LAURA EWAN
ewan@workerlaw.com

Sent via email to tonyp@atg.wa.gov

January 12, 2018

Tony Perkins
Investigator, Campaign Finance Unit
Washington Attorney General's Office
P.O. Box 40100
Olympia, WA 98504-0100

RE: 5th Legislative District Democrats - Alleged Violations of RCW 42.17A
SCBIL File No. 6840-001

Dear Mr. Perkins:

On behalf of the 5th Legislative District Democrats Political Committee ("the Committee"), we are hereby responding to the allegations raised by Glen Morgan in the above-referenced matter.

Many of Mr. Morgan's allegations are absolutely unfounded, as described herein. Several of the unfounded allegations seem to be based on a fundamental misunderstanding of the internal governing structure of the Committee, of campaign finance law, or even of the basic facts regarding reporting requirements.

Under normal circumstances, the extent of any errors made by the Committee would have merely been addressed by the PDC in a constructive and meaningful way. The Committee does not believe the extent of any of the actions it allegedly took would justify imposing any sort of penalty in excess of such a referral, if further action is even deemed necessary at all.

We believe that these allegations should be dismissed outright. However, if the State believes further inquiry is warranted, referral to the PDC is the only way for your office to ensure that the purposes of the Fair Campaign Practices Act ("FCPA") are fairly and properly effectuated. In this way, the Committee may formally resolve these issues with the PDC and the State of Washington. We do not believe this will occur if Mr. Morgan takes action on behalf of the State in Washington Superior Court.

We address the specific claims that were made against the Committee by Mr. Morgan in turn, as follows:

1. ***"Failure to file accurate, timely C3 and C4 reports. (Violation of RCW 42.17A.235)"***

Without the Committee conceding to his allegations, Mr. Morgan has identified filings that he alleges were unlawfully filed late—while structuring his spreadsheet to exaggerate issues and to hide the truth of the Committee's actions here. If one sorts the identified reports by due date, there is an obvious pattern of improving performance. These filings pale in comparison to the overwhelmingly successful and timely ones over the Committee's reporting history. The Committee asserts that any instances of late filings were never done intentionally or willfully, and were certainly not so widespread as to merit intervention by any court.

Mr. Morgan's allegation here also identifies instances of *amended* reports, supplementing or clarifying information previously reported in a timely fashion (as is even admitted by Mr. Morgan's "Amended Y/N" column in his spreadsheet entitled "Exhibit A").

There is no law holding that the mere act of amending a report thereby makes it a *de facto* late filing. In fact, all of the amended C4 reports were originally filed on or before the original due date. But, again, the way Mr. Morgan's Exhibit A is structured tends to exaggerate the significance of the amended reports. For example, report 100687664 amends 100687663, which was filed the same day and merely corrects an error in inputting a date and the selection of the donor. Furthermore, this exaggeration continues by structuring his complaint to make single errors or delays in filing look like multiple ones.

Ultimately, there is no law holding that the mere act of amending a report thereby makes it a *de facto* late filing, nor would such an application of the FCPA uphold the goal of transparency outlined within the law.

2. ***"Failure to accurately, timely report debt. (Violation of RCW 42.17A.240(8), see WAC 390-05-295)"***

Mr. Morgan's assertions about the Committee's supposed failure to report debts fail as well. As outlined in "Exhibit B," Mr. Morgan methodically alleges that certain expenditures made in a given report "should have been reported as debt" in the *prior* reporting cycle. For example, by Mr. Morgan's reasoning, a purchase from Buttonsmith—a custom manufacturer which sells primarily over the internet on Amazon, producing and shipping items with same day shipping—*must* have been a "debt" incurred sufficiently in advance to have been reported as a debt in the prior reporting cycle. He has absolutely zero factual basis for this assertion. Likewise, he lists the Committee's rental of caucus space as a failure to report debt, which is untrue on its face, as the Committee's payment was for *custodial services* for the cleanup of these spaces—an expense incurred and properly reported in the same reporting period as an expenditure.

He appears to confuse "expenditures"—which were, in fact, properly reported subsequent to being made—and "debts," which occur, for example, where a commitment to pay has been made, with an agreement that payment be made (in the words of RCW 42.17A.240(8), the debt is now "outstanding"). As RCW 42.17A.005(20) states:

> **"Expenditure" includes** a **payment**, contribution, subscription, distribution, **loan**, advance, deposit, or gift of money or anything of value, and includes **a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure**.

(emphasis added.) There is nothing to indicate that the *decision* to make an expenditure, for example, wanting to purchase buttons—*without* any further concrete actions being taken—constitutes an "agreement…to make an expenditure" that would require a committee to be "guesstimating" how much that expenditure might be and then reporting it as a "debt"/future "expenditure" *at that time*. Mr. Morgan's interpretation seems to create a new reporting burden on *any* expenditure a committee may even *contemplate* undertaking. And Mr. Morgan has offered no evidence whatsoever that any specific expenditure was preceded by a promise to pay in an earlier reporting period, and hence a debt that should have been reported.

Even assuming, *arguendo*, that the Committee actually incurred debts on the dates that the Plaintiff imagines, his theory of liability is based on a legal fallacy. Specifically, he alleges that the Committee is cumulatively hundreds of days late in reporting these debts, which amount to thousands of dollars in liability. These inflated figures are based on Mr. Morgan's novel theory that the obligation to report debt survives the life of the debt itself. That is, Mr. Morgan claims that, for each expenditure listed, the Committee had a parallel obligation to report a debt which was not extinguished when the debt itself was paid, and that the Committee's failure to amend reports to include already paid debt constituted an ongoing violation continuing up to the date Mr. Morgan submitted his complaint (see column "Approx. days late"). By asserting without basis that the debt was actually incurred in a prior month and should have been reported at that time, and then calculating the imagined date the debt was incurred through the filing of his complaint—despite the fact that the obligation was fully satisfied and reported as an expenditure—Mr. Morgan has created an absurd application of the law, with no principle in law or reason that supports such a result. This claim also must fail.

The ultimate goal of the FCPA is transparency. As long as committees are undertaking their best efforts to report the expenditures they undertake—especially when the expenditures are reported in the correct reporting period—the application of the law in the manner suggested by Mr. Morgan is unreasonable.

Even if the AG or the PDC disagree regarding the nature of reporting debt obligations, without the Committee conceding to Mr. Morgan's allegations, the Committee conscientiously reported the dollar amounts spent, the purpose of the expenditures, and the dates the expenditures were incurred. The public was never deprived of meaningful information by any of the Committee's actions here.

This allegation should be dismissed outright.

3. "Failure to properly break down, describe expenses. (Violation of RCW 42.17A.235, see WAC 390-16-205, WAC 390-16-037)"

Mr. Morgan's "Exhibit C" cites various instances where the Committee did not break down expenses to a degree Mr. Morgan would have found suitable.

Several of his examples are flat-out wrong, as, for example, there were no subvendors to identify from Buttonsmith, because they are a printing company and therefore printed the signage reported by the Committee. Buttonsmith *is* the vendor. There is *no* subvendor. The expenses described as paper and toner are, in fact, for precisely that. Meeting agendas, checklists, and other party operations-related tasks were then printed. Remaining materials are used over an extended period of time to print materials related to the operation of the organization by volunteers at no further cost.

But, again, even if he were correct that subvendors should have been identified or that more information could have been provided—which we do *not* concede—the public was not deprived of meaningful information by the Committee's actions here.

Regarding the number of items printed, Mr. Morgan relies upon WAC 390-16-37, which provides *examples* of reports made for printing-related expenditures and which include a quantity figure for the copies purchased. The Committee's reading of the cited WAC is that it is referring specifically to electioneering expenses, and *not* to ordinary operating and organization building expenses. Regardless, in response to previous allegations leveled at other candidates, the Attorney General and the PDC have implicitly rejected Mr. Morgan's theory and declined to take enforcement action.[1]

The Committee believes that its overall successful reporting record in this category should be taken into account, and this allegation should be dismissed outright.

Conclusion

With respect to Mr. Morgan's utterly unfounded claim that any of the above actions, if found to be violations of the law, were done with malice as contemplated by RCW 42.17A.750(2)(c): there has been absolutely no malicious action undertaken by the Committee.

[1] For instance, in March 2017, Mr. Morgan filed a complaint with the PDC and a corresponding 45-day notice with the Attorney General alleging that John Wilson, a 2015 candidate for King County assessor, committed various violations of the Act. See PDC Ticket No. 14854. Relying on WAC-390-16-37, Morgan claimed that Wilson failed to properly break down twenty-two expenditures. *Id*. Among these allegedly problematic expenditures were various payments Wilson made to Overnight Printing & Graphics and FedEx Office for printing services. *See id*. While Wilson identified on the C-4s the amount and the purpose of the expenditures, he did not list the quantity of the copies he paid for. Despite this, the PDC and the Attorney General declined to take formal action. In so doing, the PDC noted that, with the exception of one expenditure that fell outside of the limitations period, all of the expenditures Mr. Morgan flagged as unlawful were "sufficiently identified and accounted for." *Id.*

Alleging the mere "possibility" that violations have been committed—with the serious multiplier of allegations of malice—does not amount to sufficient grounds for the criminal prosecution that Mr. Morgan is seeking.

For the foregoing reasons, we believe that it would be appropriate for the AG's office to either dismiss these allegations outright or refer this matter to the PDC for review. This approach would ensure that the purposes of the FCPA would be upheld in the most appropriate and straightforward way possible. We respectfully ask your office to so conclude.

If you have any questions, or if there is anything we can do to be of assistance to you, please do not hesitate to contact us.

Sincerely,

Laura Ewan
Counsel for 5th Legislative District Democrats

cc: Martin Chaney