

To: Public Disclosure Commission
Date: August 8, 2018
Re: Response in Case No. 38327

This is Mr. Kilduff's fourth complaint with two new allegations against the Gaylord for Prosecutor Candidate Committee.

Allegation 1: Photograph more than 5 years old on Gaylord's Personal Facebook Profile (RCW 42.17.330).

Randall Gaylord has had a personal Facebook account for many years. Since May 25, 2018, the Facebook profile picture has shown Mr. Gaylord with a loose tie leaning on a campaign sign in front of a log structure. The image is genuine and not deceptive. The grainy photograph is obviously more than 5 years old and is truthfully explained in the text above the photo: "Here's a photo from the 1994 Campaign for Prosecuting Attorney." There is nothing deceptive about the picture and the text eliminates any potential for confusion by correctly showing the age.

More importantly, the photograph is found as the "profile picture" on the personal Facebook page of Randall Gaylord, a Facebook page created and used primarily for the personal life of Mr. Gaylord. Mr. Gaylord has a large family of 9 brothers and sisters and he and his wife combined have about 100 cousins and relatives who live around the world. Facebook is one way he keeps in touch with these family members. No payment was made to Facebook in connection with the change of the personal profile picture, therefore that action is exempt from the PDC rules. See WAC 390-05-290 (4). In addition, Facebook, not Mr. Gaylord, controls the size of the photograph on the internet browser of the reader.

Political advertisements for the re-election campaign are done through the Facebook Political Page of Re-Elect Randall Gaylord for Prosecutor Committee-D. Facebook has strict requirements to comply with the PDC's rules for political advertising. RCW 42.17.330 and WAC 390-05-290. The campaign Facebook page was established on June 1, 2018, shortly after the campaign started. It existed on the date Mr. Kilduff captured the Gaylord personal page, as a reference to it is found in the left column banner. Importantly, all paid advertisements to Facebook are for political advertising on the political page and not the personal page.

For more information on distinguishing personal and campaign Facebook accounts see the Response of De' Sean Quinn(6) (Letter dated October 6, 2017) and the PDC guidance on this subject <https://www.pdc.wa.gov/learn/index-of-interpretations-by-subject/online-campaign-activities> There is nothing in the guidance which suggests that a personal Facebook Profile Picture is subject to PDC regulations.

Allegation No. 2: Copy of Gasslee Statement of Support on Website (RCW 42.17.335).

A copy of the Ed Gasslee opinions of Mr. Power and Mr. Gaylord were placed on the campaign website www.teamgaylord.com with proper attribution to the source and location. In that

respect, the statement is genuine, accurate and complete. There is no connection between the original source, a blog called sanjuanupdate.com and the Gaylord for Prosecutor Committee. There is no violation of RCW 42.17.335 for truthfully reporting statements of support.

The issue for Mr. Kilduff is the identity of Ed Gasslee. Mr. Kilduff speculates that Gasslee is Tom Evans, a lawyer and supporter of Mr. Gaylord. No, it's not Tom Evans, though it is true that Mr. Evans supports Mr. Gaylord's re-election.

The fact that Ed Gasslee is not found on Mr. Kilduff's electronic search does not make a PDC violation. "Ed Gasslee" may be a misspelling or a pseudonym. The history of the use of pseudonyms in political discourse is well known. See for example, <https://www.city-journal.org/html/defense-political-anonymity-13257.html>

RCW 42.17A.335 requires truthful endorsements and statements of support, and this is exactly what has been done. The rule does not require a statement of support to be attributed to a registered voter in the district, or a person who resides in the State, or a person who can be found using a search service of unknown geographic territory. No rule is mentioned which prevents a statement of support made anonymously.

The standard of proof under RCW 42.17A.335 is clear and convincing evidence. The clear and convincing evidence is that opinions of support for Mr. Gaylord's re-election, announced by others, were accurately copied and placed the Gaylord campaign website.

In choosing how to proceed, however, it is necessary to balance the objective of Mr. Kilduff (to suppress speech he doesn't like) against the distraction of (unfounded) PDC Complaints. All things considered, the choice has been made to remove the Gasslee statement of support from the campaign website www.teamgaylord.com No action is necessary by the PDC.

I request that each allegation in Case No. 38327 be dismissed as unfounded. I invite the PDC staff to contact me if you need additional information.

Regards,

Randall Gaylord