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October 25, 2013

The Honorable Robert Ferguson
Attorney General
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PO Box 40100
Olympia, WA 98504-0100

Washington Public Disclosure Commission
Ms. Andrea McNamara-Doyle
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Olympia, WA 98504-0908

The Honorable John Tunheim
Thurston County Prosecuting Attorney
2000 Lakeridge Dr. S.W., Building 2
Olympia, WA 98502

Re: Supporters of I-522

Dear Attorney General Ferguson, Thurston County Prosecuting Attorney Tunheim, and Ms. McNamara-Doyle:

On behalf of No on 522, we are writing to provide information concerning violations of Washington public disclosure laws by supporters of I-522. While No on 522 is reluctant to go down this path, No on 522 thinks it is important to bring these matters to your attention for a fair and balanced enforcement of the law. Please show this complaint the same attention and urgency as the allegations made by supporters of I-522.

A. Supporters of I-522 Have Failed to Register and Report as Political Committees and Failed to Comply with Washington's Public Disclosure Laws

Under the Attorney General and PDC's interpretation of the political committee test, key supporters of I-522 are carrying on activities, including accepting contributions and making expenditures in support of I-522, without registering and reporting as a political committee. If the State's view of the law is accurate, these entities' failure to register violates RCW

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October 25, 2013
Page 2

42.17A.205 and WAC 390-16011. Because they are not registered and reporting, they are also violating numerous sections of RCW 42.17A and Title 90 of the Washington Administrative Code which require reporting of expenditures and contributions, sponsors, and top five contributors.

We understand the AG and PDC staff believe that an organization is subject to political committee registration and required to report contributions and expenditures if the organization receives any contributions that may be used to support or oppose a ballot measure in Washington.¹ Under that view, several organizations should be required to register and report as political committees because they have apparently received contributions and made expenditures supporting I-522.

1. Food Democracy Now! and Food Democracy Action!

Food Democracy Now!² is raising money for an affiliated 501(c)(4) named Food Democracy Action! for the express purpose of passing along all of the contributions to Yes on 522. *See* Exhibit A.³ Food Democracy Now!'s solicitation expressly states:

Every dollar you donate will go to the YES on I-522 campaign.

The solicitation also states:

All money raised for this campaign will *go through Food Democracy Action!*, a 501(c)(4) allied organization of Food Democracy Now!, focused on grassroots lobbying and legislative action. Donations are not tax deductible.

Exhibit A (emphasis added).

Plainly, Food Democracy Action! is acting as a conduit for Yes on 522, in violation of RCW 42.17A.470. In addition, the solicitation demonstrates that Food Democracy Action! is accepting

¹ No on 522 respectfully believes the State's interpretation of the political committee test is overbroad and conflicts with more recent U.S. Supreme Court authority making clear that the primary or major purpose of an organization must be to engage in electoral activities to qualify as a political committee, however, No on 522 recognizes the State has a different view so raises the issues in this letter based on the State's interpretation of the law.

² *See* <http://fooddemocracynow.org/about/>.

³ Exhibit A was found at:

https://fdn.actionkit.com/donate/stop_Monsanto_and_the_GMA_lie_machine_today/?akid=1025,312465.fkDGms&rd=1&t=2

October 25, 2013
Page 3

contributions earmarked for Yes on 522. As a result, the individual contributors to Food Democracy Action! should be reported by Yes on 522 as the true source of the contributions.

Food Democracy Action! has also failed to register as a Washington political committee. Because it is accepting contributions intended to support a Washington ballot measure, it is required (under the theory the State is pursuing against GMA) to register and report its activities as a Washington political committee.

Because Food Democracy Action! has not registered and reported as a political committee, there is no way of knowing from public records whether the true source of earmarked contributions to Food Democracy Action! have been disclosed by Yes on 522. Yes on 522 has reported two separate \$50,000 contributions from Food Democracy Action!, which suggests the individual contributors were not disclosed. Failure to report earmarked contributions violates RCW 42.17A.460.

2. The Organic Consumers Association and Related Entities

The Organic Consumers Association is a Minnesota-based 501(c)(3) corporation with a self-described national and international policy board. *See* <http://www.organicconsumers.org/aboutus.cfm>. The Organic Consumers Association has raised money directly for Yes on 522. (*See, e.g.*, Exhibit B). It has also solicited money *for itself* with an appeal to contribute *for purposes of supporting I-522*. (*See, e.g.*, Exhibit B, p. 4). And it has raised money to oppose GMO labeling, including through appeals to support I-522, through its affiliated Minnesota based Organic Consumers Fund, which describes itself as an allied organization with the Organic Consumers Association. *See* <http://organicconsumersfund.org/donate/> and (Exhibit C).

The exhibits to this letter include just some of the examples of activities by the Organic Consumers Association and Organic Consumers Fund demonstrating an expectation of receiving contributions supporting I-522. For example, on August 8, 2013, the Organic Consumers Association's website identified I-522 and solicited contributions to both the Organic Consumers Association ("tax deductible, helps support our work on behalf of organic standards, fair trade and public education") and the Organic Consumers Fund ("non-tax-deductible, but necessary for our legislative efforts in Washington, Vermont, and other states"). (Exhibit C). To be clear, these solicitations were for the OCA and its national Fund, not for an existing affiliated Washington political committee.⁴ Under the State's interpretation of RCW 42.17A.005(37), the Organic Consumers Association and Organic Consumers Fund should, therefore, have registered

⁴ Notwithstanding the solicitations were for contributions to OCA and the national fund, if OCA instead directly deposited the funds in a Washington political committee, it may have violated the law by failing to obtain donor consent.

October 25, 2013
Page 4

as political committees because they had "the expectation of receiving contributions or making expenditures in support of" I-522. This is similar to the claim the AG is currently pursuing against the Grocery Manufacturers Association. Put simply, under the State's view of the law, if an association solicits and receives money from members who reasonably expect some of their funds will be used to support I-522, the association or its fund is a political committee. In the OCA's case, it solicited funds for itself (not a separate strategic fund or Washington political committee) without registering and reporting as a political committee.

There is further evidence indicating the OCA's solicitations resulted in contributions to OCA. In particular, the Organic Consumers Association itself contributed \$128,000 to a Washington political committee called the Organic Consumers Fund Committee to Label GMOs in WA State (the "Washington Fund"). Presumably these funds were a result of the Organic Consumers Association's solicitations of its members to support I-522 and the identity of the particular member contributors should be disclosed.

The Washington Fund, in turn, has contributed all of its funds (except credit card and accounting fees) to the Yes on 522 Committee. According to reports filed with the PDC (Exhibit D, the Washington Fund has collected and passed through \$580,000 to Yes on 522. The transactions raise questions under RCW 42.17A.435.

The Organic Consumers Association is not acting independently in this conduct. It is coordinating with Yes on 522 while also sponsoring its own Washington political committee. (See, e.g., Exhibit E). In the "action center" of the Organic Consumers Association's website entitled "Millions Against Monsanto," the Organic Consumers Association includes a link to Yes on 522's website.⁵ The Organic Consumers Association also provided form letters soliciting contributions directly to Yes on 522.⁶ Similarly, using a mailing list the Organic Consumers claims includes 850,000 members,⁷ OCA solicited money for supporting I-522. (Exhibit I).

The structure used by the OCA and Yes on 522 has served as a basis for Yes on 522 to misleadingly claim that 80% of its contributions come from within Washington (Exhibit J) because the Washington Fund is registered as a Washington political committee. Contributors to the Washington Fund are almost all from outside of Washington, however. Indeed, the Washington Fund has collected more than 4,500 contributions from outside of Washington with fewer than 400 coming from within Washington. That is, more than 92% of the Washington

⁵ <http://www.organicconsumers.org/monsanto/links.cfm>. (Exhibit F).

⁶ For example, see form letter on OCA's website containing the subject line: "Please contribute to the Yes on 522 campaign to label GMOs in Washington State."
http://salsa3.salsalabs.com/o/50865/p/dia/action3/common/public/?action_KEY=11846. (Exhibit G).

⁷ See <http://www.organicconsumers.org/aboutus.cfm>. (Exhibit H).

October 25, 2013
Page 6

A group calling itself Volunteers for I-522 has a website supporting I-522, including descriptions of events by the organization and links to "allies" such as the Organic Consumers Association, Yes on 522, and 522parents.org. See <http://volunteersfori522.org/>. The website includes a calendar with speaking tours and fundraising events¹⁰ and media releases directing individuals to Yes on 522's website. The Volunteers for I-522 website also invites people to contact Volunteers for I-522 to "participate in actions, banner, volunteer and voter outreach, and phonebanking." *Id.* The website does not include any sponsor or top five contributor disclosures and Volunteers for I-522 is not registered as a political committee. As a result, Volunteers for I-522's funding and expenditures have not been publicly disclosed, in violation of Washington law.

4. 522Parents.org

522Parents.org is not registered as a political committee, does not report its expenditures and contributions, and does not provide the mandatory disclaimers on its website. See <http://522parents.org/>. The website promotes I-522 and provides links to the Label It WA political committee's now defunct website.

B. Supporters of I-522 are Violating Washington Law By Failing to Provide Mandatory Disclaimers and Top Five Contributor Disclosures.

Supporters of I-522 routinely failed to label their advertisements in accordance with Washington law. Specifically, supporters of I-522 routinely fail to include the sponsor and top five contributor disclaimers required under RCW 42.17A.320, WAC 390-18-010, and WAC 390-18-015.

For example, a billboard appearing in Tukwila at the W. Valley Highway and 180th Avenue with the Yes on 522 logo and Ben & Jerry's logo and the text "Vote Yes on 522 to support mandatory GMO labeling" does not contain sponsor information or the top five contributors.¹¹ (Exhibit K)

Similarly, Yes on 522's e-mail communications have routinely failed to comply with disclosure requirements throughout the campaign. For example, we include as (Exhibit L) a May 29, 2013, e-mail from Yes on 522's campaign manager offering a coupon for Ben & Jerry's ice cream to the first 52 recipients to share Yes on 522's Facebook page. The e-mail does not contain any sponsor or top five disclosures.

¹⁰ For example, a "GMO Labeling Fundraiser featuring Pam Lary with Special Guest Jeffrey Smith" scheduled for October 1. https://www.google.com/calendar/embed?src=jkodrsfvd7affcrvsd20hrmj80@group.calendar.google.com&ctz=America/Los_Angeles&gsessionid=sRyes27QU1aX9fwVTbKZeQ. (Exhibit Q).

¹¹ A photograph of the billboard, taken on August 17, 2013, is attached as (Exhibit K).

October 25, 2013
Page 7

In August, a Yes on 522 advertisement appeared in Mother Jones magazine. The advertisement, attached as (Exhibit M), contained an advertisement for Dr. Bronner's Magic Soap with rhetoric supporting I-522, solicitations for contributions, requests to vote for I-522, a Yes on 522 logo, and links to Yes on 522's website. The same advertisement has been placed on bottles of Dr. Bronner's Magic soap.¹² Despite the voluminous text in the advertisements, nothing discloses the sponsor or the top five contributors behind the advertisements.¹³

The pattern of failing to disclose continued. On September 9, 2013, representatives of Yes on 522 attended the 25th District Democrats meeting and passed out Yes on 522 flyers without the mandatory disclosures. (Exhibit N). The next day, on September 10, 2013, the Yes on 522 campaign manager again sent an e-mail solicitation seeking 1,000 donors to match an apparently anonymous (and likely unreported) pledge. The e-mail failed to include any sponsor or top five disclosures. (Exhibit O).

Even Yes on 522's website is deceiving. Yes on 522 recently added the sponsor and top 5 disclaimers to its website but has done so in a half-tone/screened manner making the disclaimers difficult to read. See <http://yeson522.com/> (Exhibit P). As a result, the website continues to violate RCW 42.17A.320, WAC 390-18-010, and WAC 390-18-015.

We have included only a sampling of advertisements violating Washington law. Indeed, it is more difficult to find examples of Yes on 522 advertisements complying with the law than not.

C. Supporters of I-522 are Violating Washington Law by Failing to Properly Report Pledges and In-Kind Contributions.

Supports of I-522 frequently refer to anonymous pledges to help generate matching contributions and enlist the support of businesses and lawyers to promote I-522 without reporting in-kind contributions. The pledges and in-kind contributions, however, have been accepted but not been reported – either as anonymous contributions, pledges, or in-kind contributions. As a result, the committees have violated RCW 42.17A.220 and .235.

For example, in late March or early April, 2013, the Organic Consumers Association posted a message to its Facebook page referring to a \$750,000 previously anonymous pledge to Label it WA contributed by Dr. Bronner's Magic Soaps. Although the Organic Consumers Association is not registered as a Washington political committee, it wrote:

¹² See <http://drbronner.com/drbronnners-yes-on-522-label.php>

¹³ The main page of Dr. Bronner's website also includes an advertisement for Yes on 522, which links to Yes on 522's website. Again in violation of Washington law, the advertisement does not indicate the sponsor or top five contributors. <http://drbronner.com/>

October 25, 2013
Page 5

Fund's contributions are from out-of-state. Those out-of-state contributors provided more than 94% of the funds the Washington Fund has received. Many of the contributions even come from outside of the United States raising serious questions as to whether foreign nationals are contributing to the Yes side in violation of federal law.⁸

The Washington Fund has also failed to properly comply with the PDC's requirements to have a Washington bank account allowing the PDC to easily scrutinize banking activities. Under the PDC's Instruction Manual for Political Committees at p. 9, the Washington Fund's bank account should "be established in a bank, mutual savings bank, savings and loan association or credit union doing business in Washington State." Contrary to the PDC's direction, however, the Washington Fund's account is with Northshore Federal Credit Union in the Silver Bay, Minnesota branch. Northshore Federal Credit Union does not have a branch in Washington.⁹ By using a financial institution outside of Washington, the Washington Fund places its banking and accounting outside the State's jurisdiction.

In addition to protecting the activities described above, there are other reasons to be concerned with the Washington Fund's banking activities. According to Northshore Federal Credit Union, its members must be "[p]ersons who reside, work, worship, or go to school in Lake or Cook Counties, Minnesota," surviving spouses of members, or immediate family members of current credit union members. See <http://www.northshorefcu.org/Mem%20Elig.htm>. Under those requirements, it is unclear how a Washington political committee could hold an account at Northshore Federal Credit Union. It is possible, therefore, there is no separate account for the Organic WA Fund and that it shares an account with its Minnesota parent entity.

The activities by and relationship between Yes on 522, the Washington Fund, the Organic Consumers Association, and the Organic Consumers Fund raises issues under Washington's disclosure law including whether major contributors to Yes on 522 have failed to register and report as political committees.

3. Volunteers for I-522

⁸ The Washington Fund lists scores of contributors with foreign addresses. It is not possible to tell from the Washington Fund's PDC filings whether it has ensured the donors are U.S. citizens or lawful permanent residents. If the donors are not U.S. citizens or lawful permanent residents, the Washington Fund has violated the Federal Election Campaign Act. Under federal law, the Washington Fund was required to return any funds from foreign nationals or, within 10 days of receipt, take steps to confirm the contribution was lawful by obtaining copies of current and valid U.S. passport papers for U.S. citizens providing a foreign address. 11 C.F.R. §110.20.

⁹ According to its website, Northshore Federal Credit Union's three branches are in Silver Bay, Grand Marais, and Lutsen, Minnesota. See <http://www.northshorefcu.org/contact.htm>

October 25, 2013
Page 8

Thanks to everyone's amazing response to *our campaign*, Dr. Bronner's Magic Soaps, who was our anonymous donor, has gone public with their support and will now be donating \$750k to the I-522 campaign, instead of the \$500k they originally planned to donate. So, between the \$250k we raised, and the \$750k Dr. Bronner's is donating, that's \$1 million for the Label it Wa campaign.

(Exhibit R) (emphasis added).

Likewise, on August 1, 2013, the Organic Consumers Association's website included a section entitled Support the OCA & OCF referring to a matching \$150,000 grant (pledge) from Mercola.com. (Exhibit S). The Mercola.com pledge was not reported.¹⁴

More recently, the Smith & Lowney law firm has provided legal services for Yes on 522 beyond compliance assistance, thereby violating WAC 390-17-405. *See, e.g.*, (Exhibit T) from <http://www.spokesman.com/blogs/spincontrol/2013/sep/25/i-522-fight-over-pet-food/> (identifying Knoll Lowney as attorney for the Yes campaign responding to questions on the substance of the initiative) and (Exhibit U) (Lowney letter to broadcasters on behalf of Yes on 522). The legal services, which apparently include creating Moms for Labeling (an entity that waited more than a month after formation to register as a political committee) for purposes of supporting I-522, should have been reported as expenditures (if paid) or in-kind contributions. Moms for Labeling has also failed to include the name of its sponsor in the name of the committee. WAC 390-16-011A. Moms for Labeling has received all of its funding from Dr. Bronner's Magic Soaps. As a result, Dr. Bronner's Magic Soaps is the sponsor whose name must be included in the committee's name. RCW 42.17A.005(42)(b). The relationship between Dr. Bronner's and the various committees supporting I-522 is also suspect, as a sponsor may not sponsor multiple committees or make independent expenditures while also sponsoring a committee. Dr. Bronner's is the sole contributor to Moms for Labeling, is one of the largest contributors to Yes on 522, assisted the Organic Consumers Association as an anonymous donor, and has also been promoting Yes on 522 through its own advertising on Dr. Bronner's products. *See, e.g.*, (Exhibit M). It is unclear whether Dr. Bronner's labels were unreported independent expenditures or in-kind contributions.

Other groups similarly appear to be contributing unreported services. For example, FUSE appears to be providing services to Yes on 522 by issuing press releases and FUSE's executive director serving as a media spokesperson for Yes on 522. *See, e.g.*, (Exhibit V) from

¹⁴ As with previously discussed items on the Organic Consumers Association's website, the article solicited contributions to the Organic Consumers Association and to the Organic Consumers Fund.

October 25, 2013
Page 9

<http://www.kirotv.com/news/news/big-money-battle-over-gmo-labeling-initiative/nZzfP/>. To the extent FUSE or its officers and directors are making expenditures supporting I-522, its contributions should be reported. The failure to report all of this information conceals the relationship between the various entities and individuals manipulating public opinion in support of I-522 and violates public disclosure laws.

D. Conclusion

Supporters of I-522 are routinely violating Washington disclosure laws and misleading the public. Even without discovery and the resources available to the State through its investigatory powers, No on 522 has identified a broad and deep range of violations by supporters of I-522. No on 522 respectfully requests the State investigate the allegations, which are far more widespread than the allegations raised against opponents of I-522, and ensure supporters of I-522 comply with the law.

Sincerely

Davis Wright Tremaine LLP



Robert J. Maguire

Attachments