



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112 • Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

April 3, 2018

Sent electronically by email to:

Dan Brady: dan@danbradylaw.com

Chad Standifer: ChadS@atg.wa.gov

Dan Brady Law
P.O. Box 31818
Bellingham, WA 98228

Subject: Commission Final Order, Shift Washington, PDC Case 7561

Dear Mr. Brady:

Enclosed is a copy of the Public Disclosure Commission's Final Order Imposing Fine that was entered in the above-referenced case concerning Shift Washington. Also enclosed is a copy of the Stipulation as to Facts, Violations and Penalty that was accepted by the Commission.

At its March 22, 2018 meeting, the Commission found Shift Washington in violation of RCW 42.17A.255 and 42.17A.320, and assessed a total civil penalty of \$2,500 of which \$1,250 is suspended on the condition that the Respondent is in compliance with all current reporting requirements, have no further violations of RCW 42.17A or PDC rules as promulgated in WAC 390 for four years from the date of this Order, and pay the non-suspended portion of the penalty (\$1,250) within 30 days from the date of this Order.

Please make your \$1,250 check or money order payable to the WA State Treasurer, and mail the payment to the address listed below:

**WA State Treasurer - Public Disclosure Commission
Financial Office
PO Box 41465
Olympia, WA 98504-1465**

In the event Shift Washington fails to meet any of the above terms of this order, the entire \$2,500 penalty will become immediately due without any further intervention of the Commission.

Shift Washington
Final Order Cover Letter
PDC Case 7561
Page 2

If you have questions, please contact Phil Stutzman at (360) 664-8853; toll free at (877) 601-2828 or by email at phil.stutzman@pdc.wa.gov.

Sincerely,



Peter Lavallee
Executive Director

Enclosure: Final Order and Stipulation as to Facts, Violations and Penalty

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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 In re the Matter of Enforcement Action
10 Against:

PDC CASE NO. 7561

11 SHIFT WASHINGTON,

FINAL ORDER

Respondent.

12 **I. INTRODUCTION**

13 This matter was heard by the Washington State Public Disclosure Commission
14 (Commission) on March 22, 2018, at the Public Disclosure Commission Office, 711 Capitol
15 Way, Room 206, Olympia, Washington 98504. The hearing was held pursuant to RCW 34.05,
16 RCW 42.17A, and WAC 390-37.

17 Commissioners present included Anne Levinson, Commission Chair (presiding); Jack
18 Johnson, Commission Vice-Chair; and Commissioners David Ammons and William Downing.
19 Also present were Assistant Attorney General Scott Douglas representing the Commission;
20 Philip Stutzman, Senior Compliance Officer on behalf of PDC Staff; and Assistant Attorney
21 General Chad Standifer representing PDC Staff. Respondent Matthew Lundh was present on
22 behalf of Shift Washington, and was represented by attorney Dan Brady. The proceeding was
23 open to the public and recorded.

24 The hearing concerned allegations that Respondent Shift Washington violated RCW
25 42.17A.255 by failing to timely file a C-6 Report disclosing Independent Expenditures made in
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1 opposition to Initiative 732 (I-732), a 2016 statewide ballot initiative concerning a carbon tax,
2 and violated RCW 42.17A.320 by failing to include complete sponsor identification on its
3 Facebook ads that were political advertising.

4 The Commissioners had before them the following materials:

- 5 • Notice of Administrative Charges dated March 12, 2018;
- 6 • Report of Investigation prepared by PDC Senior Compliance Officer Philip Stutzman, dated
7 March 12, 2018;
- 8 • Complaint filed on August 10, 2016, against Shift Washington by Kyle Murphy;
- 9 • Email dated August 31, 2016, to PDC Staff from Matthew Lundh and Josh Amato;
- 10 • Email dated September 15, 2016, to PDC Staff from Matthew Lundh and Josh Amato;
- 11 • Second email dated September 15, 2016, to PDC Staff from Matthew Lundh and Josh
12 Amato;
- 13 • C-6 report filed by Shift Washington on September 20, 2016;
- 14 • Summary of interview with Matthew Lundh on March 6, 2018, prepared by Philip Stutzman;
- 15 • Spreadsheet of comparable PDC cases with violations and penalties; and
- 16 • Proposed Stipulation as to Facts, Violations, and Penalty submitted by the parties, signed on
17 March 19, 2018.

18 II. STIPULATION

19 The parties jointly submitted a signed Stipulation as to Facts, Violations, and Penalty
20 (Stipulation). Mr. Standifer summarized the Stipulation and asked the Commission to accept the
21 Stipulation. Mr. Brady likewise asked the Commission to accept the Stipulation. Mr. Stutzman
22 provided testimony regarding mitigating factors, including that Shift Washington is a relatively
23 new organization, founded in 2014, and that Respondent was otherwise in compliance with PDC
24 reporting requirements.

25 The Commission voted 4-0 to accept the Stipulation as to Facts, Violations, and Penalty.
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III. FINDINGS OF FACT

1. Shift Washington's website describes the organization as "a new online platform for shifting the debate in Olympia." Shift Washington's website provides news and commentary on political issues at the national and state level. Its website states that Shift Washington will cover topics that sometimes get little attention from other media sources, and will shine a light on stories the traditional media does carry, but which might otherwise get lost in the clutter of a person's busy day.

2. Shift Washington is a nonprofit corporation run by a board of directors. Sernno Digital, a company co-founded by Matthew Lundh and Josh Amato, runs the day-to-day operations of Shift Washington.

3. On August 10, 2016, the Public Disclosure Commission (PDC) received a complaint from Kyle Murphy alleging that several online advertisements sponsored by Shift Washington explicitly encouraged Washington residents to vote against I-732, but were not being reported as Independent Expenditures.

4. The online communications appeared on Facebook as advertisements in the news feed of Facebook users. Randy Pepple, one of Shift Washington's board members during the relevant time period, instructed Matthew Lundh and Josh Amato to create the Facebook ads. The ads identified I-732 on multiple occasions, and included the following statements:

a. "Is I-732 a Regressive Tax?"

b. "Carbon Tax: Hidden Costs?"

c. "Think a carbon tax is fair?"

d. "Carbon taxes cause the cost of goods we need most to skyrocket. Those of us who already barely make ends meet will struggle even more to afford our groceries, gas, and heating bills."

e. "What does a carbon tax mean for people you care about?"

1 f. "Does I-732's Carbon Tax Hurt Poor People?"

2 g. "Does I-732 = 25 cent Gas Hike?"

3 h. "How much will a carbon tax cost you?"

4 i. "When gas prices go up, everyone feels the pain."

5 j. "I-732 Carbon Tax. Do you support cutting emissions with a 25-cent increase per
6 gallon?"

7 5. The Facebook ads referenced I-732, and gave the viewer an opportunity to answer
8 "yes" or "no" to a variety of questions about I-732. People who responded to the questions were
9 directed to the Shift Washington website where they were asked for contact information.

10 6. One of the ads said, "Is I-732 a regressive tax? Gas prices go up. Food costs go up.
11 Boeing gets a tax break. Hurts poor people most. Carbon Tax: Hidden Costs? Carbon taxes cause
12 the cost of goods we need most to skyrocket. Those of us who barely make ends meet will
13 struggle even more to afford our groceries, gas, and heating bills. With our agricultural
14 communities and energy businesses bearing ... Learn More [Click Here]"

15 7. Another ad said, "Use our calculator to find out how much a carbon tax will cost you.
16 Does I-732 = 25-cent Gas Hike? [Option given to answer "yes" or "no"] When gas prices go up,
17 everyone feels the pain. Commuting to work, transporting food and taking family road trips, all
18 become more expensive. Supporters of the carbon tax have estimated an increase of 25 cents per
19 gallon if it goes into effect. Learn More [Click Here]"

20 8. Another ad said, "What does a carbon tax mean for people you care about? [A picture
21 shown of a person holding the hands of an elderly loved one] Carbon taxes cause the cost of
22 goods we need most to skyrocket. Those of us who already barely make ends meet will struggle
23 even more to afford our groceries, gas, and heating bills. With our agricultural communities and
24 energy businesses ... [Link to Shift Washington website]"

25 9. The ads repeatedly cast I-732 in a negative light. The ads opposed I-732 and cost \$100
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1 or more and were, therefore, required to be reported on PDC form C-6 within five days of making
2 the expenditures, in accordance with RCW 42.17A.255.

3 10. The Facebook ads were reportable no later than August 1, 2016. Shift Washington
4 filed a C-6 report of Independent Expenditures at the request of PDC staff on September 20,
5 2016. The report was filed 50 days late, but 49 days before the November 8, 2016, General
6 Election. The cost of producing and placing the Facebook ads was \$28,164.50.

7 11. Political advertising is required to include sponsor identification as detailed in RCW
8 42.17A.320 and WAC 390-18. The Facebook ads included the name of the sponsor and a link to
9 Shift Washington's website, but did not include the sponsor's address, as required by RCW
10 42.17A.320.

11 **IV. CONCLUSIONS OF LAW**

12 1. The Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the
13 State campaign finance and disclosure law; RCW 34.05, the Administrative Procedure Act; and
14 WAC 390.

15 2. Respondent Shift Washington violated RCW 42.17A.255 by failing to timely file a C-
16 6 Report disclosing Independent Expenditures totaling \$28,164.50 that opposed Initiative 732, a
17 2016 statewide ballot proposition concerning a carbon tax.

18 3. Respondent Shift Washington violated RCW 42.17A.320 by failing to include its
19 address on its Facebook ads that were political advertising.

20 **V. ORDER**

21 Based upon the stipulated Findings and Conclusions, the Commission accepts the Stipulation of
22 the parties and orders that:

23 1. Respondent Shift Washington is assessed a total civil penalty of \$2,500 for violation
24 of RCW 42.17A.255 and RCW 42.17A.320, with \$1,250 of the penalty suspended on the
25 following conditions:
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- 1 a. Respondent Shift Washington is in compliance with all PDC reporting requirements;
2 b. Respondent Shift Washington pays the non-suspended portion of the penalty (\$1,250)
3 within 30 days from the date of entry of this Final Order;
4 c. Respondent Shift Washington is not found to have committed any further violations
5 of RCW 42.17A or WAC 390 within four years of the date of this Final Order; and
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7 2. If Respondent Shift Washington fails to comply with any of the conditions of this
8 Order, the suspended portion of the penalty shall immediately become due without further action
9 by the Commission.

10 So ORDERED this 3rd day of April, 2018.

11 WASHINGTON STATE PUBLIC
12 DISCLOSURE COMMISSION

13 FOR THE COMMISSION:

14 

15 Anne Levinson
16 Chair, Public Disclosure Commission

17 *Copy of this Order mailed and/or emailed to:*

18 Dan Brady, Counsel for Respondent (dan@danbradylaw.com)
19 Phil Stutzman, PDC Staff (phil.stutzman@pdc.wa.gov)
20 Chad Standifer, Assistant Attorney General, Counsel for PDC Staff (ChadS@atg.wa.gov)

21 I, Phil Stutzman *and/or emailed*, certify that I mailed a copy of this order to the Respondent/
22 Applicant at his/her respective address postage pre-paid on the date stated herein.

23 Philip E. Stutzman 4/3/2018
24 Signed Date

1 **NOTICE: RECONSIDERATION**

2 Pursuant to the provisions of RCW 34.05.470 and WAC 390-37-150, you may file a Petition for
3 Reconsideration with the PDC within ten (10) days from the date this Final Order is served upon
4 you. Any Request for reconsideration must state the specific grounds for the relief requested.
5 Petitions must be delivered or mailed to the Washington State Public Disclosure Commission,
6 711 Capitols Way, Room 206, Box 40908, Olympia WA 98504-0908.

6 **NOTICE: PETITION FOR JUDICIAL REVIEW**

7 You have the right to appeal this Final Order to Superior Court, pursuant to the Petition for
8 Judicial Review provisions of RCW 34.05.542. Any Petition for Judicial Review of this Final
9 Order must be filed with the court and also served upon both the Commission and the Office of
10 the Attorney general within thirty (30) days after the date this Final Order is served upon you.
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**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action
Against:

Shift Washington

Respondent.

Case No. 7561

**STIPULATION AS TO
FACTS, VIOLATIONS AND
PENALTY**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Peter Lavallee, and Respondent Shift Washington, through its attorney, Dan Brady, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. Shift Washington's website describes the organization as, "a new online platform for shifting the debate in Olympia." Shift Washington's website provides news and commentary on political issues at the national and state level. Its website states that Shift Washington will cover topics that sometimes get little attention from other media sources, and will shine a light on stories the traditional media does carry, but which might otherwise get lost in the clutter of a person's busy day.

2. Shift Washington is a nonprofit corporation run by a board of directors. Sermo Digital, a company co-founded by Matthew Lundh and Josh Amato, run the day-to-day operations of Shift Washington.
3. On August 10, 2016, the Public Disclosure Commission (PDC) received a complaint from Kyle Murphy alleging that several online advertisements sponsored by Shift Washington explicitly encouraged Washington residents to vote against I-732, but were not being reported as independent expenditures.
4. The online communications appeared on Facebook as advertisements in the news feed of Facebook users. Randy Pepple, one of Shift Washington's board members during the relevant time period, instructed Matthew Lundh and Josh Amato to create the Facebook ads. The ads identified I-732 on multiple occasions, and included the following statements:
 - a. "Is I-732 a Regressive Tax?"
 - b. "Carbon Tax: Hidden Costs?"
 - c. "Think a carbon tax is fair?"
 - d. "Carbon taxes cause the cost of goods we need most to skyrocket. Those of us who already barely make ends meet will struggle even more to afford our groceries, gas, and heating bills."
 - e. "What does a carbon tax mean for people you care about?"
 - f. "Does I-732's Carbon Tax Hurt Poor People?"
 - g. "Does I-732 = 25 cent Gas Hike?"
 - h. "How much will a carbon tax cost you?"
 - i. "When gas prices go up, everyone feels the pain."
 - j. "I-732 Carbon Tax. Do you support cutting emissions with a 25-cent increase per gallon?"
5. The Facebook ads referenced I-732, and gave the viewer an opportunity to answer "yes" or "no" to a variety of questions about I-732. People who responded to the questions were directed to the Shift Washington website where they were asked for contact information.
6. One of the ads said, "Is I-732 a regressive tax? Gas prices go up. Food costs go up. Boeing gets a tax break. Hurts poor people most. Carbon Tax: Hidden Costs? Carbon taxes cause the cost of goods we need most to skyrocket. Those of us who barely make ends meet will struggle even more to afford our groceries, gas, and heating bills. With our agricultural communities and energy businesses bearing ..." Learn More [Click Here]

7. Another ad said, "Use our calculator to find out how much a carbon tax will cost you. Does I-732 = 25-cent Gas Hike? [Option given to answer "yes" or "no"] When gas prices go up, everyone feels the pain. Commuting to work, transporting food and taking family road trips, all become more expensive. Supporters of the carbon tax have estimated an increase of 25 cents per gallon if it goes into effect." Learn More [Click Here]
8. Another ad said, "What does a carbon tax mean for people you care about? [A picture shown of a person holding the hands of an elderly loved one] Carbon taxes cause the cost of goods we need most to skyrocket. Those of us who already barely make ends meet will struggle even more to afford our groceries, gas, and heating bills. With our agricultural communities and energy businesses ..." [Link to Shift Washington website]
9. The ads repeatedly cast I-732 in a negative light and opposed I-732. The ads opposed I-732 and cost \$100 or more, and were, therefore, required to be reported on PDC form C-6 within five days of making the expenditures, in accordance with RCW 42.17A.255.
10. The Facebook ads were reportable no later than August 1, 2016. Shift WA filed a C-6 report of Independent Expenditures at the request of PDC staff, on September 20, 2016. The report was filed 50 days late, but 49 days before the November 8, 2016 General Election. The cost of producing and placing the Facebook ads was \$28,164.50.
11. Political advertising is required to include sponsor identification as detailed in RCW 42.17A.320 and WAC 390-18. The Facebook ads included the name of the sponsor and a link to Shift Washington's website, but did not include the sponsor's address, as required by RCW 42.17A.320.

Factors in Mitigation Offered by Shift Washington

12. Shift Washington contends that it did not intend to sponsor political advertising supporting or opposing Initiative 732, noting that the ads did not include language about voting for or against I-732. Shift WA contends that asking yes/no questions is a common tactic of organizations, like Shift WA, which seek to link people using their personal email with their

position on specific issues. Shift WA contends that the purpose of the ads was to seek information solely for the benefit of Shift WA.

13. Shift WA contends that it did not intentionally, directly or indirectly appeal for votes, money or support for a No on I-732 effort, given the totality of its effort, and that it did not intentionally include an incomplete sponsor identification in its advertising.

STATUTORY AND RULE AUTHORITY

RCW 42.17A.255 states that for the purposes of RCW 42.17A.255, the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to **RCW 42.17A.220, 42.17A.235, and 42.17A.240**. Subsection (2) states that within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

RCW 42.17A.005(36) states, "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

RCW 42.17A.320 states, in part, (1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, 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.

VIOLATIONS

1. Based on the Stipulation of Facts, and Factors in Mitigation set forth above, Respondent Shift Washington stipulates that it violated RCW 42.17A.255 by failing to timely file a C-6 Report disclosing Independent Expenditures totaling \$28,164.50 that opposed Initiative 732 (I-732), a 2016 statewide ballot proposition concerning a carbon tax.

2. Respondent Shift Washington also stipulates that it violated RCW 42.17A.320 by failing to include its address on its Facebook ads that were political advertising.

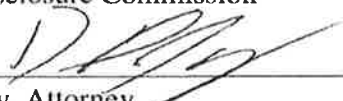
PENALTY

1. Based upon the Stipulation of Facts and Violations set forth above, Respondent Shift Washington agrees to pay a total civil penalty of \$2,500 with \$1,250 suspended on the following conditions:
- a. That the Respondents are not found to have committed any further violations of RCW 42.17A or WAC 390 within four years of the date of the final order in this matter.
 - b. That the Respondent is in compliance with all reporting requirements.
 - c. That the non-suspended portion of the penalty (\$1,250) is paid within thirty days of the date of the final order in this matter.

Respondent Shift Washington affirms its intention to comply in good faith with the provisions of RCW 42.17A and WAC 390 in the future.



Peter Lavalley, Executive Director
Public Disclosure Commission



Dan Brady, Attorney
Representing Shift Washington

3/19/18

Date Signed

3/19/18

Date Signed