



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 13-021
WITH RCW 42.17A)	
)	
Pete Holmes, Kim Garrett, City of)	
Seattle staff, and City of Seattle)	REPORT OF INVESTIGATION
)	
Respondents.)	
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I.
BACKGROUND

- 1.1 Pete Holmes is the Seattle City Attorney. He was elected to office in the November 3, 2009 General Election.
- 1.2 Kim Garrett is a City of Seattle employee, and serves as Special Assistant to Mr. Holmes.
- 1.3 Initiative 502 (I-502) was an initiative to the Washington State Legislature, proposing the reform of state marijuana laws. I-502 was submitted to the Washington Secretary of State on May 10, 2011, and sufficient signatures were collected and submitted by December of that year to send the initiative to the legislature. When the legislature adjourned in April 2012 without taking action on the initiative, I-502 automatically advanced to the November 6, 2012 General Election ballot, where it was approved by approximately 56 percent of votes cast.
- 1.4 On June 1, 2011, New Approach Washington (NAW) filed a Political Committee Registration (form C-1pc) with the PDC, registering its campaign in support of a marijuana legalization initiative. On May 17, 2012, NAW filed an amended registration, identifying I-502 as the ballot initiative it would support, and listing Alison Holcomb as NAW's campaign manager.

- 1.5 Pete Holmes was a sponsor and prominent supporter of I-502, and is featured on the NAW website, www.newapproachwa.org. **(Exhibit 1.)**
- 1.6 On October 24, 2012, the Washington Attorney General received a 45-day Citizen Action Letter (Citizen Action Complaint) from Arthur West, alleging violations of RCW 42.17A.555 by Pete Holmes and the City of Seattle. **(Exhibit 2.)** On November 5, 2012, the King County Prosecuting Attorney's Office received Mr. West's Citizen Action Complaint, and acknowledged receipt of the complaint in a letter to Mr. West dated November 7, 2012. In his Citizen Action Complaint, Mr. West gave notice that he would bring legal action against Mr. Holmes and the City of Seattle if the attorney general and the King County Prosecutor failed to take action on his allegations within 45 days of the date of receipt of his notice, as provided by RCW 42.17A.765(4).¹

II.

ALLEGATIONS IN COMPLAINT

- 2.1 In his Citizen Action Complaint, Mr. West alleged that Pete Holmes and the City of Seattle violated RCW 42.17A.555 by using the city email network and paid city staff to write and transmit email communications for the purpose of promoting I-502. He enclosed copies of fourteen emails or email conversations that he said demonstrated the alleged violations.
- 2.2 Although Mr. West alleged general violations of RCW 42.17A.555 by the City of Seattle, he alleged specific violations only by Mr. Holmes and employees under his supervision, including Kim Garrett, Special Assistant to the City Attorney, and Kimberly Mills, Communications Director for the Office of the City Attorney. A third employee named by Mr. West, Assistant City Attorney John Schochet, was implicated in the complaint and the attached evidence only in the sense that his private email address was listed as a recipient on an email sent by Alison Holcomb of NAW. The complaint included no specific allegation that Mr. Schochet used public facilities in a manner prohibited by RCW 42.17A.555, and no allegation was made concerning any other city official or employee.

¹ Mr. West's letter misidentified the Citizen Action statute as RCW 42.17A.460. That section of law concerns the attribution of campaign contributions, including earmarked contributions.

III. FINDINGS

- 3.1 **City of Seattle Response to Complaint:** On November 9, 2012, PDC staff received a response to the Citizen Action Complaint on behalf of the City of Seattle from Jean Boler, Civil Division Chief of the Seattle City Attorney's office. **(Exhibit 3.)** In her response, Ms. Boler stated that allegations in the Citizen Action Letter against the City of Seattle should be dismissed. She stated that RCW 42.17A.555 prohibits elective and appointed officials and employees from using or authorizing the use of public facilities for the purpose of assisting a candidate's campaign, or for the promotion of or opposition to a ballot proposition. Because the City of Seattle is not an individual, Ms. Boler stated, the city was not appropriately named as a respondent to Mr. West's complaint.
- 3.2 **Response to Complaint / Information Received from City Attorney's Office Staff:** On November 9, 2012, PDC staff received a response to the Citizen Action Complaint from Pete Holmes. **(Exhibit 4.)** On November 15, 2012, and December 19, 2012, Mr. Holmes provided written responses to staff's additional questions. **(Exhibits 5, 6.)** On December 4, 2012, PDC staff conducted an interview under oath with Mr. Holmes. On December 5 and 6, 2012, PDC staff sent questions by email to Kim Garrett, and on December 7, 2012, Ms. Garrett provided a written response. **(Exhibit 7.)** On November 29, 2012, November 30, 2012, and December 4, 2012, the Seattle City Attorney's office produced calendar entries and other records relevant to the allegations. **(Exhibit 8.)** Information and documents received from Mr. Holmes and his staff are discussed below.
- 3.3 **Evidence Enclosed with Citizen Action Complaint:** PDC staff reviewed the fourteen emails or email conversations enclosed with the Citizen Action Complaint. Staff found that two of these emails contained references to I-502, however it did not appear that their purpose involved promotion of the initiative. The first, a July 18, 2012 email to Mr. Holmes from John Barry, a volunteer with the City Attorney's Office, concerned Mr. Barry's plans to attend the 2012 Capitol Hill Block Party with colleagues from the office, and his desire to obtain a guest pass. In the email, Mr. Barry mentioned an individual named Paul who would be engaged in I-502 campaign activity at the block party, but would be available to meet with the larger group outside of that activity.² **(Exhibit 2, p 3.)** In the second instance, an August 24,

² In his November 9, 2012 response to the complaint, Mr. Holmes identified "Paul" as his son.

2012 email from Darby DuComb, Chief of Staff of the City Attorney's Office, Ms. DuComb responded to an email of concern about campaign messages sponsored by NAW. She indicated to the sender that her concerns would be more appropriately directed to the NAW campaign, stating, "*As a public agency, the City Attorney's Office is not involved in state initiative campaigns.*" (**Exhibit 2, pp 4 – 5.**)

3.4 Beyond the messages described above, the emails and email conversations enclosed with the Citizen Action Complaint began with messages circulated by Alison Holcomb among the staff and volunteers of NAW, including Pete Holmes, soliciting their involvement in activities related to I-502. In these cases, the entire conversation was then forwarded by Mr. Holmes from his private email address to the city address of Kimberly Mills or Kim Garrett, or to his own work address, with information concerning Mr. Holmes' schedule. It was apparent from these conversations that the purpose of Mr. Holmes' emails was to keep his public schedule free from conflicts, and to register his location at the times he would be engaged in campaign activity. (**Exhibit 2, pp 6 – 34.**)

3.5 Five additional email conversations enclosed with the Citizen Action Complaint followed the pattern of the communications described above, but culminated in an email from Kim Garrett, in which Ms. Garrett either scheduled or offered to schedule Mr. Holmes' participation in activity related to I-502, including panel discussions, campaign photography, and interviews for film or with the news media as a representative of the New Approach Washington campaign. In his interview under oath, Mr. Holmes stated that in each instance where Ms. Garrett scheduled an appointment for him, she did so at his direction.

These five instances (**Exhibit 2, pp 35 – 54**) are described below:

- **February 15, 2012 Interview with Documentary Filmmakers** – On February 1, 2012, Ms. Garrett sent an email to two documentary filmmakers, following a request by Alison Holcomb for Mr. Holmes' participation in a video interview about I-502. In her email to the filmmakers, Ms. Garrett states, "*Riley & Nils—Feel free to call me directly at your convenience to set up time to meet with Pete—I'd be happy to assist with this!*" (**Exhibit 2, p 35.**) In her December 7, 2012 response to PDC staff's inquiry, Ms. Garrett stated that after sending her email she received a call from Riley Morton, one of the two filmmakers, on her city phone during city business hours, and

scheduled their interview with Mr. Holmes. **(Exhibit 7, pp 1, 3.)** In his interview, Mr. Holmes stated that the interview itself was conducted in an unrestricted, unsecured area of city hall, normally open to the public, and did not involve the use of his office. In addition, he stated **(Exhibit 6)** that his understanding at the time of the interview was that the resulting documentary would not be released until long after the November 6, 2012 election; he said that his purpose in participating in the interview was not to promote I-502.

- **February 24, 2012 Interview for *City Living Seattle*** – On February 21, 2012, Ms. Garrett exchanged emails with Mr. Holmes at his city email address and discussed a request to Mr. Holmes for an interview on I-502 in the magazine *City Living Seattle*. **(Exhibit 2, p 39.)** Ms. Garrett stated to PDC staff that she received a call from the magazine reporter on her city phone during city business hours, and scheduled the interview with Mr. Holmes. **(Exhibit 7, pp 1, 3.)** The interview occurred on February 24, 2012. **(Exhibit 8, p 1.)** In his interview, Mr. Holmes stated that he took part in the interview while out of his office, and used his personal cell phone.
- **August 9, 2012 Photo Shoot for NAW Website** – On July 31, 2012, Ms. Garrett sent an email to a photographer retained by the NAW campaign, seeking to schedule a photographic portrait sitting for Mr. Holmes for use on the NAW campaign website. In the email to the photographer, Ms. Garrett states, *“Mychal—Please contact me at the number below and I’d be happy to schedule time for you to meet with Pete Holmes.”* **(Exhibit 2, p 40.)** Ms. Garrett confirmed to PDC staff that she received a call from the photographer on her city phone during city business hours, and scheduled the photo shoot for Mr. Holmes. **(Exhibit 7, pp 1, 3.)** The photo shoot took place on August 9, 2012. **(Exhibit 8, p 2.)** In his interview, Mr. Holmes stated that the photo shoot was conducted in an unrestricted, unsecured area of city hall, normally open to the public.
- **September 15, 2012 *High Times* Panel Discussion** – On August 6, 7, and 8, 2012, Ms. Garrett exchanged emails with David Bienenstock, an editor of *High Times* magazine, following Alison Holcomb’s request that Mr. Holmes participate with her in a panel discussion on marijuana legalization during *High Times*’ 2012 Medical Cannabis Cup. In an August 6, 2012 email to Mr. Bienenstock, Ms. Garrett

states, *“Pete Holmes is interested and available to take part as a panelist in High Times’ Medical Cannabis Cut [sic] on September 15 – 16 at Fremont Studios. Please include me in any logistical and follow up information concerning this event.”* Following this, Ms. Garrett and Mr. Bienenstock exchange emails to discuss the details of the event, including the number of tickets Mr. Holmes would need. **(Exhibit 2, pp 42 – 43.)** Ms. Garrett confirmed that her exchange with Mr. Bienenstock took place during city business hours, through her city email address. **(Exhibit 7, p 3.)**

- **Interview with *Capitol Hill Times*** – On August 22 and 23, 2012, emails were exchanged between Ms. Garrett’s city email address and Mr. Holmes’ private email address, in which Mr. Holmes alerted Ms. Garrett to a request from a *Capitol Hill Times* reporter for an interview with a NAW campaign representative. In response, Ms. Garrett offered to contact the reporter to schedule the interview, and Mr. Holmes directed her to do so. **(Exhibit 2, p 52.)** Despite this discussion, Ms. Garrett stated to PDC staff that she does not believe she used her city phone or email to schedule the interview for Mr. Holmes. She stated that she believed that Mr. Holmes may have set the interview up separately. **(Exhibit 7, p 4.)**

3.6 Response by Pete Holmes to Allegations: In his November 9, 2012 response to the Citizen Action Complaint **(Exhibit 4)**, Mr. Holmes stated that most of the email conversations enclosed with Mr. West’s Citizen Action Complaint involved the I-502 campaign communicating through private email addresses. He stated that these communications did not involve the use of city facilities, and therefore do not implicate RCW 42.17A.555. He stated that when these conversations included one or two final emails to Kim Garrett, his assistant at the City Attorney’s Office, or Kimberly Mills, his communications director, it was for the purpose of ensuring that his calendar was accurate and reliable, that he could be reached for city business, and that he was not double-booked. (He stated that Ms. Garrett has sole responsibility for controlling his public calendar, while Ms. Mills coordinates scheduling related to press inquiries.) Mr. Holmes stated that maintaining a single, accurate city calendar for him as an elected official is an *“[a]ctivit[y] which [is] part of the normal and regular conduct of the office or agency”* and is therefore permissible under RCW 42.17A.555(3).

- 3.7 In his November 15, 2012 response to staff's additional questions (**Exhibit 5**), and in his interview under oath, Mr. Holmes stated that prior to the I-502 campaign he had received specific guidance from Wayne Barnett, Executive Director of the Seattle Ethics & Elections Commission, concerning the use of city staff for campaign-related scheduling. Mr. Holmes stated that his use of city staff and email networks for scheduling purposes during the I-502 campaign was consistent with this guidance. He stated that Mr. Barnett's guidance was communicated in writing in letters the SEEC sent to Seattle elected officials on April 14, 2005 and June 11, 2008. Mr. Holmes enclosed copies of Mr. Barnett's April 14, 2005 and June 11, 2008 letters with his response. (**Exhibit 4, pp 3 – 6.**)
- 3.8 In his interview under oath, Mr. Holmes clarified that he did not read Wayne Barnett's letters until the summer or fall of 2012, when the I-502 campaign was already underway. However, he stated that he was aware of the letters' existence much earlier, that their substance was personally communicated to him by Wayne Barnett, and that he relied on that guidance at all times relevant to this investigation.
- 3.9 In his November 15, 2012 response to staff's additional questions, Mr. Holmes stated that Kim Garrett's activity during the I-502 campaign was appropriately limited to coordinating his public calendar with the campaign schedule. (**Exhibit 5**) He stated that her involvement in this limited capacity constituted the least possible commitment of city resources he could imagine without giving rise to potentially costly calendaring conflicts. Mr. Holmes stated that the fact that Ms. Garrett may have followed up with her own email to persons outside the office was immaterial, given the fact that, according to Wayne Barnett, she "*can and should communicate with the campaign*" regarding open time slots on his public schedule, to make sure he was not double-booked, and to place campaign events on his public schedule, to ensure he could always be reached.
- 3.10 Mr. Holmes stated that although he authorized Ms. Garrett to perform the scheduling work in question, it was part of the normal and regular conduct of his office, and not for the purpose of promoting a ballot proposition. He stated that he communicated to Ms. Garrett that her scheduling work was city business, and that the I-502 campaign was not. He stated that his staff's efforts to keep the campaign entirely separate from city work were complicated by the fact that marijuana policy is and has been a constant focus of his office. He stated that when he ran for election to the City Attorney's office, he made a campaign promise to stop prosecuting

misdemeanor possession, and after taking office took steps to keep that promise. He stated that he has testified before the state legislature regarding drug laws. He stated that he has taken part in media interviews and speaking engagements related to drug possession and drug policy generally. He stated that all of these activities are clearly official city business, and have required the support of his staff, including his scheduler. He said that I-502 concerned the same issue that has occupied his office for some time, and was novel only in that it also involved a ballot proposition. Other than this, he said, his staff's work was entirely consistent with their work outside the context of any election.

- 3.11 In his November 15, 2012 response to staff's additional questions, Mr. Holmes stated that he takes seriously his obligation not to use public resources in any election campaign, and would never intentionally violate any such restriction. **(Exhibit 5)** He stated that to the extent the PDC believes his staff's calendaring activity extended beyond the permissible scope of public work, he would welcome guidance as to where the line between maintaining an accurate city calendar and campaign scheduling should be drawn.

IV. SCOPE

4.1 PDC staff reviewed the following documents:

1. A 45-day Citizen Action Complaint of complaint from Arthur West, alleging violations of RCW 42.17A.555 by Pete Holmes, City of Seattle staff, and the City of Seattle, received by the Washington Attorney General on October 24, 2012;
2. A letter dated November 7, 2012 to Mr. West from the King County Prosecuting Attorney's Office, acknowledging receipt of his Citizen Action Complaint;
3. A response to the Citizen Action Complaint on behalf of the City of Seattle, received on November 9, 2012 from Jean Boler, Civil Division Chief of the Seattle City Attorney's office;
4. The website of New Approach Washington, www.newapproachwa.org, visited on November 19, 2012;

5. A response to the Citizen Action Complaint from Pete Holmes, received on November 9, 2012, with exhibits;
6. An email received on November 13, 2012 from Wayne Barnett, Executive Director of the Seattle Ethics and Elections Commission;
7. Emails received from Pete Holmes on November 15, 2012 and December 19, 2012, responding to PDC staff's additional questions;
8. Calendars and other records received from the Seattle City Attorney's office on November 29, 2012, November 30, 2012, and December 4, 2012; and
9. Emails received on December 7, 2012 from Kim Garrett.

4.2 PDC staff interviewed Pete Holmes under oath on December 4, 2012.

V.
LAW

RCW 42.17A.555 states, in part:

"No elective official nor any employee of his 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 promotion of or opposition to any ballot proposition.

...[T]he foregoing provisions of this section shall not apply to the following activities:

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

WAC 390-05-273 defines the "normal and regular conduct" of a public office or agency as "*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.*"

Respectfully submitted this 11th day of January, 2013.

T.P.

Tony Perkins
Lead Political Finance Specialist
Public Disclosure Commission

EXHIBIT LIST

- Exhibit 1** A selection from the website of New Approach Washington, www.newapproachwa.org, printed on November 19, 2012.
- Exhibit 2** A 45-day Citizen Action Complaint against Pete Holmes, City of Seattle staff, and the City of Seattle, received from Arthur West by the Washington Attorney General on October 24, 2012.
- Exhibit 3** A response to the Citizen Action Complaint on behalf of the City of Seattle, received on November 9, 2012 from Jean Boler, Civil Division Chief of the Seattle City Attorney's office.
- Exhibit 4** A response to the Citizen Action Complaint from Pete Holmes, received on November 9, 2012, with exhibits.
- Exhibit 5** An email received from Pete Holmes on November 15, 2012 responding to PDC staff's additional questions.
- Exhibit 6** An email received from Pete Holmes on December 19, 2012 responding to PDC staff's additional questions.
- Exhibit 7** Emails received from Kim Garrett on December 7, 2012.
- Exhibit 8** An excerpt of calendar entries and other records provided to PDC staff on November 29, 2012, November 30, 2012, and December 4, 2012.