

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin

LAURA EWAN
ewan@workerlaw.com

*Original via electronic mail to:
Jacob.Berkey@pdc.wa.gov*

November 21, 2016

Jacob Berkey
Public Disclosure Commission
711 Capitol Way, Rm. 206
P. O. Box 40908
Olympia, WA 98504-0908

Re: PDC Complaint #8981 (People for Thurston County)
SCBIL File No. 6548-001

Dear Mr. Berkey:

We write to you today on behalf of our client, People for Thurston County (“the Committee”), in response to your Wednesday, October 19, 2016, request for a written response to the allegations in the complaint submitted by Glen Morgan on October 18. The complaint alleges that People for Thurston County failed to register and report campaign expenditures, and to include sponsor ID on advertisements, in violation of RCW 42.17A.205, .235, .240, .255, .265, and .320.

As further explained herein, some portions of the allegations are correct, but many are not. Overall, the complaints highlight simple errors that were either immediately addressed or rectified in as timely a manner as possible. The Committee ultimately wishes to do whatever it takes to rectify the situation.

Statement of Facts

The Committee was formed in order to support two Thurston County Commissioner candidates in the November 2016 election.

As you are no doubt aware, the Committee has attempted to fully comply with all applicable PDC laws and deadlines since the formation of the Committee. As Mr. Chip Beatty of the PDC can attest, the Committee’s treasurer, Ms. Amanda Fisher, experienced some difficulty in getting the ORCA software to function correctly. For example, ORCA initially was only permitting the Committee to file C3 reports. Email and phone communications between October 14 and October 18 ultimately resolved the issue, and with Mr. Beatty’s help, Ms. Fisher was ultimately able to file the required C4s and C3s in a timely manner.

The Committee sought to hire an experienced consultant for assistance in these issues, as none of its officers had conducted such a campaign before. The Committee selected Northwest Passage Consulting (“NWP”) and their founder and consultant Christian Sinderman in order to assure quality campaign efforts and PDC compliance. The Committee placed a great deal of trust in NWP and its ability to assist the Committee with compliance issues.

Even as the ORCA problems were being sorted out, the Committee and NWP were working on reviewing mailer drafts, fundraising, and budget issues. Furthermore, some potential contributors ultimately declined to contribute, causing a budget reduction. Despite the rapidly-changing circumstances, the Committee remained in communication with NWP in order to make sure that the final draft of the flyer met its requirements and specifications.

The Committee planned for the first round of mailings to go out the first weekend after ballots were scheduled to be mailed. A series of regrettable errors occurred over the next few days. Attached hereto is a true and correct copy of a letter from Mr. Sinderman, acknowledging the issues which occurred. First, the final draft of the mailer did not reflect several corrections requested by the Committee. Second, NWP failed to reflect party affiliation on the mailer, and the Committee did not catch this error. Third, the mailer was sent out by NWP a week earlier than the Committee had requested. The Committee did not even know this had occurred until it learned of Mr. Morgan’s complaint. As a result, the Committee’s first C6 was filed a few days late.

The Committee deeply regrets that these errors occurred. Ultimately, the errors were accidental, were minor in scope, and were in no way intended to mislead voters in any way. Furthermore, all of the subsequent actions taken by the Committee after this incident were completed in a proper and timely fashion, and none of the initial errors committed were repeated. Therefore, the purpose and intent of the Act would not be met by imposing any sort of severe punishment on the Committee.

The Allegations

1) The PAC violated WAC [390-18-060(3)] by failing to electronically report electioneering communications in a timely manner as required by law.

This allegation is not entirely correct. WAC 390-18-060 (“Electioneering communication reporting threshold and sponsors”) reads:

When the electioneering communication or communications - Including radio or television transmissions, mailings, billboards, newspapers and/or periodicals - Reach the \$1,000 threshold, the sponsor shall electronically report to the commission as required by RCW 42.17A.305 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

The Committee's C4 was filed and did reflect the invoices received and electioneering costs expended by the end of the reporting period. The Committee's first C6 was filed as soon as it became aware that the first mailing had gone out *a week earlier* than requested (an error caused by NWP and not by the Committee). Had the mailer gone out when requested, the C6 would not have been filed in an untimely manner. Likewise, had the Committee known the mailer had gone out, it would have been sure to file the C6 in a timely manner.

These errors were not done in any sort of effort to confuse or mislead voters. And all subsequent C6s were filed prior to when required by the statutes. Ultimately, this mistake is minor in nature, was completely inadvertent, and does not merit sanctions, as the lesson was learned and the mistake was not repeated.

2) According to the PDC's guide "Sponsor Identification Independent Expenditures & Electioneering Communications", the partisan affiliation of the candidates identified in the mailer must be identified. As you can see from the attached mailer, they were not identified. The mailer should have clearly identified Jim Cooper as a Democrat, and John Hutchings an Independent.

RCW 42.17A.320 ("Identification of sponsor—Exemptions") requires that, for all written political advertising relating to partisan offices, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

It is true that these party identifiers were inadvertently left off the mailing. It was not the intent of the Committee to do so. The Committee relied upon its hired consultants to ensure compliance with the laws of the State of Washington, and this requirement was not met. This was not intentional, and all subsequent mailings by the Committee followed this requirement.

3) Jay Manning lives at 4928 Cooper Point Road, and not 4829. This is cited incorrectly on the CIPC registration.

Clearly, this transposed number was a simple typographical error. Mr. Manning's name, street name, and zip code were all correctly reported, and the transposed house number—resulting in identification of a house less than half a mile away from Mr. Manning's address—does not serve to hide the information that the statute intended to be disclosed, and certainly was not done in any attempt to do so. When viewed in combination with the fact that this typo ultimately had no demonstrable negative consequence, no severe penalties are in order for such a minor mistake.

4) The mailer incorrectly orders the Top 5 contributors to the PAC (which is required by law) in an attempt to obfuscate the fact that the vast majority of the money comes from JZ Knight [...]. In the current ordering, voters would have thought that the mailing was mostly being paid for by a local labor union, which is entirely inaccurate.

RCW 42.17A.320 (“Identification of sponsor—exemptions”) reads, in relevant part:

(2)(b) If the sponsor [of political advertising] is a political committee, the statement: “Top Five Contributors,” followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement or communication...

WAC 390-18-025 (“Advertising—Identification of ‘top five contributors.’”) reads, in relevant part:

(1) For purposes of RCW 42.17A.320 (2), (4), (5) and (6), “top five contributors” means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

There is no statutory language in the above-cited laws (or otherwise) that requires the contributors to be listed in order of the size of their contributions.¹ Furthermore, the order of contributors in the mailer as it was disbursed to the public was in no way intended to obfuscate any information about the contributors.

Additionally, this allegation relies purely on speculation, as the claim that “[i]n the current ordering, voters would have thought that the mailing was mostly being paid for by a local labor union” is unsupported by any facts. None of the contributors’ donation amounts are listed on the mailing (nor do they need to be), and therefore there is no way to claim that any voter would believe that any one of the top contributors was “mostly” paying for anything.

The purpose and intent of the Act was effectuated here, as the Committee caused the disclosure of those individuals and organizations paying for the independent expenditure ad. Ultimately, there is no merit to this allegation, as no violation of the law occurred.

5) Donation from Washington State Conservation Voters has not been reported OR it was listed in error in the Top 5 contributors section. The mailer lists three donors: ThurstonLewisMason Labor Council, Washington Conservation Voters, and JZ Knight. Unfortunately, the PAC only lists the donations from the

¹ Even though it is not required under the statute, the Committee endeavored to list its contributors by size of contribution, as the Committee believed such an approach would be a logical way to list this information. The version of the mailer that was sent out by NWP was based upon an earlier draft of the mailer that did not reflect this requested revision. Unfortunately, NWP failed to make the requested correction and mailed the earlier draft. But aside from not being a violation of any law, the ultimate order of the list was purely an error and was not intentional.

Labor Council, and JZ Knight online. If the PAC has received a contribution from the Washington Conservation Voters, it must report it immediately, as it is already late.

RCW 42.17A.220(1) (“Deposit of contributions—Investment—Unidentified contributions”) requires that all monetary contributions received by a political committee “shall be made within five business days of receipt of the contribution.”

The Committee was informed that a check of one or two thousand dollars would be forthcoming from Washington State Conservation Voters. Later, the Committee was informed that a check was in the mail. In the interest of including all information known to it when drafting the mailer, the Committee listed the contribution in the list of top five contributors, as the Committee fully expected a check to come in and be deposited prior to the date of the first mailing. Even though the check had not yet been received, and the exact amount of the check was not known, the Committee relied upon the best information it had, and believed that the check would amount to a top five contribution. In short, the reason that the Washington State Conservation Voters was listed in the mailer before the appropriate reporting to the PDC was because NWP sent out the mailer before it should have.

The Committee completely complied with the requirements of RCW 42.17A.220(1). The check of \$1,000.00 was not issued until 10/24 or received until 10/27, at which time it was promptly and timely deposited, and the C3 was promptly and timely filed. As no violation of the law occurred, this allegation should be dismissed.

6) Coordination between Jim Cooper, JK [sic] Knight, and Jay Manning is likely. If Cooper, Manning, and Knight collaborated on the planning or material of this mailer, it would constitute an inkind contribution to Cooper’s campaign well in excess of the maximum allowable by law, which would be a violation.

This accusation is categorically false. There was no coordination, communication or information sharing in any way between People for Thurston County and any candidate or campaign supported or opposed in our mailings. Simply saying that coordination “is likely” without any substantiation is not sufficient to merit proceedings on this allegation.

Conclusion

Setting aside Mr. Morgan’s rhetoric about the Committee and its intentions, the Committee simply wishes it to be known that the Committee has attempted to follow the letter and intent of the law in every way. The Committee deeply regrets the minor errors committed in connection with its first mailing and wishes to rectify the situation however the PDC deems appropriate. But due to the limited scope of violations here, aggressive or punitive measures would not support the spirit or intent of the State of Washington’s disclosure laws.

///

Jacob Berkey
November 21, 2016
Page 6 of 6

If you have any questions, or if there is anything we can do to be of assistance to you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Ewan", with a stylized flourish at the end.

Laura Ewan

Enclosure

cc: Jay Manning (*via email, jmanning@cascialaw.com*)

From: Christian Sinderman
To: [Laura Ewan](#); [Jay Manning](#)
Subject: Letter re: PDC complaint against People for Thurston County
Date: Monday, November 21, 2016 11:34:12 AM
Attachments: [People for Thurston County letter.docx](#)

Laura and Jay,

Please find attached a letter to add into the record on the PDC complaint against the IE committee.

Note that the second issue, the ordering of Top 5 contributors, is not actually a stated legal requirement so long as the list itself is accurate at the time of production.

Either way, we deeply regret the errors made, and apologize for the time you are spending on this matter.

Also note that Sanjay from our staff reached out directly and immediately to the PDC upon knowledge that the complaint was filed; they should be full aware of our acceptance of responsibility for the Party ID issue.

Let me know if this letter suffices, or if you want edits or additional explanation.

Best,
Christian

People for Thurston County
C/O Jay Manning, Treasurer

Dear Jay,

With the dust settling from the 2016 campaign season, I wanted to take a moment to personally reach out and apologize for the small, yet unacceptable, mistake on the first People for Thurston County mailing, currently subject to a PDC complaint.

Immediately upon learning of the complaint, and our responsibility for the error, we proactively reached out to PDC staff, but to date have not formally communicated with you on this matter.

We typically have a rigorous proofreading and approval process for direct mail. Over 160 pieces were sent from our shop this General Election, and sadly only one had the errors that were manifest on this one. There is no excuse for this. While we recognize the compressed timeline we were working on with you, this is a deadline business.

Specifically, the mistake contained in the piece included a failure to identify partisanship of the candidates. The complaint also references the ordering of the Top 5 contributors to the Committee. As far as we know, there is no written requirement that the contributors be listed in order of contribution levels, simply that they are accurate at the time of production.

A third issue was a simple miscommunication on timing: we mailed the piece according to a drop schedule that was never fully coordinated with the filing of an expenditure report.

Please keep us informed as this matter unfolds and know that we accept full responsibility for this issue, and look forward to working with you on its swift resolution.

All my best,

Christian Sinderman
Founder and Owner, NWP Consulting