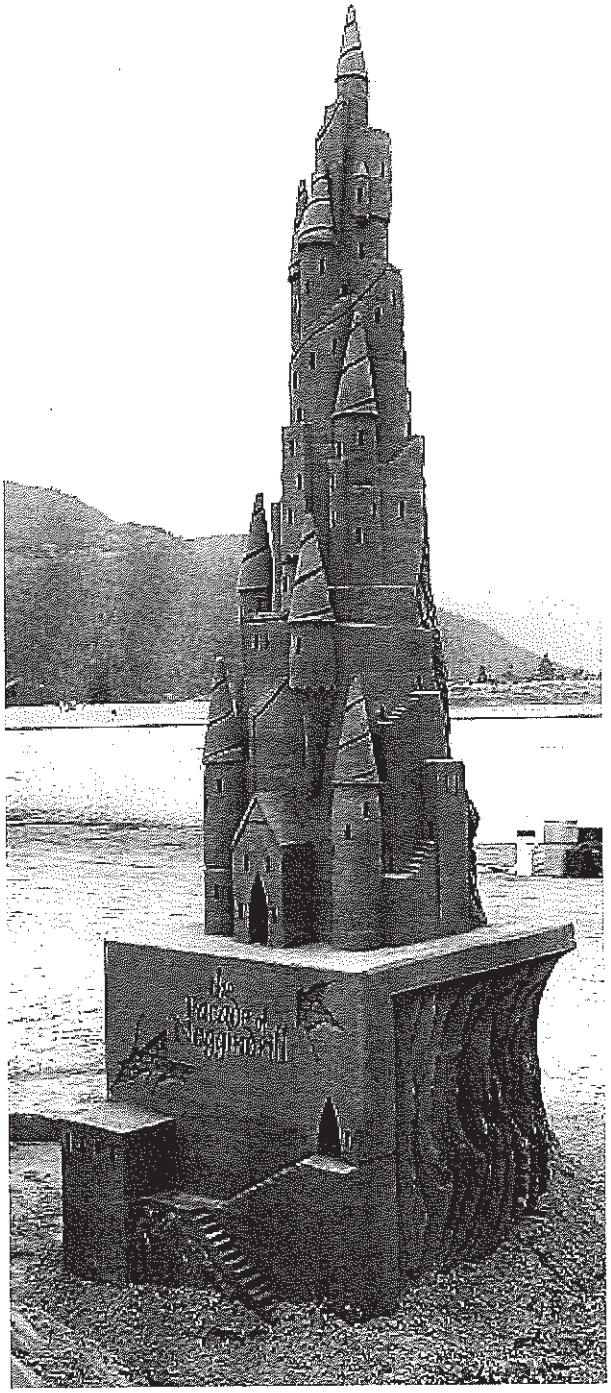
Lois G. Lerner
Director, Exempt Organizations

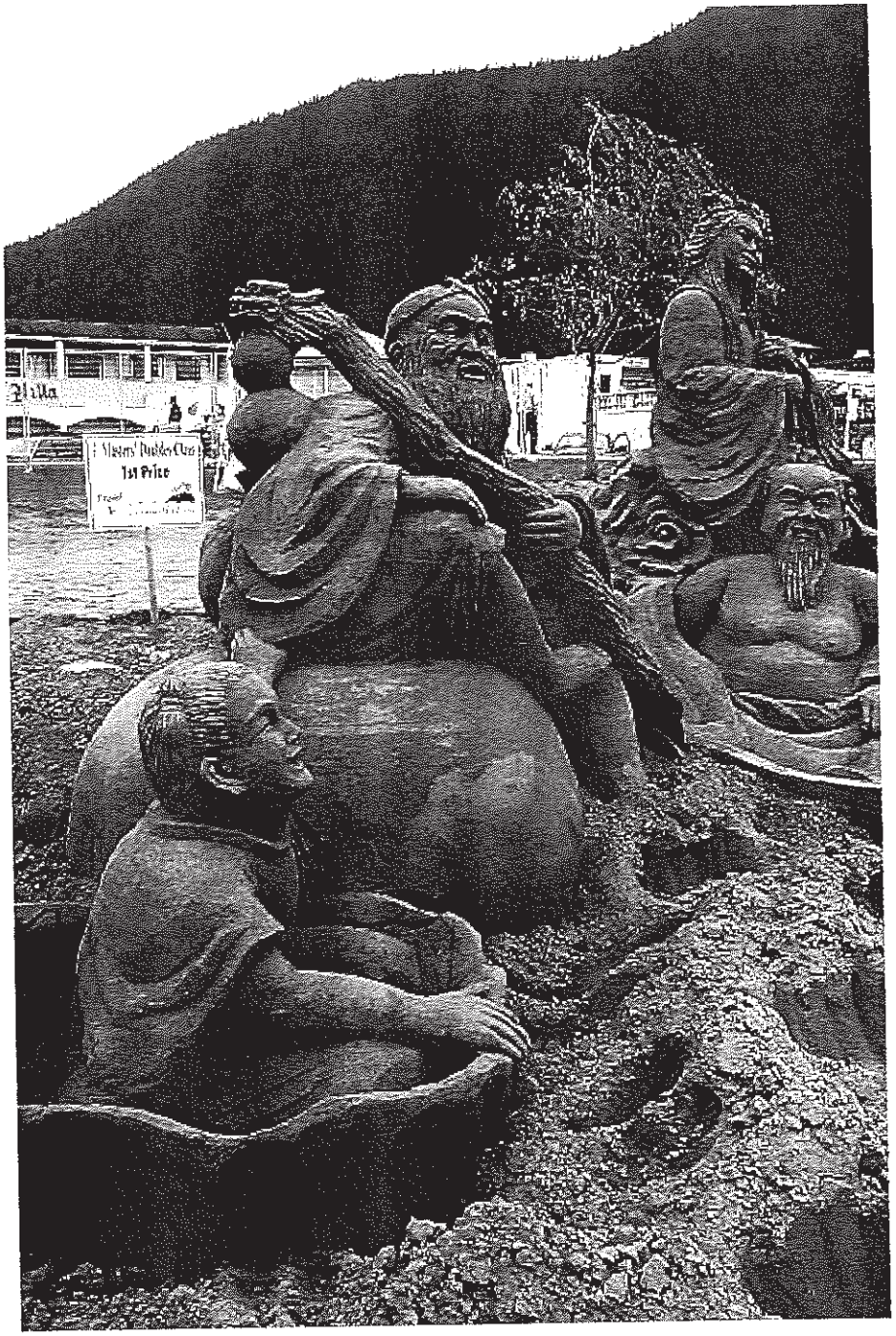
From: Urban Joseph J
Sent: Monday, June 28, 2010 2:51 PM
To: Miller Thomas J; Lerner Lois G
Subject: FW: Fwd: This Year's Sand Castles

:

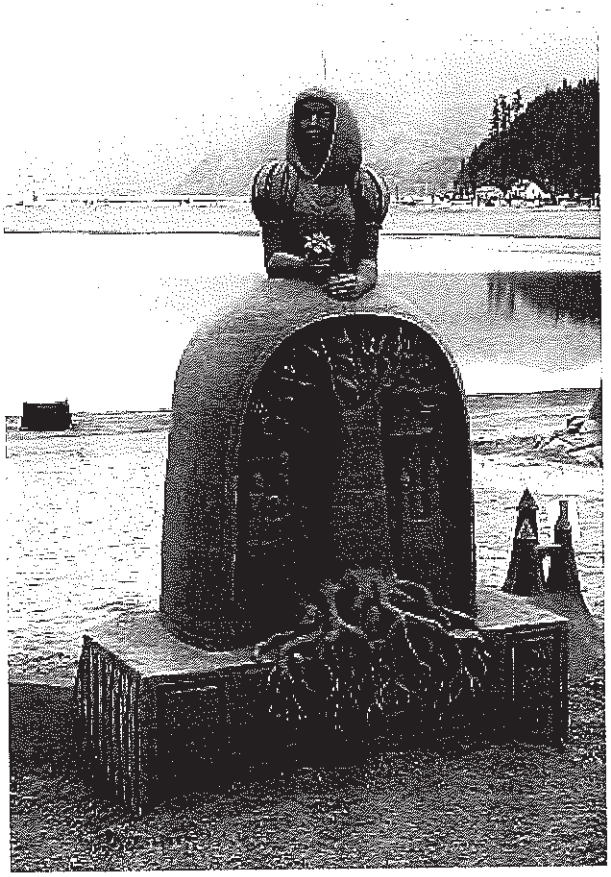
This year's sand castles competition in Oregon

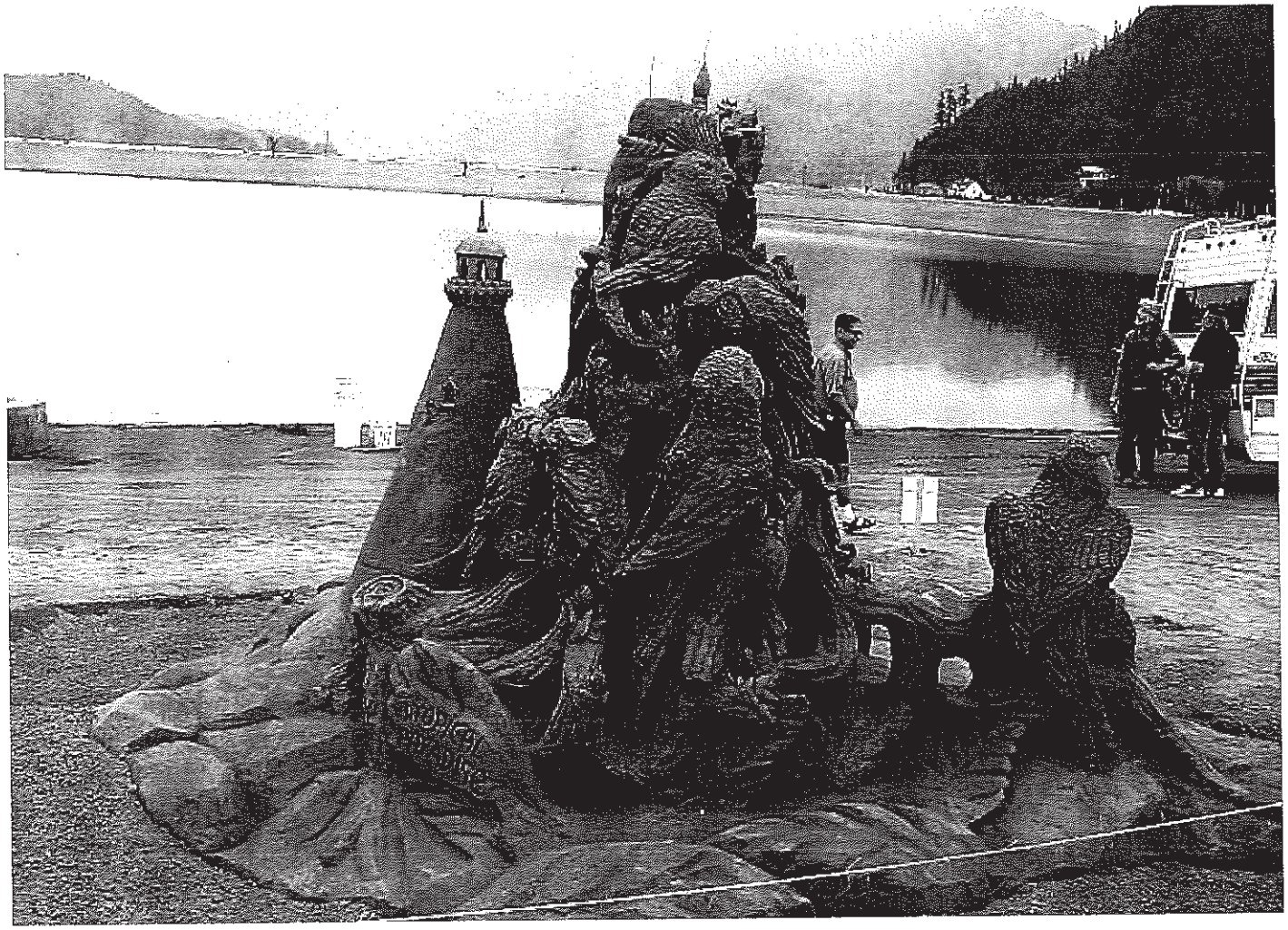


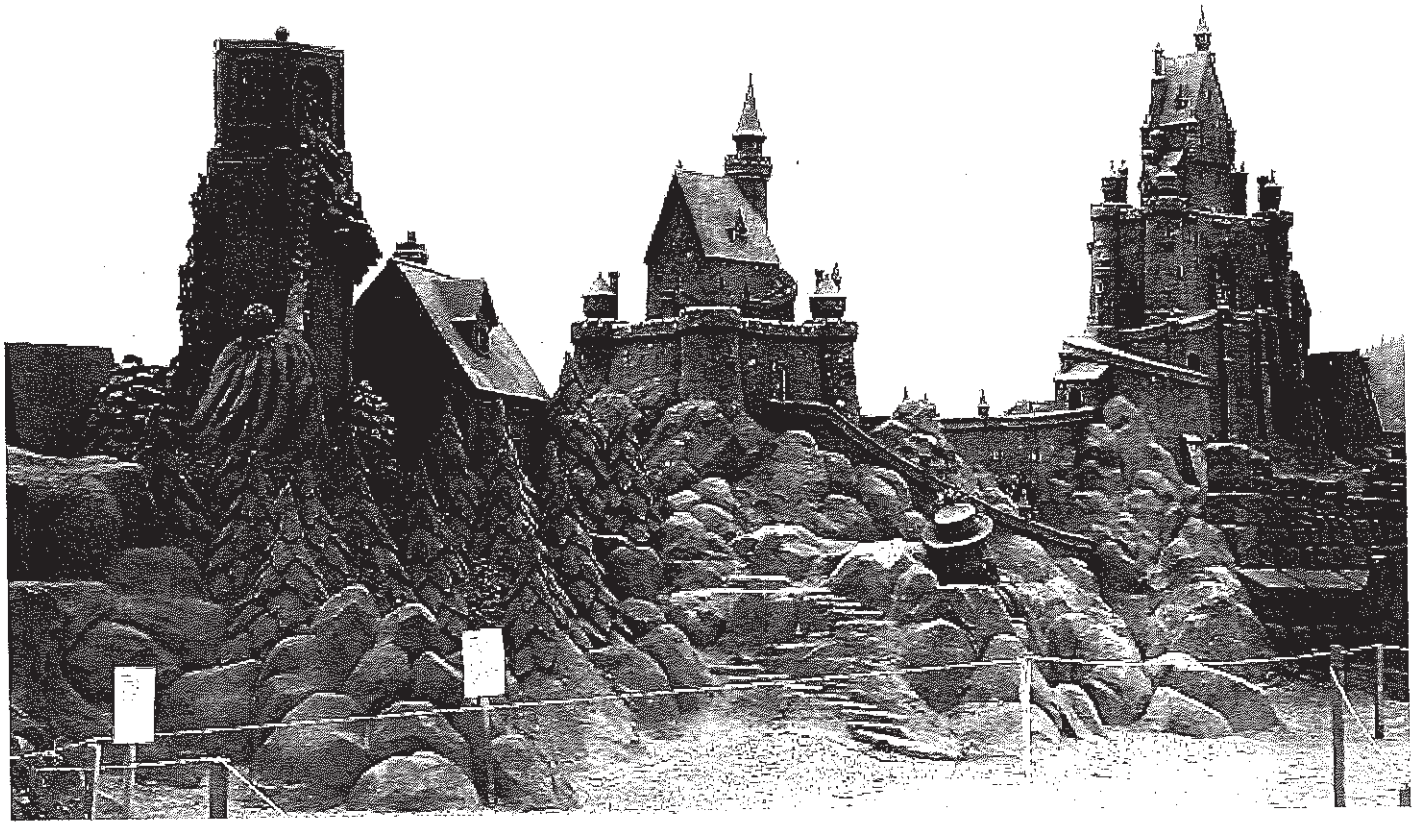



1st Prize


EVERYBODY IS A WINNER







Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Friday, July 30, 2010 4:15 PM
To: leslie.R.Lerner@Travelers.com; avannah; Kennedy, Kevin - GAB
Subject: FW: WHEN SOMEONE STEALS YR KODAK MOMENT
Attachments: Fwd: WHEN SOMEONE STEALS YR KODAK MOMENT

Sometimes it's just too absurd.

Lois G. Lerner
Director, Exempt Organizations

From: MIDGENJAKE@aol.com [mailto:MIDGENJAKE@aol.com]
Sent: Friday, July 30, 2010 2:29 PM
To: Lerner Lois G
Subject: Fwd: WHEN SOMEONE STEALS YR KODAK MOMENT

Kennedy, Kevin - GAB

From: bearcatkrg@comcast.net
Sent: Friday, July 30, 2010 1:03 PM
To: gill, kevin
Subject: Fwd: WHEN SOMEONE STEALS YR KODAK MOMENT

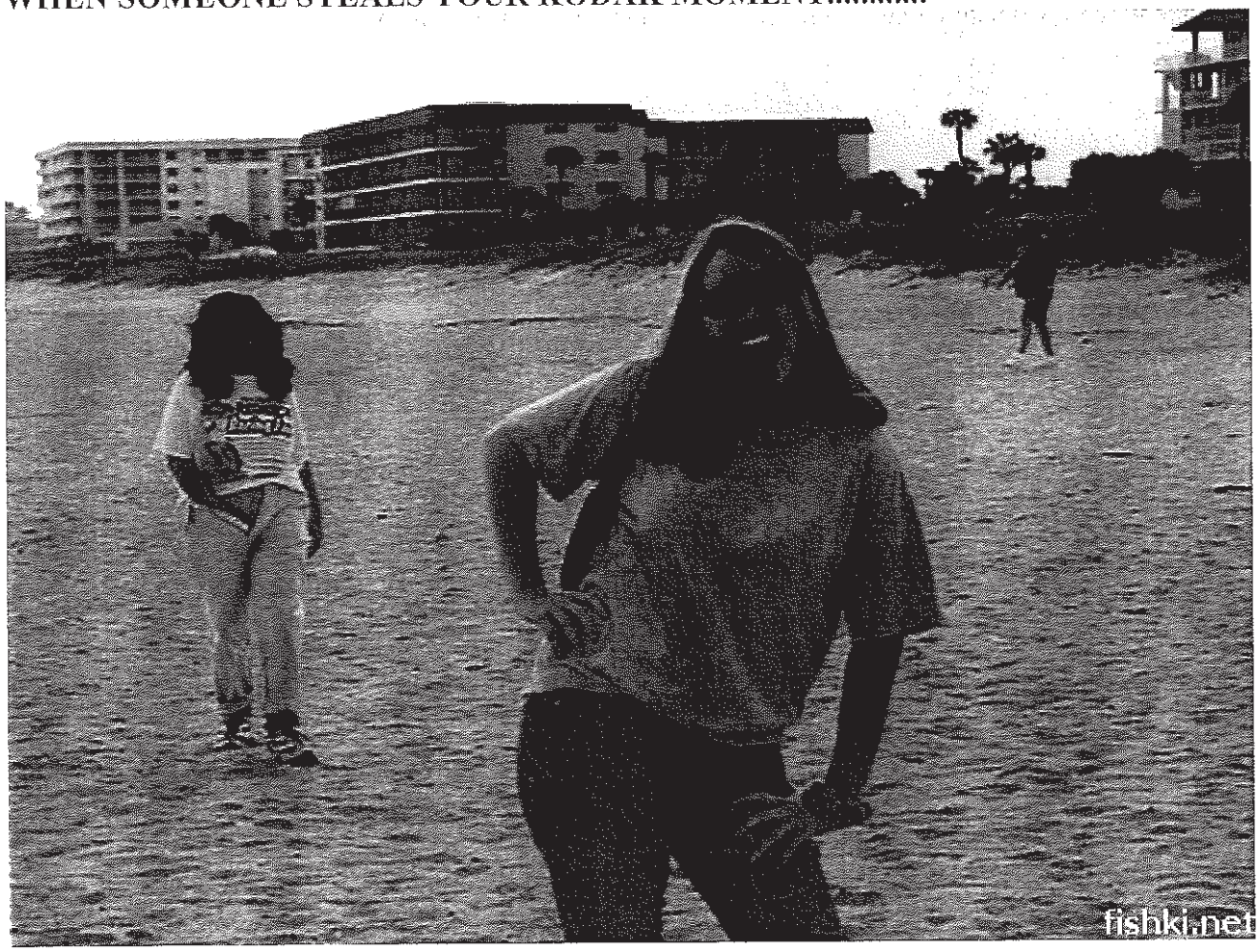
For all the photogs in the group.

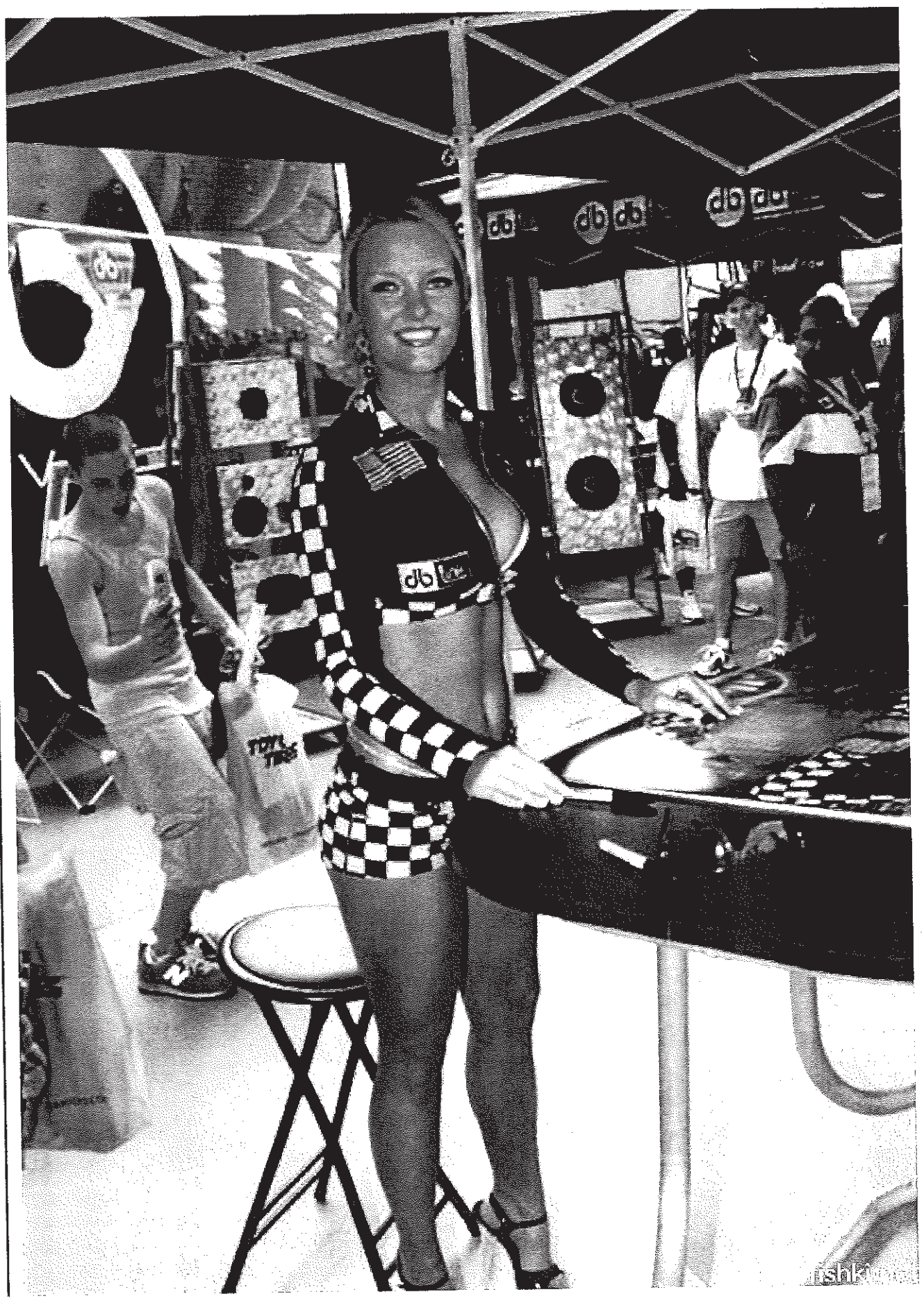
Kevin

----- Forwarded Message -----
From: "Frank Grisi" <healthfroggy@yahoo.com>
To: "Dave Kennedy" <capt099@yahoo.com>, "Gary and Janet Rieth" <GJRieth@optonline.net>, "Jim Simonetti" <jsimonetti@roxburypd.com>, "Jim Quinn" <jquinn@roxburypd.com>, "John Simone" <jsimone@roxburypd.com>, "Kevin Gill" <bearcatkrg@comcast.net>, "Mark Noll" <mnoll@roxburypd.com>, "Rob Herzog" <rherzog@roxburypd.com>, "Sandy Nyari" <sandor.nyari@verizon.net>
Sent: Friday, July 30, 2010 1:34:10 PM
Subject: Fwd: Fw: Fw: WHEN SOMEONE STEALS YR KODAK MOMENT

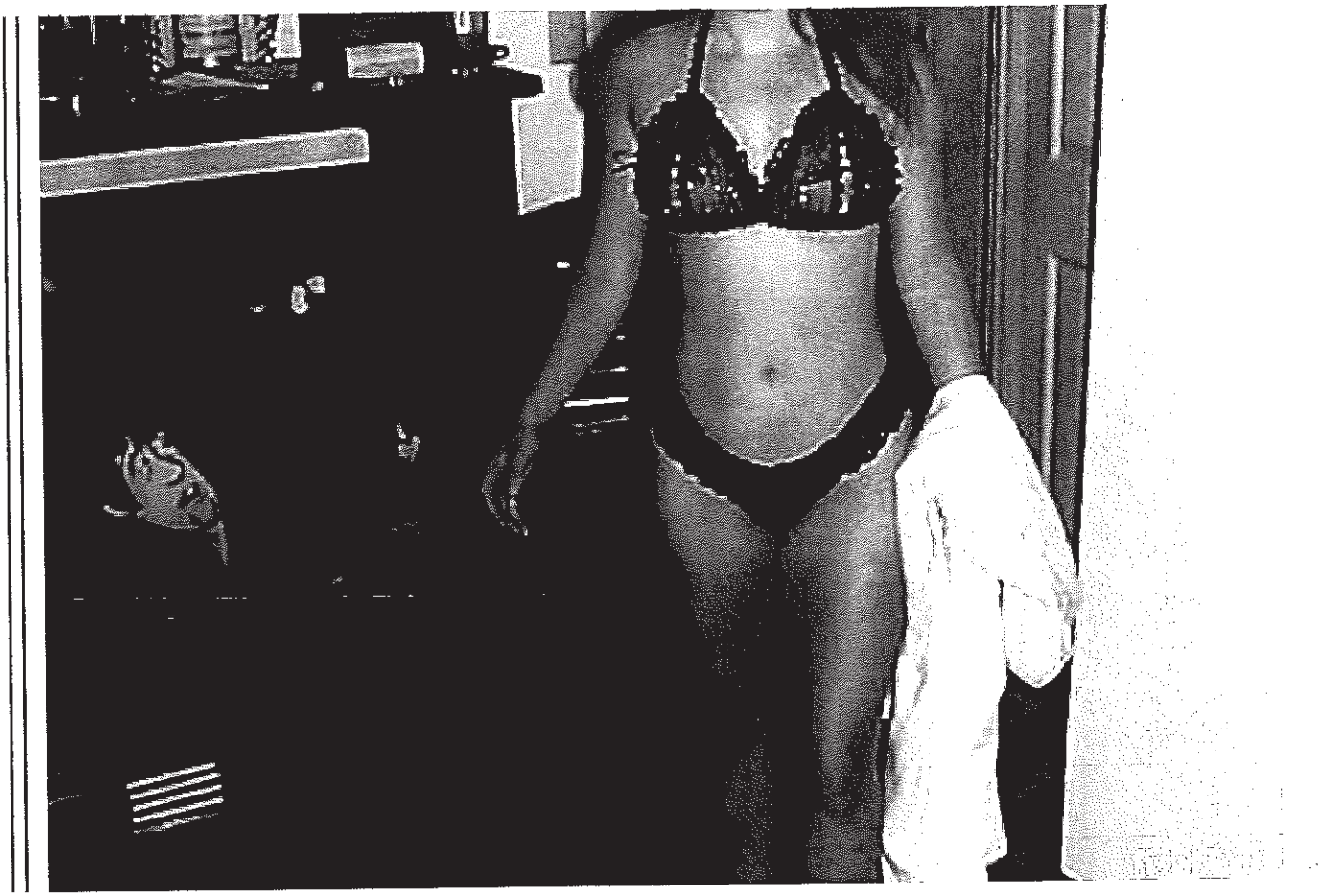
Subject: Fw: Fw: WHEN SOMEONE STEALS YR KODAK MOMENT

WHEN SOMEONE STEALS YOUR KODAK MOMENT.....






fishki.net




fishki.net


fishki.net

Don't take life too seriously.....

No one makes it out alive anyway.....

=

Hotmail is redefining busy with tools for the New Busy. Get more from your inbox. See how.

Kennedy, Kevin - GAB

From: CHunter@fec.gov
Sent: Monday, September 20, 2010 3:02 PM
To: Kennedy, Kevin - GAB
Subject: RE: COGEL
Attachments: CF Panelists and Description.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Kevin,

Hope you are well. What awful news about Julie Ruder, we were all very sad to hear it. She was a lovely person.

I am writing about this year's COGEL conference. It was nice to have some balance in the campaign finance panel last year. Any chance we could include a Republican Commissioner this year? I have asked Don McGahn and he said he would be happy to participate.

I am told there will be 35 people from the FEC attending the conference!!

Thank you, Kevin
Caroline

Caroline C. Hunter
Commissioner
Federal Election Commission
(202) 694-1043
chunter@fec.gov

"Kennedy, Kevin - GAB" <Kevin.Kennedy@Wisconsin.gov>

10/18/2009 10:32 PM

To '"MPetersen@fec.gov"' <MPetersen@fec.gov>
cc '"CHunter@fec.gov"' <CHunter@fec.gov>
Subject RE: COGEL

Matt,

Thank you for getting back to me. This panel has become a COGEL institution. It has served as a discussion point for the intersection of regulation and political speech. The panel originally started as a means of providing the audience with a perspective on who the wide range of speakers were in political campaigns and what regulations, if any, applied to their political speech. The public and regulators were often asking "who are these folks that are talking about candidates and issues, can we limit their political advertising and how are they funded?"

Given so much political speech is either exempt from regulation or regulated under tax law rather than campaign finance law, I have tried to pull together a diverse panel to keep the audience up to date on the latest development in the intersection of regulation and political speech. The Citizens United case and the Emily's List case will provide the most recent springboard from which to share views on these issues.

I have pulled together a panel that presents several perspectives that has been well received because it includes

regulators, the regulated and reform groups. The panel members include two attorneys in private practice who advise politically active individuals and groups - Mike Wittenwyler of Madison and Larry Noble of DC. Larry has additional background with the FEC and an advocacy group. I have also included Lois Lerner, the Director of Exempt Organizations at the IRS along with Paul Ryan from the Campaign Finance Institute. You and I represent the regulators. The FEC has always played role on this panel.

There is only a short period of time to comment - 10 minutes each. I really want to ensure that the audience has 25 minutes to ask questions of the panel.

Your role is really to give a perspective from the FEC standpoint in light of the most recent decisions. Of course I am assuming the Citizens United decision will have been released by then.

I have attached a copy of the panel description. Note you are the player to be named later.

I really hope you can do this.

Kevin

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-261-8683
Kevin.Kennedy@wi.gov

From: MPetersen@fec.gov [mailto:MPetersen@fec.gov]
Sent: Friday, October 16, 2009 10:56 AM
To: Kennedy, Kevin - GAB
Subject: COGEL

Kevin,

I apologize that I've been so difficult to reach recently. Caroline discussed with me the possibility of appearing on a panel at the COGEL conference--I believe the topic being the *Citizen's United* case. Let me know the basics about the panel (i.e., the specifics you'd like the panelists to address, the names of the other panelists, and the how long it will last). I'd probably be available to participate.

E-mail is probably the best way to contact me over the next few days.

Best,

Matt

Matthew S. Petersen
Vice Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

COGEL Campaign Finance Panel
Impact of *Citizens United* in Funding Political Campaigns
Monday, December 7, 2009
3:30 – 4:45 pm

Where Does the Money Come From? A Look at the Methods of Financing and Sometimes Regulating Political Speech in Light of Recent U.S. Supreme Court Decisions

In September 209, the U.S. Supreme Court heard additional arguments in *Citizens United v. the Federal Election Commission.* The Court raised questons about the continued application of restrictions on corporate speech from earlier decisions. This panel will focus on the impact of the decision as we approach the 2010 campaign cycle and beyond.

The distinguished panel members bring a wealth of experience dealing with political finance to the discussion. Panel members have a wide degree of experience ranging from regulating federal campaigns, advising political committees and organizations, managing federal campaigns, as a former General Counsel to the U.S. Federal Election Commission, regulating exempt organizations for the Internal Revenue Service, and serving as legal counsel for a nonprofit campaign finance watchdog organization.

Panel Members

Kevin J. Kennedy (Moderator) Director and General Counsel, Wisconsin Government Accountability Board

Lois G. Lerner, Director, Exempt Organizations, Internal Revenue Service
Lawrence M. Noble, Skadden, Arps, Slate, Meagher & Flom, LLP
Mathew S. Petersen, Vice-Chair Federal Election Commission (Invited)
Paul S. Ryan, FEC Program Director & Associate Legal Counsel, The Campaign Legal Center
Mike Wittenwyler, Godfrey & Kahn, S.C.

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Wednesday, September 22, 2010 9:16 AM
To: Kennedy, Kevin - GAB
Subject: Chicago

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

I arrive at 3:30 Monday and am staying at Marriott downtown--on Magnificent mile

Lois G. Lerner
Director, Exempt Organizations

Kennedy, Kevin - GAB

From: CHunter@fec.gov
Sent: Monday, September 27, 2010 9:51 AM
To: Kennedy, Kevin - GAB
Cc: 'Paul Ryan'
Subject: Re: COGEL

Many thanks, Kevin, for passing the request along to Paul. Paul, I would be happy to discuss COGEL with you at your convenience. I am also interested in discussing the NDPAC AO with you.
Thank you,
Caroline Hunter
(202)694-1045

From: "Kennedy, Kevin - GAB" [Kevin.Kennedy@Wisconsin.gov]
Sent: 09/27/2010 09:38 AM EST
To: Caroline Hunter
Cc: 'Paul Ryan' <PRyan@campaignlegalcenter.org>
Subject: RE: COGEL

Caroline,

I am doing very well. Thank you for asking. Julie's tragic death was very difficult for those of us who had worked closely with her.

Paul Ryan is coordinating the panel this year. It focuses on the federal aftermath of Citizens United. I have shared your inquiry with him and am copying him on this email. He has arranged for a moderator for the panel and is working with him to fill out the panel.

I look forward to seeing you in DC in December.

Kevin

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-266-8005
Kevin.Kennedy@wi.gov

From: CHunter@fec.gov [mailto:CHunter@fec.gov]
Sent: Monday, September 20, 2010 3:02 PM
To: Kennedy, Kevin - GAB
Subject: RE: COGEL

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Caroline C. Hunter
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"Kennedy, Kevin - GAB" <Kevin.Kennedy@Wisconsin.gov>

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To "'MPetersen@fec.gov'" <MPetersen@fec.gov>
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Your role is really to give a perspective from the FEC standpoint in light of the most recent decisions. Of course I am assuming the Citizens United decision will have been released by then.

I have attached a copy of the panel description. Note you are the player to be named later.

I really hope you can do this.

Kevin

Kevin J. Kennedy
Director and General Counsel

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Friday, October 08, 2010 4:36 PM
To: Kennedy, Kevin - GAB
Subject: RE: COGEL

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

no calls yet

Lois G. Lerner
Director, Exempt Organizations

From: Kennedy, Kevin - GAB [mailto:Kevin.Kennedy@Wisconsin.gov]
Sent: Tuesday, September 28, 2010 7:32 PM
To: Becker, Jonathan - GAB; 'Paul Ryan'
Cc: Lerner Lois G
Subject: COGEL

Paul,

This email follows up our recent discussions on the two COGEL panels related to *Independent Expenditures and Citizens United*. Jonathan Becker will moderate the impact of *Citizens United* on state regulation. The panel will be on Wednesday, December 8, 2010 @ 9:15-10:30. You are recruiting Roman Roathcoat from the CA FPPC as a panel member. Jon will follow up with Mike Wittenwyler and Gary Goldsmith from the Minnesota Campaign Finance and Public Disclosure Board as panel members. Jon's direct line is 608-267-0647.

I discussed your interest in having Lois Lerner participate in the federal panel on Monday, December 6, 2010 @ 1:45 - 3:15 with Lois. She expressed a willingness to participate on the panel, but pointed out she cannot provide much comment on the treatment of 501 c4's political activity short of existing information. I leave it to you to follow up with Lois. Her direct line is (202) 283-8848

Kevin

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-261-8683
Kevin.Kennedy@wi.gov

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Tuesday, October 12, 2010 10:35 AM
To: Kennedy, Kevin - GAB
Subject: FW: Washington Post Editorial - Secret Campaign Money

Follow Up Flag: Follow up
Flag Status: Flagged

Plain and simple

Lois G. Lerner
Director, Exempt Organizations

From: Urban Joseph J
Sent: Tuesday, October 12, 2010 9:04 AM
To: Lerner Lois G; Fish David L; Kindell Judith E; Miller Thomas J; Lowe Justin; Buller Siri; Grant Joseph H
Cc: Pyrek Steve J
Subject: Washington Post Editorial - Secret Campaign Money

Secret campaign money

Tuesday, October 12, 2010; A16

THE GUSHER OF secret money pouring into the coming election is alarming. It should be plugged for future campaigns -- and could be, with the switch of a Senate vote or two. But the rhetoric about this development, from President Obama on down, is irresponsibly alarmist. And the popular understanding of how this mess arose -- generated by the president and other Democrats and abetted in part by media reports -- is ill-informed. The fundamental problem is not the Supreme Court's ruling in *Citizens United*, although that reflected wrongheaded judicial activism. The real problem lies in a tax code that permits too much political activity to take place in secrecy.

First, the alarmism. Mr. Obama and his administration have seized on a report from a Web site run by the liberal Center for American Progress to argue that the U.S. Chamber of Commerce -- one of the biggest players in the world of secret campaign cash -- is using "secret foreign money . . . to influence our elections," in the words of an over-the-top ad from the Democratic National Committee.

"Just this week, we learned that one of the largest groups paying for these ads regularly takes in money from foreign corporations," the president said last week. "So groups that receive foreign money are spending huge sums to influence American elections." But Bruce Josten, the chamber's chief lobbyist, told the New York Times that the chamber's 115 foreign affiliates pay less than $100,000 in membership dues, out of a total budget of $200 million. The foreign money is kept in segregated accounts. The White House seems willing to stoke xenophobia without any evidence for its accusations.

The real threat from the chamber's campaign activities is from secret *domestic* cash. The chamber expects to spend $50 million this election cycle, but where is the money coming from? Pharmaceutical companies? Oil companies? Banks?

As to why this information is secret, you'd think, from the rhetoric, that the Supreme Court is to blame. It's not. The *Citizens United* ruling concerned "independent expenditures" explicitly supporting or opposing federal candidates. Individuals have long been able to spend unlimited sums in this way. In Citizens United, the court extended that right to corporations and, implicitly, unions. That is dangerous, in two ways. First, because independent expenditures can be direct in advocating a candidate's election or defeat rather than coyly suggesting the same, the decision amplifies corporate voices. Second, and this is the link to secret campaign cash, it allows established or newly sprouted interest groups to take unlimited amounts of corporate or other money and use it for independent expenditures -- without revealing the underlying givers.

Nonetheless, corporations had ample ability to influence the political process -- and, if they wanted, to do so secretly -- even before *Citizens United,* and most of the activity about which Democrats are complaining involves such previously legal conduct. A 2007 Supreme Court ruling, *Federal Election Commission v. Wisconsin Right to Life*, was more damaging than Citizens United. In that case, the court invalidated a provision of the McCain-Feingold campaign finance law and allowed groups, including corporations, to run "issue advocacy" commercials naming particular candidates up through Election Day. As Loyola Law School professor Justin Levitt explains in a new paper for the Yale Law & Policy Review, "The day before the Citizens United decision, corporations had the constitutional right to spend unlimited funds telling voters that 'Candidate Smith hates puppies.' Citizens United added only protection for these corporations to convey an incremental 'Vote Smith out' exhortation."

The problem of this secret spending -- and the solution to it -- lies in the tax code and its enforcement. Nonprofit advocacy groups, known as 501(c)(4)s, are permitted to engage in political advocacy as long as that is not their primary purpose. Meanwhile, these groups do not have to reveal the identities of their donors. IRS regulations bar such organizations from "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office," but as a practical matter, these limits have not made much difference. One such Republican-leaning group, American Crossroads GPS, has touted its ability to keep donor names confidential even as it runs ads in key races. Similarly, trade associations such as the Chamber of Commerce, organized under section 501(c)(6) of the tax code, are not required to disclose donors and are permitted even greater leeway to engage in political activity.

The Disclose Act would require that these groups reveal the funders of campaign ads; it would do so without intruding on the privacy of contributors to other efforts unrelated to campaigns. The 2010 flood of secret money can't be turned off. It's essential to act in time for 2012.

Kennedy, Kevin - GAB

From: Richard Balasko <rbalasko@mymts.net>
Sent: Tuesday, November 16, 2010 5:06 PM
To: Kennedy, Kevin - GAB
Subject: Re: Ahhh! To be the CEO in Wisconsin!

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

Ahhh now that explains why when you were up here there were plenty of police to escort you to the airport....lol.

See you in Washington. Hope your travel plans don't go up in smoke.

Rick

----- Original Message -----
From: Kennedy, Kevin - GAB
To: 'Lerner Lois G' ; 'rbalasko@mts.net' ; 'mrprez98@aol.com' ; 'david.freel@ethics.ohio.gov' ; 'jcontino@state.pa.us' ; 'michael.sullivan@state.ma.us' ; 'lnoble@skadden.com'
Sent: Tuesday, November 16, 2010 3:51 PM
Subject: Ahhh! To be the CEO in Wisconsin!

According to some anonymous blogger I have the ability to reject otherwise valid recount petitions but I am unable due to my reliance on some pharmaceutical tools for my work.

http://political-capital.blogspot.com/2010/11/is-kevin-kennedy-smoking-weed-again.html

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-266-8005
kevin.kennedy@wi.gov

Kennedy, Kevin - GAB

From: Contino, John <jcontino@state.pa.us>
Sent: Monday, November 22, 2010 10:39 AM
To: Kennedy, Kevin - GAB; 'Freel, David'; Lerner Lois G
Cc: mrprez98@aol.com; rbalasko@mts.net; michael.sullivan@state.ma.us; lnoble@skadden.com
Subject: RE: Ahhh! To be the CEO in Wisconsin!

I just want to know if Kevin is taking any of his " pharmaceutical tools" to DC instead of beer"

John J. Contino, Esquire
Executive Director
State Ethics Commission
309 Finance Building
P.O. Box 11470
Harrisburg, PA 17108-1470
(717)-783-1610

-----Original Message-----
From: Kennedy, Kevin - GAB [mailto:Kevin.Kennedy@Wisconsin.gov]
Sent: Monday, November 22, 2010 11:28 AM
To: 'Freel, David'; Lerner Lois G
Cc: mrprez98@aol.com; rbalasko@mts.net; Contino, John; michael.sullivan@state.ma.us; lnoble@skadden.com
Subject: RE: Ahhh! To be the CEO in Wisconsin!

We all wear it so well, who would think we are chronologically able to retire if not financially.

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-266-8005
kevin.kennedy@wi.gov

From: Freel, David [mailto:David.Freel@ethics.state.oh.us]
Sent: Monday, November 22, 2010 10:18 AM
To: Lerner Lois G; Kennedy, Kevin - GAB
Cc: mrprez98@aol.com; rbalasko@mts.net; jcontino@state.pa.us; michael.sullivan@state.ma.us; lnoble@skadden.com
Subject: RE: Ahhh! To be the CEO in Wisconsin!

Ah, from the mouth of you *youngsters*, got to love ya!

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Monday, November 22, 2010 11:16 AM
To: Freel, David; Kennedy, Kevin - GAB
Cc: mrprez98@aol.com; rbalasko@mts.net; jcontino@state.pa.us; michael.sullivan@state.ma.us; lnoble@skadden.com
Subject: RE: Ahhh! To be the CEO in Wisconsin!

No--you're retiring because your old! (Smile)

Lois G. Lerner
Director, Exempt Organizations

From: Freel, David [mailto:David.Freel@ethics.state.oh.us]
Sent: Monday, November 22, 2010 11:13 AM
To: Kennedy, Kevin - GAB
Cc: mrprez98@aol.com; 'rbalasko@mts.net'; 'jcontino@state.pa.us'; 'michael.sullivan@state.ma.us'; Lerner Lois G; 'lnoble@skadden.com'
Subject: RE: Ahhh! To be the CEO in Wisconsin!

Kevin,

Now you know why I am retiring.

Dave

From: mrprez98@aol.com [mailto:mrprez98@aol.com]
Sent: Tuesday, November 16, 2010 6:53 PM
To: Kennedy, Kevin - GAB; 'Lerner Lois G'; 'rbalasko@mts.net'; Freel, David; 'jcontino@state.pa.us'; 'michael.sullivan@state.ma.us'; 'lnoble@skadden.com'
Subject: Re: Ahhh! To be the CEO in Wisconsin!

Hey buddy. I was accused of much worse in CT. And not anonymously. It's the new politics we live in under Citizens' United! LOL!
Stay cool, but then; I don't have to tell you that.
I could say a lot more but I will do so to your face and not to your state e-mail.
Can't wait to see all of you in DC,
Jeff

Sent from my Verizon Wireless BlackBerry

From: "Kennedy, Kevin - GAB" <Kevin.Kennedy@Wisconsin.gov>
Date: Tue, 16 Nov 2010 15:51:49 -0600
To: 'Lerner Lois G'<Lois.G.Lerner@irs.gov>; 'rbalasko@mts.net'<rbalasko@mts.net>; 'mrprez98@aol.com'<mrprez98@aol.com>; 'david.freel@ethics.ohio.gov'<david.freel@ethics.ohio.gov>; 'jcontino@state.pa.us'<jcontino@state.pa.us>; 'michael.sullivan@state.ma.us'<michael.sullivan@state.ma.us>; 'lnoble@skadden.com'<lnoble@skadden.com>
Subject: Ahhh! To be the CEO in Wisconsin!

According to some anonymous blogger I have the ability to reject otherwise valid recount petitions but I am unable due to my reliance on some pharmaceutical tools for my work.

http://political-capital.blogspot.com/2010/11/is-kevin-kennedy-smoking-weed-again.html

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
608-266-8005
kevin.kennedy@wi.gov

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Tuesday, December 21, 2010 1:48 PM
To: leslie.R.Lerner@Travelers.com; avannah; Kennedy, Kevin - GAB
Subject: FW: Holiday Goats

You will smile

Lois G. Lerner
Director, Exempt Organizations

From: midgenjake@aol.com [mailto:midgenjake@aol.com]
Sent: Tuesday, December 21, 2010 2:31 PM
To: Lerner Lois G
Subject: Fwd: Holiday Goats

You have to see this. OMG..I want one

Sent from my iPhone

Begin forwarded message:

> **From:** "Earl Griffith" <egriffith4@cox.net>
> **Date:** December 19, 2010 10:23:34 PM EST
> **To:** <Undisclosed-Recipient:;>
> **Subject: Fw: Holiday Goats**

http://www.youtube.com/watch_popup?v=b4_EdJ-XkUA&vq=medium

Kennedy, Kevin - GAB

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Thursday, December 30, 2010 4:46 PM
To: Lerner,Leslie R.; Urban Joseph J; Johanna313@live.com; Meredith Miles; avannah; Kennedy, Kevin - GAB
Subject: FW: This Year and all of 2011

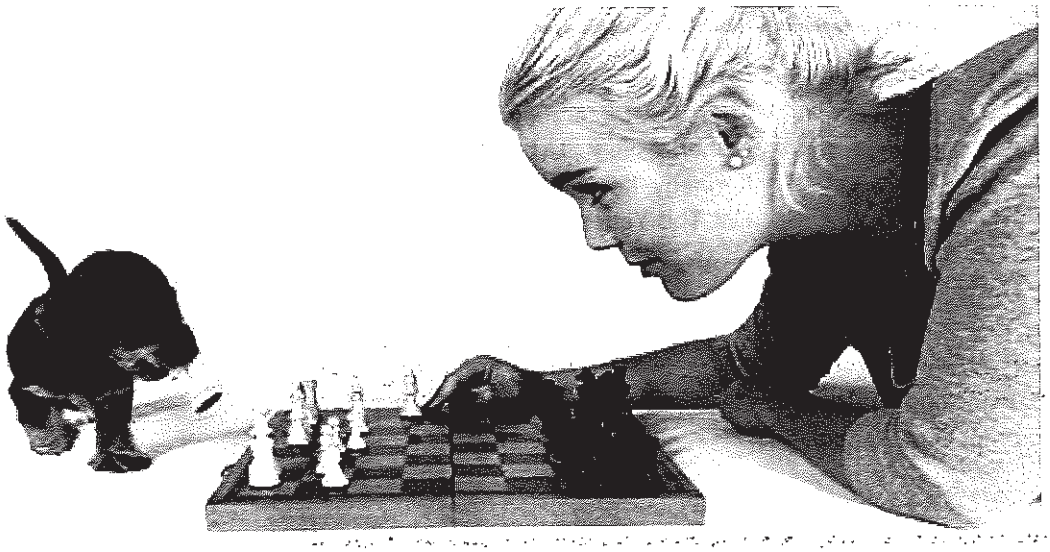
Lois G. Lerner
Director, Exempt Organizations

From: Earl Griffith [mailto:egriffith4@cox.net]
Sent: Thursday, December 30, 2010 12:44 PM
To: Undisclosed-Recipient:;
Subject: This Year and all of 2011

Subj: This Year and all of 2011

Throughout the rest of this Year and all of 2011..

May you always make the right moves.



May your cup runneth over with love.

May you always find shelter from any storm.