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February 25, 2019

VIA EMAIL

Tabatha Blacksmith
Compliance Coordinator
Public Disclosure Commission
pdcc@pdcc.wa.gov

Re: Case Nos. 46509 (Ben Stuckart) and 46514 (Yes for Public Safety)

Dear Ms. Blacksmith:

We represent **Councilmember Ben Stuckart**, who is running for Mayor of the City of Spokane this fall, and **Yes for Public Safety** (the “Yes Campaign”), an initiative campaign that supported passage of Proposition 1 in Spokane’s recent special election on February 12, 2019. Mr. Stuckart and the Yes Campaign independently approached us for assistance with evaluating and responding to the lengthy complaints Glen Morgan recently filed against them in case nos. **46509** and **46514**, respectively. Given the overlapping and wide-ranging allegations in these complaints, we are submitting a single letter on behalf of both respondents.

The complaints arise from one of the Yes Campaign’s mailers, which included a picture and quote from Mr. Stuckart as a Councilmember in support of Proposition 1. Proposition 1 was a property tax levy designed to fund emergency and crime reduction services. In December of 2018, the Spokane City Council, including Mr. Stuckart as Council President, voted in favor of forwarding this measure to voters for approval at the February 12, 2019, special election. Mr. Stuckart subsequently consented to a targeted request from the Yes Campaign to use a publicly available photograph of him and a quote attributable to him as Council President in one of its mailers. That was the full extent of their interaction. The mailer also listed multiple organizations endorsing the measure, explained multiple reasons to adopt it, repeatedly urged voters to approve Proposition 1, and disclosed the largest contributors to the campaign. A copy of the mailer, including both the front and back, is attached to this letter. The Yes Campaign spent about \$5,200 total on this mailer. None of the Yes Campaign’s other campaign advertisements—including another mailer, yard signs, and door hangers—featured Mr. Stuckart.

The allegations in the two complaints are conspiratorial and unorganized. On the whole, however, we have been able to discern four asserted violations: (1) that the mailer should have been reported as an electioneering communication in support of Mr. Stuckart; (2) that the mailer

should have been treated as an in-kind contribution to Mr. Stuckart's mayoral campaign; (3) that Adam McDaniel, who provided some consulting services to the Yes Campaign free of charge, should have been listed on the mailer as a top contributor; and (4) that Mr. McDaniel's in-kind contribution to the Yes Campaign violated contribution limits. We address each of these assertions below in turn. As we explain, the only error committed here was the Yes Campaign's omission of Mr. McDaniel, a modest in-kind contributor, from its "Top 5" disclosure. This was a minor and unintentional mistake that warrants no further action under the circumstances.

1. Electioneering Communication

The Yes Campaign's mailer was issue advocacy and did not qualify as an "electioneering communication" subject to the special requirements of RCW 42.17A.300-.310. Those requirements are designed to regulate political advertising that "masquerades as relating only to issues and not to candidate campaigns" but that actually "is the functional equivalent of express advocacy" about candidate races.¹ To address those kinds of ads, but without unduly burdening political speech activities in general, the framework is "narrowly tailored" to cover ads that "mention" candidates "right before the election" with a likely goal "to influence . . . the outcome of those elections."² Accordingly, an "electioneering communication" is defined as a broadcast or other transmission that (1) "[c]learly identifies a candidate" who is running for a state or local office, (2) is transmitted "within sixty days before any election for that office," and (3) has a "fair market value of one thousand dollars or more."³

Here, the mailer was not transmitted within 60 days before either the primary or general election for the Office of the Mayor of Spokane, which will take place in August and November of this year. Instead, the Yes Campaign's mailer was transmitted many months earlier, in the lead-up to the February 12 special election. In other words, not only was the transmission far earlier but it related to an entirely separate election. For these reasons, the Yes Campaign's mailer cannot be considered an electioneering communication. This distinguishes the case of Cindy Larsen referenced in the complaints, which involved a mailer that fell within the 60-day window leading up to a relevant candidate election.⁴ No such circumstances are present here.

2. In-Kind Contribution

Likewise, the Yes Campaign's mailer was issue advocacy rather than an in-kind contribution to Mr. Stuckart's mayoral campaign. An in-kind contribution is something of value, other than money, that a person "provides . . . to a candidate" for less than fair market value.⁵

¹ RCW 42.17A.300(1)(d), (2)(c).

² RCW 42.17A.300(1)(b), (2)(b).

³ RCW 42.17A.005(22)(a).

⁴ See PDC Case No. 6928, Executive Summary and Staff Analysis at 1-2.

⁵ WAC 390-16-207(1); see also WAC 390-05-210(1) (noting that an in-kind contribution must be made "for the purpose of assisting" a candidate).

This includes, for example, “collaborating” with a candidate and then buying “political advertising supporting that candidate or opposing that candidate’s opponent.”⁶ Here, the Yes Campaign’s mailer was directed to supporting a ballot measure and could not reasonably be considered an in-kind contribution to Mr. Stuckart’s mayoral campaign, for multiple reasons.

First, the communications between Mr. Stuckart and the Yes Campaign were extremely limited and had nothing to do with Mr. Stuckart’s mayoral campaign. The Yes Campaign sought out Mr. Stuckart because he was a Councilmember who had voted in favor of Proposition 1. In response to a targeted request, Mr. Stuckart consented to have a publicly available picture of him and a quote in support of the measure used in the Yes Campaign’s mailer. This was an appropriate way for Mr. Stuckart to support the measure as a citizen and as a Councilmember.⁷ Mr. Stuckart was not contacted again and was not provided the mailer for review prior to publication. Mr. Stuckart’s mayoral campaign was never discussed. This was simply a Councilmember lending his endorsement to a measure that the Council had forwarded to the people. This does not qualify as the kind of “collaborating” that would be required for the Yes Campaign’s issue-oriented mailer to be considered an in-kind contribution to Mr. Stuckart’s unrelated and distinct campaign for the Office of Mayor.⁸

Second, the Yes Campaign’s mailer could not reasonably be viewed as supporting Mr. Stuckart’s mayoral campaign in substance. The mailer expressly referred to Mr. Stuckart as Council President, the role in which he voted in favor of Proposition 1. No reference was made to the Office of Mayor or Mr. Stuckart’s candidacy. Moreover, the mailer was being sent many months before the mayoral primary, concerning an entirely separate election. There was simply no connection to Mr. Stuckart’s campaign. In fact, other than a press conference to formally announce his candidacy and the establishment of a standard campaign website, Mr. Stuckart and his committee still have not begun advocating or advertising in support of his candidacy; the campaign’s kick-off event is scheduled to take place early next month. Under these circumstances, the Yes Campaign’s mailer cannot reasonably be viewed as providing support for Mr. Stuckart’s candidacy, as would be necessary to consider it an in-kind contribution.

Third, none of the presumptions that the PDC has established for considering an expenditure to have been coordinated with a candidate for local office apply here,

⁶ *Id.*

⁷ See RCW 42.17A.555(2) (authorizing an elected official to give a “statement” in support of a ballot measure “in response to a specific inquiry”); see also PDC Interpretation No. 04-03 at 4 (“Local elected officials are free to support agency ballot issues and engage in other political activities so long as such activities do not make use of government facilities, time or resources . . .”); *id.* at 9 (indicating that an official may engage in political activities and may use his “title” in doing so, so long as he is clearly speaking on his “own behalf” or the “legislative body has adopted a resolution” on the subject).

⁸ WAC 390-16-207(1).

notwithstanding Mr. Morgan's insinuations to the contrary. In particular, WAC 390-05-210 provides in relevant part that a presumption of coordination applies when (1) the candidate gives "direction" or other such input on an expenditure "supporting that candidate"; (2) the candidate provides "information" about "plans, projects or needs" that is used to inform an expenditure; (3) an expenditure is made with assistance from someone who has been an "officer" of the candidate's campaign within the past 12 months; or (4) an expenditure is made in consultation with someone who "is or has been receiving any form of campaign-related compensation" from the candidate within the past 12 months.⁹ These provisions do not apply here, because (1) Mr. Stuckart did not give input on the mailer, and it did not support his candidacy; (2) Mr. Stuckart provided no plans or other such information to guide the mailer; (3) his treasurer, who is also the treasurer for the Yes Campaign and multiple other Spokane-area campaigns, provided no assistance or input on the mailer and serves only ministerial functions for the Yes Campaign; and (4) no one who worked on the mailer was receiving compensation from Mr. Stuckart. Graphic designer Mike Lee, who regularly provides his services to local campaigns, worked solely on other projects for the Yes Campaign, and in any case, has not received compensation from Mr. Stuckart for any such work since 2016. In sum, none of the regulatory presumptions of coordination apply here. This was simply issue advocacy that included an endorsement from a relevant public official who provided no other input.

Finally, as explained above, the Yes Campaign's mailer does not qualify as an electioneering communication, which is the line that the Legislature has drawn for treating issue advocacy as supporting a candidate for office. Again, electioneering communications are treated as a form of express advocacy about candidates even if no candidate is expressly supported or opposed, subject to special requirements and limitations that otherwise would not apply to mere issue advocacy.¹⁰ This may even include treatment as a contribution, when made in cooperation with a candidate.¹¹ When the standards for an electioneering communication are not met, however, then issue advocacy is not to be treated as a form of candidate support and is broadly protected from governmental restraints.¹² In such cases, as here, applying special reporting

⁹ WAC 390-05-210(3)(a)-(d).

¹⁰ RCW 42.17A.300(1)-(2); *see also* RCW 42.17A.300(2)(c) (noting that current regime was adopted because the United States Supreme Court upheld the regulation of electioneering communications in *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003), which the Legislature considered an abrogation of the Washington Supreme Court's prior decision in *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245 (2000)).

¹¹ RCW 42.17A.310.

¹² *See* RCW 42.17A.300(2) (providing that the electioneering communication requirements are "narrowly tailored" to avoid constitutional infirmity); *Fed. Election Comm'n v. Wisc. Right to Life, Inc.*, 551 U.S. 449 (2007) (clarifying that the holding of *McConnell* was limited and reaffirming that regulation of issue advocacy, even electioneering communications, is unconstitutional unless the only reasonable interpretation under the circumstances is that the advocacy is the functional equivalent of express advocacy for or against a candidate); *Wash.*

requirements and contribution limits would unduly burden the constitutional rights of candidates and initiative campaigns to associate and advocate on issues of concern to them and their communities.¹³ That is especially true in this case, given the straightforward nature of the contact between the ballot measure campaign and a public official who happened to be a candidate for a different office, and the separate, special election for the measure at issue. Washington's campaign finance laws have been designed specifically to avoid constitutional infirmity in this context, further confirming that the Yes Campaign's mailer cannot be considered an in-kind contribution.

Mr. Morgan's complaints place great emphasis on the Larsen case, but again, that case is distinguishable for multiple key reasons. In that case, the PDC alleged that the candidate had actively participated in a photo shoot and provided pre-publication review for the mailer at issue; that the candidate was not identified in any role, much less a role that was topically relevant to the initiative and distinct from her candidacy; that the candidate's campaign manager oversaw production of the mailer, which cost over \$50,000, and a primary election mailing was not included in the candidate's own budget; and most importantly, that the mailer was distributed shortly before the candidate's election, in the same election as the initiative, and thus qualified as an electioneering communication.¹⁴ Based on these allegations, the PDC referred the matter to the Attorney General's Office, which resulted in a stipulated judgment and penalty of \$2,000.¹⁵ Here, Mr. Stuckart did not actively participate in any aspect of the mailer; he was identified in a different role; none of his officers or agents oversaw the mailer, which cost only \$5,200 and was published before Mr. Stuckart's campaign even began advocating or advertising in earnest; and most importantly, the mailer was distributed in advance of a separate special election well before Mr. Stuckart's future mayoral race. In sum, no violation occurred here with respect to the Yes Campaign's treatment of its mailer as issue advocacy, rather than an in-kind contribution.

3. Top Contributor Disclosure

The Yes Campaign admittedly did commit a minor, inadvertent regulatory violation regarding the disclosure of its top contributors on the mailer. Under WAC 390-18-010, political

State Republican Party, 141 Wn.2d 245, 274, 275-76, 278 (2000) (holding that restrictions on issue advocacy are unconstitutional unless the advocacy can only be interpreted as express advocacy under the circumstances and noting that issue advocacy "is direct political speech which may be made more effective through association"); *see also, e.g., State ex rel. Two Unnamed Pet'rs v. Peterson*, 363 Wis.2d 1, 44, 47-49, 64 (2015) (discussing *Wisc. Right to Life* and noting that "issue advocacy, whether coordinated or not, is beyond the reach" of governmental regulation (internal quotations omitted)); FEC MUR Nos. 6037, 6044.

¹³ *See id.*

¹⁴ *See* PDC Case No. 6928, Investigative Report at 4-6, 9-10; Executive Summary and Staff Analysis at 1-3.

¹⁵ *See id.*, Recommendation to AGO; Stipulation and Agreed Judgment with AGO.

advertising in support of a ballot measure and costing more than \$1,000 must disclose the sponsoring political committee's top five contributors of \$700 or more.¹⁶ And because an in-kind contribution is considered a type of contribution, it presumably qualifies as a basis for identifying a committee's top contributors.¹⁷ That said, we are not aware of any PDC guidance specifically addressing this issue.

As distributed, the mailer listed Spokane Firefighters Local 29 and Spokane Police Guild as top contributors to the Yes Campaign. Each of those groups contributed \$30,000 to the campaign in early January. On January 16, shortly before the Yes Campaign's first mailer was submitted for distribution, the campaign received an invoice from McDaniel Projects for a \$1,000 in-kind contribution, covering the modest volunteer consulting services that Adam McDaniel provided to the Yes Campaign that month. McDaniel Projects is a licensed sole proprietorship that normally provides such consulting services for pay.¹⁸ That is why Mr. McDaniel's volunteer efforts were reportable as an in-kind contribution in this instance.

At the time, the Yes Campaign Chair, who is a volunteer and a firefighter with limited prior experience in campaign management, did not realize that an in-kind contribution could qualify someone as a top contributor. He had taken a PDC training course, but does not recall that issue ever being discussed or addressed. Given the relatively small value and volunteer nature of the in-kind contribution, and the short timeframe between receipt of the invoice and distribution of the mailer, it simply did not dawn on him to have the mailer edited to include McDaniel Projects as a top contributor. This was a mistake, but one that was minor and unintentional. There was no intent to conceal, as demonstrated by the timely reporting of the in-kind contribution itself on the Yes Campaign's C4 report filed on January 22, 2019.¹⁹ The lesson has been learned, and the Yes Campaign Chair is committed to avoiding any similar mistakes in the future. In fact, after seeing Glen Morgan's blog post about this issue, the Chair made sure to include McDaniel Projects as a top contributor in the Yes Campaign's other advertising materials, including a subsequent mailer that was sent to a broader and substantially overlapping

¹⁶ WAC 390-18-010(2)(a), -025(1). Given the detailed provisions of RCW 42.17A.320, the PDC may have acted beyond its regulatory authority in expanding the "Top 5" disclosure requirement to ballot measure advocacy in WAC 390-18-010. Because the purported violation in this case was minor and warrants no further action, however, this issue need not be resolved at this time.

¹⁷ See, e.g., WAC 390-16-207(1) (noting that an in-kind contribution must meet the definition of a contribution).

¹⁸ See Dep't of Revenue, *Business Lookup*, UBI # 603-531-973, available at <https://secure.dor.wa.gov/gteunauth/> (search under "Trade name" for "McDaniel Projects"). The PDC's regulations make clear that reporting contributions from a sole proprietorship is proper, so long as such contributions are aggregated with those directly from the owner for purposes of ensuring compliance with applicable contribution limits. See WAC 390-16-310(4).

¹⁹ See Report No. 100882020.

group of recipients. Under these circumstances, no further action is warranted beyond an appropriate warning.

Contrary to the innuendo in the complaints, this was an isolated incident. Mr. Morgan has suggested a broader pattern of sinister conduct, citing to numerous other PDC cases, but there is no support for that accusation. For one thing, the complaints he points to involved varying and different persons and entities as respondents. In any case, most of the cited complaints were deemed to lack evidentiary support and warranted nothing more than technical corrections, advisory warnings, or a nominal fine.²⁰ Two of the complaints are still pending with no findings of a violation.²¹ Only one resulted in a hearing and substantial fine, but that case concerned untimely and incomplete reporting of independent expenditures, a distinct issue not relevant here.²² In sum, both Mr. Stuckart and the Yes Campaign have proceeded in good faith, and the Yes Campaign's isolated mistake of omitting a \$1,000 in-kind contributor from its "Top 5" disclosure list was honest and inadvertent, and should be treated as such.

4. Contribution Limits

Finally, the in-kind contribution that the Yes Campaign received from McDaniel Projects did not violate any applicable limits. There are no limits on contributions to ballot measure campaigns such as the Yes Campaign. The limits that Mr. Morgan references apply to candidate campaigns only. Moreover, Mr. McDaniel provided a variety of general services to the Yes Campaign and had nothing to do with the substance of the Yes Campaign's first mailer, which could not be considered a contribution to Mr. Stuckart's campaign in any event for the reasons detailed above. Mr. McDaniel and the Yes Campaign never discussed Mr. Stuckart's future mayoral campaign, and none of Mr. McDaniel's consulting work related to it.

It also bears mentioning that the Yes Campaign's mailer itself could not have exceeded the contribution limits applicable to Mr. Stuckart's mayoral campaign. When an advertisement has been deemed to support multiple campaigns, including a candidate campaign—unlike the present situation—the "value of the in-kind" to the candidate is "the portion of the expense that benefits the candidate or political committee."²³ Here, one could not reasonably consider the Yes Campaign's mailer to have provided any meaningful benefit to Mr. Stuckart's mayoral campaign, much less a benefit exceeding applicable limits. Again, the entire value of the mailer was about \$5,200; Mr. Stuckart was referenced in a different role, as only part of the mailer; the mailer concerned an entirely different, special election; and it was sent months before the mayoral election and well before Mr. Stuckart even began campaigning in earnest. The mailer

²⁰ See PDC Case Nos. 2218, 9062, 9063, 33375, and 37430.

²¹ See PDC Case Nos. 16286 and 17132.

²² See PDC Case No. 9059.

²³ WAC 390-16-207(3)(b).

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had no meaningful or quantifiable value to Mr. Stuckart's mayoral campaign, much less a "fair market value," and thus could not have violated any contribution limits.²⁴

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In conclusion, the only violation committed here was an isolated mistake that was minor, unintentional, and warrants no further action. Both Mr. Stuckart and the Yes Campaign therefore respectfully request that Mr. Morgan's complaints against them be dismissed.

Sincerely,

PACIFICA LAW GROUP LLP



Taki V. Flevaris

²⁴ WAC 390-16-207(1).

APPROVE 

ENDORSED BY







"I support Prop 1 because we need to keep our growing community safe. The city's Firefighters and Police Officers show up for us no matter what. In this February 12 special election, it's time for us to show up for them. Please join me in voting Yes to Approve Prop 1"



-Ben Stuckart
Spokane
City Council
President

Paid for by: Yes For Public Safety 911 E Baldwin Ave Spokane, WA 99207
Top 5 contributors: Spokane Firefighters Local 29, Spokane Police Guild

APPROVE 

Spokane is a great place to live, work, and raise a family. Our community is safe, connected, and looks out for one another. However, **Spokane may lose 48 firefighters by the end of 2019.** But it doesn't have to be this way. Voting to Approve Prop. 1 keeps our growing community safe:

- Prop. 1 keeps 30 already-trained firefighters on staff
- Prop. 1 will add additional police officers.
- Prop. 1 will allow the Spokane Fire and Police Departments to respond to community needs, while still being staffed for major emergencies.