State of Washington
PUBLIC DISCLOSURE COMMISSION

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October 17, 2017

Delivered electronically to Dan Brady legal counsel for Keith Effler "dan@danbradylaw.com"

Subject: Keith Effler Reminder letter, PDC Case 22929

Mr. Effler:

Enclosed is a copy of a letter sent to Matthew Burdine, Michael Collins, and Sydnee Galusha concerning the three complaints filed with the Public Disclosure Commission (PDC) against your 2017 campaign for Yakima City Council and a local publication entitled the Rain Shadow Report (RSR). The complaint alleged that you violated RCW 42.17A.235 and .240 by failing to timely disclose an in-kind contribution for the portion of the RSR that featured your candidacy, based on your involvement in the design and production of the publication. A copy of the complaint was previously sent to you.

As noted in the letter to three complainants, the PDC will not be conducting a more formal investigation into these allegations or taking enforcement action in this matter. However, pursuant to WAC 390-37-060(1)(b), this letter serves as a reminder letter concerning the timely disclosure of all campaign contribution and expenditure activities, including in-kind contributions.

If you have questions, you may contact PDC staff member Kurt Young at 360-664- 8854, or by e-mail at kurt.young@pdc.wa.gov

Sincerely,

Peter Lavallee
Executive Director

Enclosure: Letter to Matthew Burdine, Michael Collins, and Sydnee Galusha

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October 17, 2017

Sent electronically to: Matthew Burdine at"matthewburdine@gmail.com"
Michael Collins at "zmikecollins@gmail.com"
Sydnee Galusha at "sydneegalusha@gmail.com"

Subject: Complaints filed against Keith Effler (PDC Case 22929) and Rain Shadow Report (PDC Case 22931)

Dear Complainants Burdine, Collins and Galusha:

The Public Disclosure Commission (PDC) has completed its review of the complaints the three of you filed against Keith Effler, a candidate for Yakima City Council, District 4 and a publication entitled the "Rain Shadow Report" (RSR) that featured information about five of the candidates seeking election to the Yakima City Council, District 4 position, and was distributed prior to the August 2017 primary election. Collectively your complaints alleged the following:

1. Keith Effler violated RCW 42.17A.235, RCW 42.17A.310, and WAC 390-16-207, for failing to timely and accurately disclose an expenditure or in-kind contribution for a publication entitled the "Rain Shadow Report" that was distributed prior to the August 2017 primary election in the City of Yakima. As part of your complaints you provided evidence that Mr. Effler or his business had been involved with the production of the RSR publication, which benefitted his candidacy for Yakima City Council in 2017.

2. The RSR violated RCW 42.17A.320 by printing and distributing information about five of the candidates seeking election to Yakima City Council, Position No. 4, prior to the August 2017 primary election, and that the RSR was a political advertisement that required sponsor identification. Your complaints questioned who paid for the RSR publication, and alleged that the sponsors of the RSR had a PDC reporting requirement, either as an independent expenditure or contribution to Mr. Effler.

PDC staff reviewed your complaints, allegations and supplemental information provided, and the responses from the Respondents, and as a result we found the following:

- On May 27, 2017, Keith Effler filed a Candidate Registration (C-1 report) declaring his candidacy for Yakima City Councilmember, District No. 4, selecting the Full Reporting option and listing himself as the Campaign Treasurer, and Jared Bower as Volunteer Coordinator.

- On July 31, 2017, after the first complaint had been filed Mr. Effler sent an email to PDC staff concerning the RSR publication, stating that *"A business, also one of my political donors, produced a 12-page newspaper and distributed it to voters in our area. I had nothing to do with the editorial content but I helped out quite a bit in other ways. They used my photographs and I did some of the design work as well as coordinate the printing. Also, a managing member of the business is listed as my volunteer coordinator for my campaign."*

- Staff reviewed the complaint documents provided by Ms. Galusha, which included several emails between Mr. Effler and the Yakima Herald-Republic during July of 2017, concerning the design, layout, changes and payment for the RSR. Staff questioned Mr. Effler concerning his role in the RSR publication, and the total costs to produce and distribute the RSR. Staff informed Mr. Effler that based on his involvement in the production of the RSR and his knowledge about the publication, he should report a $315 in-kind contribution from the sponsor of the RSR for the fair market value of the portion of the RSR publication that featured him.

- On August 1, 2017, Mr. Effler filed an amended 7-day pre-primary C-4 report disclosing a $315 in-kind contribution received from Conquest Church, LLC on July 11, 2017 for a "Periodical Article."

- On August 10, 2017, Dan Brady, an attorney representing Mr. Effler, submitted an email to the PDC and attached a letter stating Mr. Effler was one of several *"people that came up with the concept of the RSR publication roughly one year ago. It was intended to be a regional current events periodical including political coverage."* He stated that in May of 2017, Mr. Effler filed as a candidate for Yakima City Council Position 4, and once he filed, he decided that *"he could not in any way be associated with the editorial or news content of the RSR"*, and that he has no *"ownership interest in the RSR or any entity that did."*

- Mr. Effler was interviewed by the RSR in July of 2017, and that Mr. Effler's business, Caffery Photo and Media, provided the photographs and graphics work on RSR, also in July of 2017. Mr. Brady stated that Mr. Effler assisted in formatting the RSR publication and working with the Yakima Herald-Republic on the production, but added that *"at no time did Mr. Effler alter, edit, adjust or influence the written articles of the publication. The RSR ultimately included a disclaimer (attached with the complaint) that his company, Caffery Photo and Media, assisted as described."*

- Manny Jacobowitz, legal counsel for Jared Bower and Conquest Church LLC, submitted a response stating *"'Kyle Smith' was a pen name."* In response to a request from PDC staff and "in the spirit of cooperation", he identified Kyle Smith as being Jared Bower. He stated that Mr. Bower is *"one of the elders of the Conquest Church, LLC"* and that he and other individuals that were involved with the RSR wanted "*to start a local news magazine that would speak to and for the community. The original plan was to publish quarterly, with the next issue to come out in October 2017."*

- Mr. Jacobowitz stated that in addition to the graphics work Mr. Effler provided on the RSR, he also assisted in placing the print-run orders for the RSR, and that an article in the Yakima Herald-Republic *"reported that Mr. Effler said that he didn't pay for the run."*

- Mr. Jacobowitz stated that Conquest Church LLC paid for the RSR, and that the Mr. Effler's work consisted of helping to "*come up with the idea to start a news magazine, and did a little design work; later, as a business owner, he provided neutral graphics for pay at standard rates and helped place their print-run order, and, as a candidate, he sat for an interview. Other than answering interview questions, he did not provide or influence the subject matter, technique, content, sequence, or any other aspect of the presentation. He did not control or direct the Report what to say about him or other candidates. Nor did he direct, ask, help, or pay the Church or Mr. Smith to publish or distribute the Report.*"

PDC staff did not find evidence that the Rain Shadow Report was a "regularly scheduled publication" under RCW 42.17A.005(13), so it did not meet the test of what "a contribution does not include." However, Mr. Effler voluntarily disclosed the receipt of an in-kind contribution from Conquest Church, LLC prior to the primary election being held, for the portion of the RSR that featured his candidacy after contacting PDC staff.

Staff does not believe that any of the other candidates featured in the RSR publication consulted, coordinated, communicated or collaborated, with Mr. Bower or Conquest Church, LLC, or worked on the production or distribution of the Rain Shadow Report. Thus, no contribution was received by those candidates.

While it appeared the Rain Shadow Report could meet the definition of an Electioneering Communication, the total costs to produce and distribute the publication did not meet the spending threshold of $1,000 per candidate featured. Thus, Conquest Church, LLC did not have a C-6 reporting requirement for the expenditures made to produce and distribute the publication.

Finally, we found insufficient evidence to demonstrate that the Rain Shadow Report was a political advertisement that required sponsor identification, or that it met the definition of an independent expenditure. The Rain Shadow Report did not directly support or oppose any candidates, and did not urge recipients to vote for or against any candidate.

After a careful review of the alleged violations and relevant facts, PDC staff have concluded our review of the complaints filed by the three of you against Keith Effler, the Rain Shadow Report, and Conquest Church, LLC, and will not be conducting a more formal investigation into your complaints or pursuing enforcement action in this case.

If you have questions, you may contact Kurt Young at 360-664-8854, toll-free at 1-877-601-2828, or by e-mail at kurt.young@pdc.wa.gov.

Sincerely,

Kurt Young
Compliance Officer

Endorsed by,

Peter Lavallee
Executive Director