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November 7, 2017

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Public Disclosure Commission

Sent via Electronic Mail & USPS First Class Mail

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Re: Case No. 26814 -- Kennewick Public Facilities District ("KPF") – Victor Epperly
(*Alleged Violations of RCW 42.17A.555*)

Dear Mr. Stutzman:

As a follow-up to our recent discussion, our office represents the Kennewick Public Facilities District ("the District"), and it is responding on their behalf to the above-referenced Complaint by Mr. Epperly.

As is evident from Mr. Blackhorn's initial identification of three (3) allegations, Mr. Epperly's allegations, neither directly nor indirectly, allege a violation of RCW 42.17A.555 and appear to be more argument on the merits than substantive allegations. Based upon our recent email exchange, and in fear of answering questions that have not been asked, I have addressed each of the allegations contained in Mr. Epperly's Complaint to the extent that they are relevant.

1. **Allegation No. 1 - Information Mailer fails to adequately disclose the Scope of Work.**

Mr. Epperly's first allegation, taken in its broadest context, does not allege a violation of RCW 42.17A.555.

The Public Disclosure Commission's *Guidelines for Local Government Agencies in Election Campaigns (Public Disclosure Law Re: Use of Public Facilities in Campaigns* ("PDC Guidelines", under Section 2 of the Basic Principles, states:

"The Public Disclosure Commission holds that it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies. This includes informing the community of the needs of the agency that the community may not realize exists.

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Local governments may expend funds for this purpose provided that the preparation and distribution of information is not for the purpose of influencing the outcome of an election."

This is consistent with the legislative mandate of affirming the State's longstanding policy of promoting informed public discussion and understanding of ballot propositions (RCW 42.17A.555).

This is also consistent with the PDC's historical holdings that with respect to election related publications, one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate (PDC's Guidelines, Basic Principles, 7.a.).

WAC 390-05-271(2) specifically states that:

"RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a non-discriminatory, equal access basis for political uses, or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

The standard is whether the Informational Mailer contained "an objective and fair presentation of the facts for each ballot measure."

The Informational Mailer does exactly that. Due to its limited space, obviously, every element of the Project cannot be described. The critical elements are whether it gives an objective and fair presentation with a description of the elements to be included, and equally important, the cost and source of payment for those improvements.

The limited space on the Informational Mailer is supplemented by its website which does address Mr. Epperly's concern about where the potential seats would be located.

2. **Allegation No. 2 - *The Informational Mailer fails to disclose that the sales tax will generate more revenue than is needed to pay the debt service on the revenue bonds.***

This allegation, likewise, fails to allege any violation of RCW 42.17A.555.

As stated above, the standard is whether within the abbreviated space available within the Informational Mailer, the District provides "an objective and fair presentation of the facts."

The Informational Mailer succinctly states that the Project is to be funded by the statutorily available sales tax increase of 0.2% which will service payments of the bonds utilized to fund the Project, and which will expire once the bonds are repaid. Mr. Epperly's conjecture regarding the sales tax growth rate, the bond repayment schedule, and the amount that may actually be generated

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is pure speculation. The ultimate finance plan, the value, length, maturity and interest rate for issued bonds are presently incapable of determination and will not be determined until after the outcome of the election.

3. **Allegation No. 3 - The Mailer contains information regarding expiration of the sales tax that contradicts the Ballot Measure.**

This allegation, likewise, fails to state any violation of RCW 42.17A.555. As pointed out above, it is premature to determine the financing structure until the availability of sales tax revenues are assured and their amount determined. At that point, the District will have several options to pursue, one of which will be to issue bonds for the statutorily established maximum period of 25 years. Other options, depending upon the amount of sales tax generated may allow for bonds having a much shorter maturity. Therefore, the mailer identifies the maximum period, while the ballot caption addresses the broader options available to the District. Mr. Epperly is attempting to create a nuance where none is justified. The Washington State Supreme Court recently in *Washington Association for Substance Abuse and Violence Prevention (WASAVP) v. State*, 174 Wn.2d 642, 664, 278 P.3d 632 (2012) dealt with a similar issue in regard to the ballot caption for I-1183, concluding "...our Supreme Court has repeatedly held that arguably misleading nuances in ballot titles do not invalidate a law duly enacted by voters where no voter was likely to be deceived." The Court went on to find that the ballot caption "was not palpably misleading or false and accurate" thereby concluding "The Court noted 'numerous occasions' in which it had rejected ballot title challenges based on nuances between terms."

Mr. Epperly's challenge of the ballot caption is misplaced and untimely.

Under RCW 29A.36.071 and RCW 29A.72.050, the ballot caption must contain a concise description of the measure with a ballot title not to exceed ten words, and a concise description not exceeding seventy-five words, which must be "sufficiently broad to reflect" the proposition subject and "sufficiently precise to give notice" of the proposition subject matter, and that the description of the proposition be true and impartial and clearly identify the proposition.

Proposition 17-4 meets that criteria. RCW 29A.36.090 provides an exclusive procedure by which any person dissatisfied may object to a ballot title and seek its amendment to conform with the requirements of the Statute. That Statute requires a challenge to a ballot caption to be filed within ten (10) days of the filing of the ballot caption with county auditor (RCW 29A.36.090).

The ballot caption was filed by the Benton County Prosecuting Attorney's Office on August 23, 2017. Obviously, more than ten (10) days has expired since that filing, and any challenges to the ballot caption are not time barred.

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4. **Allegation No. 4** - *The District's web page entitled "THELINKTC.COM" contains information contradictory to the ballot measure caption.*

Mr. Epperly makes the same argument as above by attempting to create a nuance between the maximum period for payment of bonds as provided by statute, and the District's intent that the sales tax expires upon the payment of any bonds issued upon the improvements. That allegation, likewise, fails to allege any violation of RCW 42.17A.555.

Addressing Mr. Blackhorn's expansion of this allegation that the District operated THELINKTC.COM website "in support" of the ballot proposition is equally unfounded.

The PDC Guidelines point out, the District "may develop an objective and fair presentation of the facts" related to a ballot measure, including "agency needs" and "anticipated impacts," and then "post" that information to the District's website (Guidelines, technology, websites, emails, computerized calling systems, Section 21).

As addressed above, the maintenance of the District's website is in fulfillment of the District's responsibility to inform the general public as included in the basic principles adopted by the Public Disclosure Commission. Just as the PDC Guidelines identified for the Informational Mailer, the website must provide an "objective and fair presentation of the facts relevant to the ballot proposition". In addition, maintenance of the website is a part of the normal and regular conduct of the District. The District not only maintains a general informational website at www.threeriversconventioncenter.com, it has for the last three elections, maintained informational websites.

As such, it supplements the single jurisdiction-wide objective and fair presentation of the facts regarding the ballot measure as identified in the PDC's Guidelines.

5. **Allegation No. 5** - *The web page, THELINKTC.COM, has "external" information, and therefore, cannot be considered unbiased.*

Again, there is no specific allegation of a violation of RCW 42.17A.555. Mr. Epperly's allegation falls into two prongs, both associated with minor pages in the website. The first is a list of entities expressing support for the Proposition. As identified in the PDC Guidelines (Section 15 "Lists"), the six entities listed have expressed their support for the Proposition. There are no statements, links or contact information included which would lead to information in favor of, or in opposition to, the ballot caption. This is a list of agencies or vendors that normally transact business with the District and is available under the Washington Public Records Act (RCW 42.56).

Mr. Epperly's second reference is to "articles" which are links to all of the letters to the Editor and articles published to date in the Area's single newspaper--The Tri-City Herald. These "articles" contain everything written both for and against The Link, without distinction and without

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editorializing. This list contains a link to allow a complete unbiased and neutral forum to see all of the opinions expressed, either for, or against, the Proposition without any endorsement or support by the District given to any of these letters or articles.

This is consistent with the PDC Guidelines (Technology [websites, emails, computerized calling systems], Section 21) which states:

"Agency websites may permit viewers to make selections to learn about the anticipated impacts of a ballot measure for a specific division, or otherwise allow readers to explore issues in greater or lesser detail."

The use of this platform is consistent with PDC Guidelines for the use of agency facilities which "is permitted when the facility is merely a 'neutral form' where the activity is taking place, and the public agency in charge of the facility is not actively endorsing or supporting the activity that is occurring."

6. **Allegation No. 6 - Reference in Facebook page to Three Rivers Convention Center Address.**

It is alleged that on the District webpage (THE LINKTC.COM), appeared a link to a previous Facebook site which showed "a business address" of the Three Rivers Convention Center. Upon investigation, the District learned that the webpage designer (Focal Point) had included the attachment identified in the Exhibits supplied by Mr. Epperly. On its face, it was solely informational and did not urge a vote For The Link and used publicly available illustrations. Following the page link, it did go to a site maintained by The Link Entertainment Center which identified the location as 7016 W. Grandridge Blvd., Kennewick, Washington, the physical address of the Project. None of the contents of those pages contained anything other than informational materials. The District, however, immediately upon its discovery of its source, removed the link to that page. While the District has absolutely no control over the content of that page, it is a stretch to suggest the conclusion of the physical address of the Facility constituted either a "business address" or suggested a "yes" vote for the Proposition.

7. **Allegation No. 7 - Sharing of Public Records Information.** The Complaint alleges that "it appears to be sharing media information with the PRO committee". This allegation is pure speculation and does not allege a violation of RCW 42.17A.555. The District as part of its public information, has since early 2016, made available to the public at open houses, to the media by media packets and to public records requestors, thumb drives with copies of the photographs, renderings, site plan drawings and its mailer to all those that have requested it.

This information has been in the public domain since 2016 and constitutes public record under RCW 42.56.010 and has been treated by the District as such. This is consistent with the PDC Guidelines in that they are "(1) made in the ordinary course of the agency's business, (2) were not

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'staged' for campaign purposes, and (3) are made available to a campaign on the same terms and conditions as any other member of the public would receive for photos or videos."

Under the same allegation, Mr. Epperly makes an unrelated reference to a contribution to the PAC in support of the Proposition (Citizens for the Link Entertainment Center) from Venuworks. That contribution was from Venuworks, an Iowa corporation, at 4611 Mortensen Rd., Suite 111, Ames, Iowa. Venuworks of Kennewick, LLC, is a Washington limited liability company contracted to provide management services for the District. All contributions were made by Venuworks of Iowa, and none of the facilities of Venuworks of Kennewick, LLC were utilized to keep a conscious separation between the support of this Proposition by Venuworks and the administrative services provided by Venuworks of Kennewick, LLC.

8. **Allegation No. 8 - The ballot caption does not address sales tax to be used for Operating Costs.**

This allegation, likewise, does not allege a violation of RCW 42.17A.555. As addressed above, any challenge to the ballot caption must be made pursuant to RCW 29A.36.090 within the time period provided therein, which has long passed. Likewise, the standards for establishing the concise description required in the ballot caption is, likewise, addressed above. This allegation fails to state the violation of any statutory requirements and certainly not the standards established by the Washington State Supreme Court in *WASAVP v. State* of "palpably, misleading or false", as cited above.

Mr. Epperly's allegations of an "indirect conflict between the text of the ballot measure and the representation made in the informational materials" provided by the District are not only unsupported in fact, they present no alleged violation of RCW 42.17A.555 over which the Public Disclosure Commission has jurisdiction. The allegations should, therefore, be dismissed.

If you have any questions or concerns in this regard, please don't hesitate to give me a call.

Sincerely yours,



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cc: Ms. Barbara Johnson, President of KPFD
Mr. Corey Pearson, Executive Director