

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

In the Matter of Enforcement Action
Against:

Yes on I-522 Committee,

Respondent.

Case No. 14-011

SUPPLEMENTAL MEMORANDUM
BY RESPONDENT YES ON I-522
COMMITTEE

I. INTRODUCTION

Respondent Yes on I-522 Committee (the "Committee") has been charged with violations relating to their failure to timely disclose in-kind contributions on C-4 Reports during the 2013 election (RCW 42.17A.235 and 42.17A.240). The hearing in this matter is currently set for Thursday, June 26, 2014. The Committee and PDC are separately entering a Stipulation as to Facts, Violations and Penalty. The Committee also submits this memorandum to provide additional context and discuss previous enforcement proceedings and penalties.

II. PCC NATURAL MARKETS

PCC was one of the primary sponsors of the I-522 Initiative. Its total support of I-522 was \$144,058. The late reported \$6,400 represented 4.4% of its total support of I-522. PCC was a publicly known, outspoken, and enthusiastic sponsor of the Initiative and much of the in-kind contributions related to its member bulletin, also available at retail outlets. It cannot be said that the public was misled as to either the fact or significance of PCC's support for the Initiative.

The late reporting occurred simply as a result of re-examination and reconciliation of the contributions with PCC's internal accounting records, including resolution of valuation issues.

III. BEN AND JERRY'S ICE CREAM

As with PCC, Ben and Jerry's was a well-known and vocally outspoken supporter of the Initiative. Ben and Jerry's contributed a total of \$151,522 to the Committee.

The largest by dollar amount in-kind contribution from Ben and Jerry's was for \$95,000 for Facebook, radio and banner ads. The original omission was caused by one of the office staff for the Treasurer misreading an email which was forwarded to her by Ben and Jerry's. The email listed in-kind contributions to the Committee for the 21-day reporting period (that were properly reported), as well as a section labeled "Future Spending" that was not included on the 7-day Report filed approximately two weeks later. This action was unintentional and also not in any way an error by Ben and Jerry's.

The bulk of the late reported \$95,000 spent for "political advertising" was for a Facebook ad. A copy of that ad is attached as Exhibit 1. Jerry, one of Ben and Jerry's founders, states in the ad that "Ben and Jerry's is proud to support mandatory GMO labeling. Join us and cofounder Jerry in supporting yes on I-522." Below that verbiage is a picture of Jerry holding a Yes on 522 poster standing in front of a Ben and Jerry's ice cream truck. This information certainly fully discloses Ben and Jerry's support of I-522. It is worth noting that over 41,000 people "liked" the page and it was seen by over a total of 50,000 people. Certainly those 50,000 people were well aware that Ben and Jerry's had engaged in this advertising on behalf of I-522.

IV. DOCTOR BRONNER'S MAGIC SOAPS

Doctor Bronner's Magic Soaps was another outspoken and well know supporter of the Initiative. Doctor Bronner's Magic Soaps total amount donated in support of I-522 was \$2,302,881. The late reported amounts represented .5% of the total amount donated by Doctor Bronner's Magic Soaps.

The late reporting occurred simply as a result of re-examination and reconciliation of the contributions with internal accounting records of the donor.

V. APPROPRIATE NUMERICAL CONTEXT OF UNREPORTED CONTRIBUTIONS

The unreported in-kind contributions at issue represent 1.19% of the total contributions to the supporters of the Initiative and .035% of the spending on the No side. As a percentage of spending of all money either in support or in opposition to the Initiative, these late reported in-kinds represent .27%.

Fundamentally, the essence of this complaint is about \$95,000 of in-kind contributions constituting advertising on Facebook and elsewhere which went unreported for nine days. These in-kinds were from previously reported contributor, a contributor both well-known and outspoken, were below 1% of total spending (on a losing campaign), and clearly not part of an attempt to conceal, but simply an unintentional clerical error by a low-level office staff person of the accounting firm owned and managed by the Committee's Treasurer.

In addition to attaching a copy of the Facebook ad, the Committee is also prepared to play at the hearing an audio of the Pandora ad.

In-kind reporting is notoriously difficult due to origination in activities occurring within other organizations or committees. The Treasurer for the Committee has worked hard in developing systems, training campaign staff and stakeholders in PDC Rules on reporting requirements, and has had a very high level of quality and accuracy in reporting. In the campaign world, particularly with in-kinds, things happen quickly and reporting is frequent with very quick cutoffs, particularly those involving the 7 and 21-day reporting requirements.

VI. OTHER COMMISSION ACTIONS

An examination of other Commission decisions indicates that the proposed penalty is appropriate:

In *Re House Republican Organizational Committee*, PDC Case Number 11-025, a \$120,000 expenditure was not properly recorded and when corrected, was filed thirteen (13) days late. A civil penalty of \$1,700 was assessed of which \$500 was suspended.

In *Re Washington Realtors*, PDC Case 10-003, there were \$400,000 of late C-6 reports by the Realtors for expenditures made against Governor Gregoire in 2008 (between 3 to 10 days late). The Realtors were given a warning.

In *Re Washington State Republican Party*, PDC Case Number 09-001, it was determined that the party had committed violations in one instance by not delivering to a statewide office candidate notice of two in-kind contributions totaling \$92,523 made within twenty-one days of the 2004 general election and, also, by not delivering notice to thirteen legislative candidates within 24 hours of making in-kind contributions totaling \$211,574.74 made within twenty-one days of the 2006 general election. A total civil penalty of \$15,000 was assessed.

In *Re One American Votes*, PDC Case Number 11-035, the political committee registered 124 days late and failed to report timely \$160,000 in contributions and \$135,000 in expenditures. A civil penalty of \$3,000 was imposed with \$1,500 suspended.

In *Re Mendoza*, PDC Case Number 12-153, Mendoza sent a mailer to 24,000 residents of the school district supporting three candidates and opposing two candidates in the 2011 Summer School Board Election. This constituted an independent expenditure and, in these small races, probably had a substantial impact on the outcome. Mendoza eventually filed a report of independent expenditures fourteen days late. Two days later he filed an amended C-6 Report disclosing total costs of \$8,168. In addition, the mailer did not include the sponsor identification

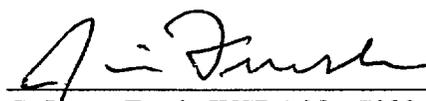
language required by RCW 42.17.510. Mendoza admitted that it was his intent to “remain anonymous” and his name did not appear anywhere on the mailer. Mendoza admitted that he concealed that he was the sole sponsor of the advertising. He was given a civil penalty of \$4,500 with \$2,500 suspended.

VII. CONCLUSION

The heart of this complaint relates to \$95,000 in in-kind contributions reported nine days late. The identity of the donor as a supporter of the Initiative was well known and the ads themselves identified the donor as the sponsor of the ads. The amounts involved were clearly *de minimus* in light of all monies spent and late reporting occurred simply because of a clerical error of a relatively low-level staffer of the campaign’s treasurer. Because the donors were well known supporters and the amounts insignificant in the context of the campaign, it was essentially a meaningless violation. The Respondent has fully cooperated in the investigation and admits the violations. The agreed upon penalty of \$4,000 is more than adequate.

Respectfully submitted this 19th day of June, 2014.

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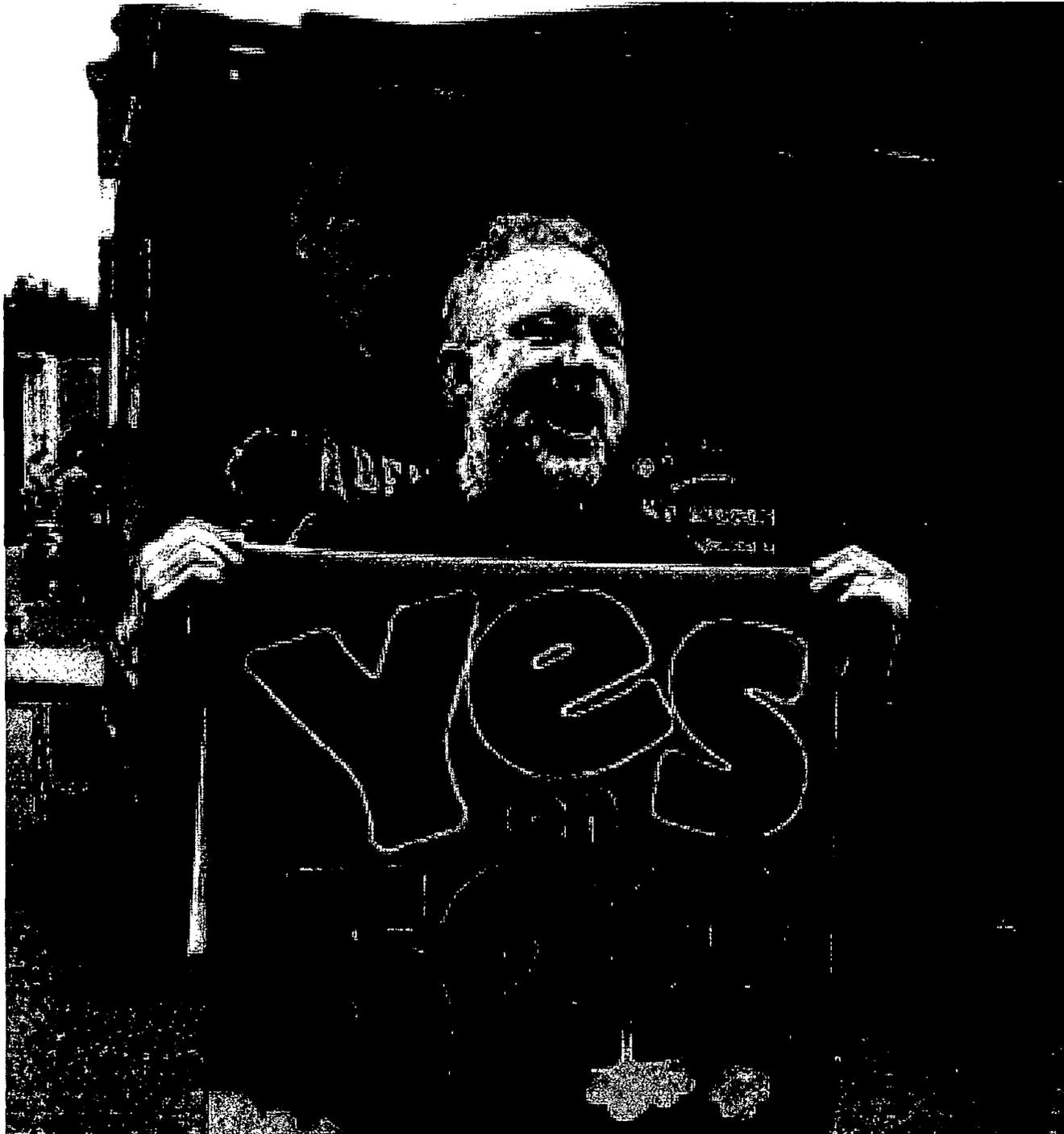


Ben & Jerry's

October 31, 2013 · 🌐

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Ben & Jerry's is proud to support mandatory GMO labeling. Join us as co-founder Jerry in supporting yes on i-522.
<http://benjerrys.co/1g3b1es>



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