



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Port of Tacoma Officials (John Wolfe, CEO) and Port of Tacoma (6626); Economic Development Board for Tacoma-Pierce County (6627); and Tacoma-Pierce County Chamber (6628)

Respondents.

PDC Case 6626, 6627, 6628

Report of Investigation

I. Background and Allegations

- 1.1 On February 19, 2016, a group calling itself "Save Tacoma Water" filed a Committee Registration (C1-pc) with the PDC for the stated purpose of supporting a ballot proposition on the November 8, 2016 general election ballot. The registration listed Sherry Bockwinkel as its campaign manager and Donna Walters as its treasurer.
- 1.2 On March 7, 2016, Save Tacoma Water filed Charter Initiative 5 with the Tacoma City Clerk, and on March 11, 2016, they filed Code Initiative 6 with the Tacoma City Clerk. Both initiatives were approved as to form, and on June 30, 2016, Save Tacoma Water submitted its signatures to the Tacoma City Clerk.
- 1.3 Code Initiative 6 sought to have the City Council enact changes to the Tacoma Municipal Code by imposing a requirement that any land use proposal requiring water consumption of one million gallons of water or more daily from Tacoma be submitted to a public vote prior to the City providing water service for such a project. A companion measure, Charter Initiative 5, repeated all the same provisions as Code Initiative 6.

- 1.4 On June 6, 2016, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the two initiatives exceeded the scope of local initiative power. On June 8, 2016, the City of Tacoma, named as a defendant, agreed with the plaintiffs that the initiatives exceeded the scope of the City's authority.
- 1.5 On June 16, 2016, Arthur West filed a 45-Day Citizen Action Complaint (Complaint) with the Washington State Attorney General and the Pierce County Prosecutor under RCW 42.17A.765(4). The complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually, and as a group, as political committees, their expenditures for legal services to oppose Initiatives 5 and 6. **(Exhibit 1)** The 45 days under RCW 42.17A.765 expired on July 31, 2016.
- 1.6 Mr. West alleged that Port of Tacoma officials used the Port's facilities to oppose Initiatives 5 and 6 by making expenditures to file a lawsuit to keep the initiatives off the ballot.
- 1.7 On July 1, 2016, Superior Court Judge Jack Nevin agreed with the Plaintiffs, enjoining placement of the initiatives on the ballot.
- 1.8 On July 13, 2016, the Attorney General's Office (AGO) sent a letter to the Public Disclosure Commission (PDC) asking staff to review the complaint, and as appropriate, investigate the allegations. The AGO asked that the PDC send with its recommendation a complete copy of any report of investigation or materials the Commission staff compiles. **(Exhibit 2)**
- 1.9 On July 15, 2016, PDC Staff sent a copy of the complaint to the Port of Tacoma, the EDB, and the Chamber, requesting responses by July 21, 2016.
- 1.10 On July 21, 2016, the Port of Tacoma, the EDB, and the Chamber submitted written responses to the complaint. **(Exhibits 3, 4, 5 & 6)**

II. Findings

Allegation that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Charter Initiative 5 and Code Initiative 6

- 2.1 Charter Initiative 5 and Code Initiative 6 became ballot propositions on March 7, 2016 and March 11, 2016, respectively. These were the dates Save Tacoma

Water initially filed the propositions with the Tacoma City Clerk before they were circulated for signatures.

- 2.2 On July 21, 2016, Carolyn Lake, an attorney representing the Port of Tacoma, provided a written response to the complaint. **(Exhibits 3 & 4)**
- 2.3 The Port of Tacoma said they understood that Code Initiative 6 expressly purported to elevate the proposed Charter amendment above state law, and overrule and or disavow the U.S. Constitution, along with international, federal, and state laws that interfered with the proposed amendment. The Port said they were aware that Initiatives 5 and 6 were nearly identical to initiatives recently found to be legally invalid by being outside the scope of local initiative powers by the Washington Supreme Court in a City of Spokane case.
- 2.4 On June 6, 2016, the Port of Tacoma, along with Co-Plaintiffs the EDB and the Chamber filed a declaratory judgment lawsuit to seek a judicial determination under Washington's Uniform Declaratory Judgment Act. The lawsuit asked the Pierce County Superior Court to (1) declare that the local initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated, and enjoin the initiatives from being placed on the November 2016 ballot, or adopted by the City. The Port spent approximately \$45,000 in that legal effort. **(Exhibit 3, Page 5)**
- 2.5 On June 8, 2016, the City of Tacoma filed its Answer and Cross Claims, agreeing that the Initiatives were legally defective. The City of Tacoma filed a cross claim against the Initiative sponsors within the existing lawsuit.
- 2.6 Ms. Lake stated that on June 18, 2016, the Port of Tacoma Commissioners held a properly noticed public meeting, and provided notice that the Commission intended to vote to *"ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed initiatives filed with the City of Tacoma-Charter Amendment 5 and Code Initiative 6."*
- 2.7 On July 1, 2016, the Pierce County Superior Court granted the Plaintiffs' Motion for Declaratory Judgment, finding the two Initiatives invalid and granting injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. **(Exhibit 4, pages 13-19)**
- 2.8 The Port stated that its actions were consistent with a long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed initiative, and noted that in no case were these actions found to violate RCW 42.17A.555. **(Exhibit 3, Pages 13 & 14)**
- 2.9 The Port asserts that they took no campaign action to influence the vote on a ballot measure, stating that the expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a

campaign on the grounds that the ordinance was facially unconstitutional. The Port argued that their action in pursuing a legal determination from the neutral judicial system was not campaigning, but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process. **(Exhibit 3, Page 2)**

- 2.10 RCW 53.57.030(3) states that a port development authority, in managing maritime activities, may sue and be sued. Under this authority, the Port of Tacoma filed its declaratory judgment lawsuit concerning Initiatives 5 and 6. It was also usual and customary for the Port of Tacoma to engage in litigation concerning issues that affect the Port District. From 2000-2016, the Port of Tacoma engaged in litigation in Pierce County Superior Court 66 times, King County Superior Court 6 times, Thurston County Superior Court 3 times, Lewis County Superior Court 2 times, and U.S. District Court for the Western District of Washington 15 times. **(Exhibit 7)**

Allegation that the Port of Tacoma may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the EDB and Chamber as a group, as a political committee

- 2.11 A political committee is defined as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” In addition, Interpretation 07-02 “Primary Purpose Test” Guidelines, sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act’s reporting requirements: (1) a “receiver of contributions” prong; and (2) a “making expenditures to further electoral political contributions” prong. A requirement of the “making expenditures” prong states that the organization making expenditures must have as its “primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting opposing candidates or ballot propositions ...”
- 2.12 The Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.
- 2.13 The interpretation states that a nonexclusive list of analytical tools that may be used to evaluate the evidence includes:
1. The content of the stated goals and mission of the organization;
 2. Whether the organization’s actions further its stated goals and mission;
 3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and

4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

- 2.14 The Port of Tacoma is a special purpose public port district that operates under Title 53 of the Revised Code of Washington, and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Five Commissioners are elected to four-year terms, and serve as the Port's board of directors. The Commission hires the CEO, sets policy and strategic direction, and approves all major expenditures. The Port put in place a 10-year strategic plan in 2012 that it updates annually. The Plan focuses on four areas: (1) Strategic investments; (2) New business opportunities; (3) Customer care; and (4) Community Pride.
- 2.15 The Port's mission is to "Deliver prosperity by connecting customers, cargo and community with the world." The Port's core values are: (1) Integrity; (2) Customer focus; (3) Teamwork; (4) Courage; (5) Competitive spirit; and (6) Sustainability. The Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also owns land, and as part of its mission, leases land to tenants.
- 2.16 The Port of Tacoma is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions. In addition, the primary purpose of the Port of Tacoma is to operate as a special purpose port district as described in its mission and legislative mandate. There is no evidence that the primary purpose, or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.
- 2.17 In addition, PDC Interpretation 91-02 addresses legal fees related to placing, or not placing, a proposition on the ballot. It says in Statement #2, "Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures." Although the Port of Tacoma's declaratory judgment request was not to defend the act of placing an initiative on the ballot, it appears to be similar to such an action in that the Port appears to have acted in good faith in seeking judicial review of the legal sufficiency of the proposed initiatives.
- 2.18 The PDC has never alleged or found that a public agency whose activities supported or opposed candidates or ballot propositions was a political committee subject to the Act's reporting requirements, or that a public agency engaging in such activities was subject to independent expenditures or electioneering communications reporting requirements. Rather, the Commission has always evaluated such alleged activities by public agencies as subject to the prohibitions that are presently codified in RCW 42.17A.555.

- 2.19 No evidence was found that the Port of Tacoma was part of a joint political committee with the EDB and the Chamber. In an email received July 29, 2016, the Port of Tacoma stated that it did not pool any funds with anyone, including the EDB or the Chamber, related to the legal action taken. In addition, the Port stated that it did not have any expectation to seek contributions to pay for its legal actions concerning Charter Initiative 5 and Code Initiative 6, and that it did not consider payment of legal fees an expenditure in support of, or in opposition to, any candidate or any ballot proposition as defined in RCW 42.17A.255. **(Exhibit 10)**

Allegation that that the EDB may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee

- 2.20 On July 21, 2016, Jason Whalen, an attorney representing the EDB, provided a written response to the complaint. **(Exhibit 5)** The EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. It is not a state government agency or a local government agency subject to the prohibitions and restrictions in RCW 42.17A.555. The complaint did not allege that the EDB is a public agency subject to the prohibitions of RCW 42.17A.555.
- 2.21 The EDB has a two-prong mission: (1) retention; and (2) recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's website lists its vision and mission as:
- VISION 2040:** Tacoma-Pierce County is the most attractive location in the Pacific Northwest for local, national and global business investment and job creation.
- MISSION:** COMPETE EVERY DAY FOREVER – The EDB grows primary businesses by working with its partners to spur private capital investment and job creation in Tacoma-Pierce County.
- 2.22 The EDB work plan to accomplish its stated mission is developed by a volunteer board of directors, and the work plan is executed by private staff members. The EDB's work plan is funded by its member investors, both private and public. The EDB states that it does not seek, as its primary or one of its primary purposes, to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions.
- 2.23 The EDB stated that because of its stated mission, it had legal standing to pursue a pre-election review of the legal sufficiency of the proposed initiatives, and joined the Port of Tacoma and the Chamber as a Co-Plaintiff in the lawsuit that sought declaratory and injunctive relief to determine whether the initiatives were beyond the proper scope of initiative power. **(Exhibit 5, Page 2)**

- 2.24 The EDB stated, "The Washington Supreme Court has held that pre-election review is proper to determine whether such local initiatives are beyond the scope of the initiative power. See e.g. *City of Port Angeles v. Our Water-Our Choice!* 170 Wn.2d 1, 239 P.3d 589 (2010). This exact issue (pre-election review of local initiatives involving water rights) was recently reaffirmed by the Washington Supreme Court in February 2016 in *Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution*. 185 Wn.2d 97; 369 P.3d 140 (2016)." **(Exhibit 5, Page 2)**
- 2.25 The EDB stated that it spent \$9,994 from its operating budget in pursuit of a legal determination of the validity of the Initiatives. The EDB stated that they have not received, and do not expect to receive, contributions toward any electoral goals. The EDB denied that its participation as a Co-Plaintiff made then a political committee. **(Exhibit 8)**
- 2.26 The EDB acknowledged that it had concerns that the proposed initiatives, if passed, would irreparably harm the EDB's work plan and efforts to attract business to the Puget Sound region, but claimed that seeking a legal determination on a purely legal issue in which the EDB and the other Co-Plaintiffs had legal standing was a far cry from engaging in political activity that would make them a political committee subject to reporting with the PDC. **(Exhibit 5, Page 3)**
- 2.27 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that EDB's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that EDB's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The EDB uses means other than electoral political activity to achieve its stated goals.
- 2.28 No evidence was found that the EDB was part of a joint political committee with the Port of Tacoma and the Chamber. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.29 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the EDB to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.

2.30 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the EDB joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending \$9,994 on this effort. While the EDB states that its expenditures were to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue of whether the Initiatives were beyond the proper scope of local initiative power, it appears that the EDB's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the EDB's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

Allegation that the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee

2.31 On July 21, 2016, Valarie Zeeck, an attorney representing the Chamber, provided a written response to the complaint. The Chamber is a Washington non-profit corporation whose President and Board of Directors are selected by a process outlined in its bylaws. It is not a state government agency or a local government agency. The complaint did not allege that the Chamber is a public agency subject to the prohibitions of RCW 42.17A.555. **(Exhibit 6)**

2.32 The Chamber's website does not include a formal Mission Statement, but does include a message from Mr. Tom Pierson, its President and CEO. The message states:

"In recent years, we have worked to strategically transform the Tacoma-Pierce County Chamber. Our goal is to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. We are sought after by business and government leaders, contributing to solutions that affect the business community. The results of these efforts have been significant & measurable. Our commitment to our members continues through our strategic programming and advocacy efforts."

2.33 The Tacoma-Pierce County Chamber's vision, goal and focus are as follows:

VISION: "is to secure the economic future of our local and business community."

FOCUS: "is to build a healthy local economy by being the Voice for Business; uniting, advocating, and supporting economic growth in Pierce County."

GOAL: “is to become the go-to-organization when tough issues need to be addressed at the local, state, and federal level. We are considered leaders among stakeholders and contribute to solutions that impact the business community.”

COMMITMENT: “to you, our members, continues through our strategic programming and advocacy efforts. We encourage innovation, entrepreneurial approaches, consensus, and collaboration.”

- 2.34 The Chamber stated that it does not meet the definition of a “political committee” because when it acted as a Co-Plaintiff with the Port of Tacoma and the EDB, it was not receiving contributions or making expenditures “in support of or in opposition to” political activity as contemplated by the Fair Campaign Practices Act (FCPA). It further stated that Initiatives 5 and 6 were not “ballot propositions” as defined in the FCPA. **(Exhibit 6, Pages 3 & 4)** However, as explained above, this is not correct.
- 2.35 The Chamber stated that it filed a lawsuit not to “further electoral political goals,” but rather to obtain a neutral judicial determination as to whether the initiatives were lawful. The Chamber states that no reported Washington case has held that seeking a judicial determination of the validity of a ballot measure is “political activity” or constitutes “promoting an electoral political goal.” **(Exhibit 6, Page 4)**
- 2.36 The Chamber stated that filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering, and stated that because the Chamber engaged in legal activity - seeking a neutral, judicial decision of a Washington State Judicial Officer – rather than attempting to sway voters or promote or oppose an issue electorally, the PDC should dismiss the Complaint. **(Exhibit 6, Page 5)**
- 2.37 The Chamber also stated that even if the Chamber was engaging in support of or opposition to the proposed initiatives, it would not meet the definition of a “political committee” because the initiatives were not ballot propositions as defined in the FCPA. The Chamber stated that its expenditures as Co-Plaintiffs occurred before there was any “ballot issue campaign” but were related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power. **(Exhibit 6, Page 5)**
- 2.38 The Chamber stated that it has spent approximately \$10,000 in legal fees on the court action. The Chamber said it used funds from its normal operating budget to pay the fees. The Chamber said it did not seek contributions for this purpose, or have an “expectation” of making expenditures for this purpose until the illegality of the initiatives became apparent. **(Exhibit 9)**

- 2.39 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that the Chamber's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that the Chamber's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The Chamber uses means other than electoral political activity to achieve its stated goals.
- 2.40 No evidence was found that the Chamber was part of a joint political committee with the Port of Tacoma and the EDB. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.41 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the Chamber to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.
- 2.42 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the Chamber joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending approximately \$10,000 on this effort. While the Chamber states that its expenditures were to challenge the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power, it appears that the Chamber's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the Chamber's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

III. Scope

- 3.1 PDC staff reviewed the following documents:
- The Citizen Action Letter filed with the Attorney General's Office and the Pierce County Prosecutor by Arthur West against the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber on June 16, 2016. **(Exhibit 1)**

- Request from the Washington State Attorney General asking the PDC to review Mr. West's 45-Day Citizen Action Complaint, received at the PDC on July 13, 2016. (**Exhibit 2**)
- Response from the Port of Tacoma, received on July 21, 2016 (**Exhibits 3 & 4**)
- Response from the Economic Development Board for Tacoma-Pierce County, dated July 21, 2016 (**Exhibit 5**)
- Response from the Tacoma-Pierce County Chamber, dated July 21, 2016 (**Exhibit 6**)
- Port of Tacoma litigation (2000-2016) (**Exhibit 7**)
- Response from the EDB about litigation costs (**Exhibit 8**)
- Response from the Chamber about litigation costs (**Exhibit 9**)
- Response from the Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255 (**Exhibit 10**)

IV. Laws

4.1 **RCW 42.17A.555** states in part: (1) No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special

purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view; ...

(3) Activities which are part of the normal and regular conduct of the office or agency.

- 4.2 **WAC 390-05-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.
- 4.3 **RCW 42.17A.005(4)** "Ballot proposition" means any "measure" as defined by RCW **29A.04.091**, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.
- 4.4 **RCW 29A.04.091** "Measure" includes any proposition or question submitted to the voters.
- 4.5 **RCW 42.17A.005(37)** defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."
- 4.6 **Interpretation 07-02 "Primary Purpose Test" Guidelines** The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements. "Political committee" means any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) **Thus, a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.** [Footnote: We use the phrases "electoral political goals" and "electoral political activity" to convey the statutory language "support of, or opposition to, any candidate or any ballot proposition"]

A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of the primary purposes

... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...”

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

1. The content of the stated goals and mission of the organization;
2. Whether the organization’s actions further its stated goals and mission;
3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and
4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

4.7 **RCW 42.17A.205 – Statement of organization by political committees.**

States in part: Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

4.8 **RCW 42.17A.235 and 240** require continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.

4.9 **RCW 42.17A.255**, states in part: (1) For the purposes of this section 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**. ... (2) 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.

4.10 **Interpretation 91-02 – Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot.**

Statement #1 Expenditures made by a person or political committee to place a measure on a ballot, to influence the wording of a ballot title or to require that a government agency place a measure on the ballot are campaign expenditures reportable under RCW 42.17A.

Statement #2 Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures.

Discussion: The proponents of a proposed ballot measure are clearly acting to support or advance that measure when they take an action to require that it be placed before the voters. It is also in their interest to have the measure stated in terms most favorable to them. The proponents, therefore, have discretion in the action they take regarding the issue. They are also not closely bound by law in the range of actions they may take. The government agency, on the other hand, is closely regulated by law in its actions regarding measures that are presented to it. It first of all is expected to remain neutral in its approach to ballot proposals. The way in which a measure is processed is specified and the government is given little leeway in its actions. If a government agency takes an official action (e.g., to write a ballot title or to refuse to place a measure on the ballot) it must be assumed that the agency is acting in good faith. If the government action is challenged, the agency then has little or no discretion in whether to defend its action. Thus, while the agency's act may serve the ultimate end of opposing a ballot proposal, since the agency lacks discretion in the situation, it has not made a campaign expenditure as envisioned by RCW 42.17A.

Respectfully submitted this 4th day of August 2016.


Philip E. Stutzman
Sr. Compliance Officer

List of Exhibits

- Exhibit 1** 45-Day Citizen Action Complaint to the Washington State Attorney General and the Pierce County Prosecutor, from Mr. Arthur West, received June 16, 2016
- Exhibit 2** Request from Washington State Attorney General to review Arthur West's 45-Day Citizen Action Complaint, received July 13, 2016,
- Exhibit 3** Response from Port of Tacoma, received July 21, 2016
- Exhibit 4** Attachments to Port of Tacoma response, received July 21, 2016
- Exhibit 5** Response from the Economic Development Board for Tacoma-Pierce County with attachments, received July 21, 2016
- Exhibit 6** Response from the Tacoma-Pierce County Chamber, received July 21, 2016
- Exhibit 7** Port of Tacoma litigation 2000-2016
- Exhibit 8** Email from the EDB stating litigation costs
- Exhibit 9** Email from the Chamber stating litigation costs
- Exhibit 10** Email from Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255