

Peter Lavelle
Executive Director
Washington State Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

Re: Response In Support of Complaint Against We the Governed
[PDC Complaint #47250]

Dear Mr. Lavelle,

Please accept this letter as our response to We the Governed and Glen Morgan's response to our complaint against We the Governed, PDC Complaint 47250. The response's assertion that the PAC was mistakenly registered does not override the violation of the law that has occurred.

In the response to our complaint, We the Governed asserts that although it registered as a PAC, it is not actually a "political committee" because "[t]here never was a bank account set up for this PAC. There never was any money raised for this PAC. There never was any money spent by this PAC." However, both of these latter two assertions are factually untrue, because the PAC both received money and made in-kind expenditures in support of or against candidates and ballot measures, as is demonstrated below.

The appropriate test for whether an entity is a political committee is whether We the Governed had the "expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(41). Expenditures under the statute include "independent expenditures." RCW 42.17A.005(29)(a). Onto this definition, the Washington Supreme Court has grafted a "primary purpose" test.

As explained herein, We the Governed fulfills both prongs of RCW 42.17A.005(41), the "receiving contributions" and "expenditures" prongs, and therefore should have been reporting to the PDC since at least 2016, if not earlier.

**WE THE GOVERNED MADE EXPENDITURES IN SUPPORT OF, OR IN
OPPOSITION TO, CANDIDATES AND BALLOT MEASURES.**

A review of We the Governed's website—which includes dozens of blog entries written and posted by We the Governed in support of or in opposition to numerous candidates and ballot measures—reveals that it has, at all times pertinent hereto, had the expectation of making political expenditures.

For example, from June 1, 2016, through the November 8, 2018 election, We the Governed posted 36 blog entries. Of these, 24 (two thirds) appear to be independent expenditures made in support or opposition to a current candidate or ballot initiative.

The blog entries described herein are not exhaustive, and We the Governed has many more on its website that are clearly in support of, or opposition to, a candidate or a ballot proposition. Even if these blog entries (particularly those posted during the months before elections) do not conclusively establish that We The Governed was and is a political committee, these entries, and the others like them, are certainly independent expenditures with a value in excess of \$100 that

therefore needed to be reported to the PDC. If We the Governed is not a PAC, it was nevertheless obligated to file C-6 reports regarding its near-constant independent expenditures.

Finally, these independent expenditures lacked proper disclaimer language. RCW 42.17A.320(2)(a) requires that such communications must include the statement, “No candidate authorized this ad. It is paid for by (name, address, city, state).” None of the following blog entries or YouTube videos contain such a statement.

Evidence of Independent Expenditures

We the Governed published a post, “The Truth About Jim Cooper,” on June 1, 2016.¹ The post attacked Jim Cooper, a candidate for Thurston County Commissioner, noting “Jim Cooper’s anticipated coronation as the next Thurston County Commissioner by the political establishment bodes ill for long-suffering residents.” We the Governed declared that Cooper would bring an “[u]nsavory close affiliation with a convicted felon and stock swindler – who might try to become hired staff in Thurston County” and “[p]olitical payoffs, poor management, bad choices, abusiveness towards staff.” Toward the end of the post, We the Governed opined:

Fortunately, for the residents of Thurston County, **the future doesn’t have to be Jim Cooper grim.** There are choices for this commissioner seat, and every other option is better than the specter of Jim Cooper in the Courthouse. Four other candidates exist as options. Diane Dondero , Allen Miller , John Hutchings , and Jon Pettit are all running for the same seat as either Democrats or Independents (no Republicans this cycle). I will write another article comparing these candidates for this same commissioner seat, but **any of them are better than the poor political choice offered by a Jim Cooper candidacy.**

(emphasis in original). The blog’s final paragraph once again emphasizes, **“Voters should select any candidate except Jim Cooper.”** (emphasis in original). Attacking Cooper’s candidacy is a mainstay of We the Governed, which often links unfavorable coverage of Thurston taxes to Mr. Cooper. For examples, see “Thurston County punishes rural serfs- again,” February 24, 2016;² “Thurston County Auditor Bends Rules to Benefit Allen Miller (and Jim Cooper),” June 11, 2016;³ “Thurston County Discovers New Cash Cow in the “Crap” Tax,” June 15, 2016;⁴ “Thurston County celebrates Independence Day with Fireworks Ban,” June 27, 2016;⁵ “Thurston County

¹ Available at <https://www.wethegoverned.com/the-truth-about-jim-cooper/>.

² Available at <https://www.wethegoverned.com/thurstonpunishesruralfolkagain/> (“Cooper is a well-known cheerleader for harmful regulation like Title 2”).

³ Available at <https://www.wethegoverned.com/thurston-county-auditor-bends-rules-to-benefit-allen-miller-and-jim-cooper/> (“Jim Cooper gets preferred position on the first page (coincidentally, his wife works in the elections department at the Thurston County Auditor’s office... If you want to know more about Jim Cooper see this article we wrote here” and “Jim Cooper has tax, fee, regulatory, and incompetent plans for Thurston County residents...”).

⁴ Available at <https://www.wethegoverned.com/thurston-county-discovers-new-cash-cow-in-the-crap-tax/> (“The two lame duck Commissioners Sandra Romero and Cathy Wolfe may not be sympathetic to your concerns, but they are mostly pushing the Crap Tax now to assist their protege Jim Cooper who hopes to replace Cathy Wolfe. That doesn’t mean you can’t tell them what you think. Also make sure you vote and get twenty of your closest friends to vote, as well, in August (primary) and November. Remind these lame duck commissioners that no law they pass is safe from rejection by future councils, and send a message that we won’t elect politicians who just want to tax crap.”).

⁵ Available at <https://www.wethegoverned.com/thurston-county-celebrates-independence-day-with-fireworks-ban/> (“The Duo are also attempting to help their hand-picked candidate Jim Cooper who is running for Commissioner by passing as many ordinances as possible. The theory is Jim Cooper can focus on his goals of imposing a local income

backpedals from total fireworks ban, fumbles through hearing,” June 27, 2016;⁶ “Total citizen opposition to questionable rural car tax at Thurston County hearing,” August 17, 2016;⁷ and “When Democrats go full Tea Party for votes,” August 27, 2016;⁸ to name just a few of the electioneering-related posts We The Governed ran during the lead up to the 2016 election. We the Governed also used images to illustrate this coverage, including the following:



See Thurston County Discovers New Cash Cow in the “Crap” Tax,” June 15, 2016.⁹

We the Governed also frequently posted blogs and “memes” about JZ Knight’s political donations to advocate against candidates during campaign cycles, such as the following:

tax and other taxes and programs of wisdom instead of dealing with pedestrian goals like fireworks bans. If you want to know your alternatives to Jim, read this article.”).

⁶ Available at <https://www.wethegoverned.com/thurston-county-backpedals-from-total-fireworks-ban-fumbles-through-hearing/> (“Jim Cooper wants a total ban on fireworks, but it looks like he is going to have to do it himself rather than use the Wolfe/Romero Duopoly to do his work for him. This assumes he can convince the voters to elect him county wide, and the voters have four other choices in the primary.”).

⁷ Available at <https://www.wethegoverned.com/total-citizen-opposition-to-questionable-rural-car-tax-at-thurston-county-hearing/> (“Some rural residents are calling the constellation of taxes being rushed through the process the ‘Cooper Tax Crunch’ because they believe Jim Cooper wants some politically painful votes finished and on the books before he becomes commissioner....Jim Cooper has terrible plans for Thurston County, but voters get to decide if they want to experience these plans.”).

⁸ Available at <https://www.wethegoverned.com/when-democrats-go-full-tea-party-for-votes/> (Cooper “has become a poster child for incompetent and unaccountable government”).

⁹ Available at <https://www.wethegoverned.com/thurston-county-discovers-new-cash-cow-in-the-crap-tax/> (“The two lame duck Commissioners Sandra Romero and Cathy Wolfe may not be sympathetic to your concerns, but they are mostly pushing the Crap Tax now to assist their protege Jim Cooper who hopes to replace Cathy Wolfe. That doesn’t mean you can’t tell them what you think. Also make sure you vote and get twenty of your closest friends to vote, as well, in August (primary) and November. Remind these lame duck commissioners that no law they pass is safe from rejection by future councils, and send a message that we won’t elect politicians who just want to tax crap.”).



See “Ancient spirit channeller buys Thurston County election – controls Democratic Party with big cash infusion,” October 19, 2016.¹⁰

Express Endorsements and Calls To Action

Other blog posts served as express endorsements and condemnations of candidates. For example, see “Five candidates battle for Thurston County Commissioner seat – but who are they?,” June 8, 2016.¹¹ In the lead up to the 2018 election, We The Governed ran a similar post, “Four candidates vie for the Thurston County Commission, but who are they?,” July 26, 2018.¹² In that post, We The Governed explicitly endorsed Bud Blake, “**Bud Blake still appears to be the best choice for Thurston County. Rural residents of Thurston County in particular would be hurting themselves voting for the challengers.**” (emphasis in original).

Another typical example is October 20, 2016’s pre-election post titled “Hirst Decision by Supreme Court unleashes wrath of ‘Futurewise’ upon property owners by taking their water.”¹³ The post implores readers to vote against current Justices:

¹⁰ Available at <https://www.wethegoverned.com/ancient-spirit-channeller-buys-thurston-county-election-controls-democratic-party-with-big-cash-infusion/> (“Let’s face it, if a warrior spirit can transcend space and time to fund and endorse the Thurston County Democratic Party and local Commissioner candidates Jim Cooper and Kelsey Hulse, what can mere mortal lawmakers do to stop it? We can all be grateful that at least we know JZ Knight and/or Ramtha – completely control the Thurston County Democratic Party and their chosen candidates. The Democratic party would not be where they are now without this ancient timeless financial support.”).

¹¹ Available at <https://www.wethegoverned.com/five-candidates-battle-for-thurston-county-commissioner-seat-but-who-are-they/> (despite noting, “I am not **formally endorsing** a candidate for this position at this time,” but describing a candidate thusly: “I may not be endorsing anyone for this race yet, but this guy is clearly a disaster for Thurston County.”) (emphasis in original).

¹² Available at <https://www.wethegoverned.com/four-candidates-vie-for-the-thurston-county-commission-but-who-are-they/>.

¹³ Available at <https://www.wethegoverned.com/hirst-decision-by-supreme-court-unleashes-wrath-of-futurewise-upon-property-owners-by-taking-their-water/>.

First, we are only weeks away from an election. The three incumbent supreme court judges all signed onto this poorly written decision. **A message must be sent. New judges must be elected, and these sorry incumbent judges need to be replaced.** The challengers are far more likely to read the plain language of the law and interpret accordingly. The challengers will not invent new legislation as dictated by special interests to promote an agenda (that is the job of legislators, not judges). You can make a difference. **Vote for these guys: Dave Larson, Greg Zempel, and David DeWolf.**

(emphasis added). The post went on to openly condemn Hilary Franz, who was running for Public Lands Commissioner, and to endorse Steve McLaughlin for the same race.

Implicit Coverage

Even posts purportedly “reporting” on the outcome of primaries critiqued candidates for the general election. For example, see August 5, 2016’s “Primary Elections 2016 – Senate Surprises and Democrats Delight,”¹⁴ which described the upcoming general election race between Chad Magendanz (R) and Mark Mullet (D) by extolling Magendanz’s virtues while tying Mullet’s “sordid start with state-level political office” to some purported historical “bribery” and “corrupt and dishonest” “slimy...chicanery” of the Democratic party.

In a November 4, 2016 post, “Democrat Party now openly disavows violence,”¹⁵ We the Governed stated, “I am strongly opposed to the plague that Jim Cooper would bring upon those of us who would suffer under his reign as Thurston County Commissioner. **This is why we oppose his candidacy.** This is why we have exposed the truth about him to those who don’t know the truth.” (emphasis added).

June 12, 2017’s post titled “Disgraced sign-thief politician Frank Gordon sneaks back into local politics”¹⁶ asserted that, “**With his sign theft drama behind him**, he has jumped into the political fray once again in the **City of Aberdeen for an uncontested seat on the City Council. The only way he won’t be the next city councilman of Aberdeen** will be if the local citizens organize a write-in campaign during the primary, which can still be done, but isn’t easy.” (emphasis added).

Similarly, on July 10, 2017, We the Governed posted “Tukwila Ethics Board hides Forterra grant funding violations.”¹⁷ The blog covers Glen Morgan’s ethics complaint about Tukwila councilmember Quinn, who failed to disclose he was a Director of a non-profit called “Forterra.” We the Governed states, “He also failed to disclose these relationships when he promoted, approved and voted for a \$76,000 grant by the City of Tukwila to Forterra (Contract #16-112).” The post stated that this failure “looks like an intentional cover-up” without any support. Mr. Quinn was a candidate for reelection at the time.¹⁸

¹⁴ Available at: <https://www.wethegoverned.com/primary-elections-2016-senate-surprises-and-democrats-delight/>.

¹⁵ Available at: <https://www.wethegoverned.com/democrat-party-now-openly-disavows-violence/>.

¹⁶ Available at <https://www.wethegoverned.com/disgraced-sign-thief-politician-frank-gordon-sneaks-back-into-local-politics/>.

¹⁷ Available at <https://www.wethegoverned.com/tukwila-ethics-board-hides-forterra-grant-funding-violations/>.

¹⁸ His candidate registration is available at <https://web.pdc.wa.gov/rptimg/default.aspx?docid=4641652>.

On July 11, 2017, We the Governed covered Karol Brown’s candidacy for Bellevue City Council by stating that she simultaneously refuses to pay taxes while wanting to raise taxes for the rich, in a blog titled, “Bellevue City Council candidate Brown owed \$135,047 to the IRS, but wants higher taxes for others.”¹⁹ On January 10, 2018, We the Governed published a blog titled, “Shelton City Council candidate says two of his favorite things are cocaine and half naked girls,”²⁰ which notes that candidate Jason “Dangercup” Coots once posted on Facebook that two of his “...favorite things are cocaine and half naked girls.’ **It remains to be seen whether the voters of Shelton share Mr. ‘Dangercup’ Coots’ passions**, but we will find out next month....” (emphasis added).

On December 20, 2018, We the Governed published a blog about Senator Kevin Ranker, who was then running for reelection,²¹ titled “Democrat Senator Kevin Ranker’s sex harassment case raises questions – how much sex is traded to increase agency budgets?”²² The post asks, in characteristic bolded text, **“If Senator Ranker believes that he can cut or increase state budgets in exchange for sexual favors and was so blatant and casual about this belief, just who else in the state legislature shares his views?”** (emphasis in original).

Independent Expenditures and Ballot Initiatives

We the Governed also directly supports and opposes various ballot initiatives. For example, in July 2016, it compared the initiative to fund Sound Transit to an STD. “How is ST3 like an STD?,” July 15, 2016.²³ The post ends with an explicit call to action: “We must encourage everyone we know to just vote “NO” on ST3 in November. This is the only perfect prophylactic protection to stop the spread of the ST3 taxation contagion.” We the Governed also ran a pre-election post covering Tim Eyman’s inclusion of \$500,000,000.00 on his C4 for his initiative PAC as an in-kind donation from Sound Transit, because, as the post explains, “Eyman will now have a much easier job collecting these \$30 car tab signatures thanks to Sound Transit’s lavish support for the \$30 car tab initiative campaign.”²⁴

More recently, We the Governed posted just before the 2018 election regarding then-current initiatives, like “Three terrible initiatives in Washington State this year, plus a good one,” on October 18, 2018.²⁵ We the Governed also writes about Glen Morgan’s frequent legal challenges to initiatives in a way that directly opposes those initiatives. For example, “Why I’m

¹⁹ Available at <https://www.wethegoverned.com/bellevue-city-council-candidate-brown-owes-135047-to-the-irs-but-wants-higher-taxes-for-others/>.

²⁰ Available at <https://www.wethegoverned.com/shelton-city-council-candidate-says-two-of-his-favorite-things-are-cocaine-and-half-naked-girls/>.

²¹ Ranker’s candidate registration is available at <https://web.pdc.wa.gov/rptimg/default.aspx?docid=4626540>.

²² Available at <https://www.wethegoverned.com/democrat-senator-kevin-rankers-sex-harassment-case-raises-questions-how-much-sex-is-traded-to-increase-agency-budgets/>.

²³ Available at <https://www.wethegoverned.com/how-is-st3-like-an-std/> (“**If ST3 is contracted by the voters in November**, it will be impossible to quarantine nearby communities from the inevitable, relentless contagion and pandemic of ever-expanding taxes and shrinking services. Like most STDs, ST3 may spread through action (or legislation passed) in the dark of the night, but **it will infect us for the rest of our days.**”) (emphasis added).

²⁴ See “Sound Transit – largest violator of Campaign laws in State history? Helping Tim Eyman?,” September 6, 2017, available at <https://www.wethegoverned.com/sound-transit-largest-violator-of-campaign-laws-in-state-history-helping-tim-eyman/>.

²⁵ Available at <https://www.wethegoverned.com/three-terrible-initiatives-in-washington-state-this-year-plus-a-good-one/>.

challenging the AG's misleading ballot title for I-1631 – the Carbon Tax,” from March 27, 2018,²⁶ which noted Morgan's objection to the purportedly “harmful impact of the proposed initiative.” Other similar posts include “The billionaire's anti-gun initiative (I-1639) and why I'm challenging the AG's ballot title,” June 3, 2018;²⁷ and “Professional Consultants screw-up Anti-Gun initiative effort with amateur failure to proofread,” July 9, 2018.²⁸

YouTube Videos

On October 22, 2016, We the Governed posted “Pacific County works hard to destroy the last oyster farm in Oysterville,”²⁹ along with an accompanying YouTube video.³⁰ The video itself specifically critiqued Pacific County Commissioner Frank Wolfe, who was a candidate for reelection at the time. In fact, the blog post is “tagged” with his name. The YouTube description of the video explains,

Pacific County Commissioners Lisa Ayers, Frank Wolfe, and Steve Rogers along with County Prosecutor Mark McClain and Central Planner Faith Taylor-Eldred dedicated enormous sums of money, political capital, time, and focus to harass, litigate, fine, and destroy Oysterville Sea Farms, a local family-run business.... Bureaucratic overreach, as Pacific County demonstrates is harmful to our freedoms, our liberty, and a healthy community. Please help Citizens Alliance for Property Rights (www.capr.us) expose more stories like this effort to save his family business so that we can work to stop abusive central planners and government bureaucrats from doing this to [the oyster farm].³¹

It is particularly troubling that We the Governed has not filed reports with the PDC regarding videos like these because two such videos addressing Charter Amendments in Whatcom

²⁶ Available at <https://www.wethegoverned.com/why-im-challenging-the-ags-misleading-ballot-title-for-i-1631-the-carbon-tax/>.

²⁷ Available at <https://www.wethegoverned.com/the-billionaires-anti-gun-initiative-i-1639-and-why-im-challenging-the-ags-ballot-title/> (“This initiative, among other things, invents a new opportunity for gun owners to become felons by criminalizing certain gun storage behavior based on whether a criminal commits a crime with the stolen firearms. In addition, this initiative denies 2nd Amendment rights for 18-20 year old adults, creates new waiting periods, invents a new gun tax (euphemistically called a ‘fee’), imposes additional repetitive background checks, creates a new gun registry, and imposes new paperwork and signage requirements for some firearm sales.”).

²⁸ Available at <https://www.wethegoverned.com/professional-consultants-screw-up-anti-gun-initiative-effort-with-amateur-failure-to-proofread/> (critiquing the initiative and noting, “This proposed initiative is the most wide-ranging anti-gun initiative in recent Washington State history, and it is well funded with large donations from billionaires Paul Allen and Nick Hanauer, among other big dollar donors”).

²⁹ Available at: <https://www.wethegoverned.com/pacific-county-works-hard-to-destroy-the-last-oyster-farm-in-oysterville/>.

³⁰ Available at: <https://www.youtube.com/watch?v=MhJ3XoqRTC4>.

³¹ It is unclear who actually created this and other similar videos. We the Governed's blog describes it as, “The latest story in our Citizen's Alliance for Property Rights Tales of Tyranny series.” See <https://www.wethegoverned.com/pacific-county-works-hard-to-destroy-the-last-oyster-farm-in-oysterville/>. But Citizens Alliance for Property Rights does not appear to have filed any disclosures that include any outlays to We the Governed regarding these videos. See https://www.pdc.wa.gov/sites/default/files/compliance_case_files/30945%20Citizens%20Alliance%20for%20Property%20Rights%20Complaint.pdf. Glen Morgan is the Director of both organizations. See <https://www.wethegoverned.com/glen-morgan-short-bio/> (“Glen is currently the Executive Director of the Citizens Alliance for Property Rights.”); <https://proprights.org/banquet/2018/speaker/> (“Glen Morgan is CAPR's new executive Director”).

County in 2015 are clearly labeled as having been produced “**for DOVE Whatcom.**”³² (emphasis added). DOVE Whatcom is a registered PAC, and did eventually report an expenditure of \$2,500 on September 22, 2015 to We the Governed on its Amended C4 (100668445), filed November 14, 2015. Similarly, We the Governed created two videos that were very favorable to Clark County Councilmember David Madore, which it posted to YouTube.³³

We the Governed then ran three blog posts³⁴ about the three videos on April 14, 2016.

The timing of these events is significant because Mr. Madore registered as a reelection candidate for County Council on March 17, 2016,³⁵ so while the YouTube videos were created and posted *before* he was a candidate, the blog posts drawing attention to the videos are clearly an independent expenditure.³⁶

WE THE GOVERNED’S PRIMARY PURPOSE IS TO SUPPORT OR OPPOSE CANDIDATES AND BALLOT MEASURES.

In addition to having the expectation of making expenditures in support of, or opposition to, any candidate or any ballot proposition, in order for an entity to be a political committee under the “expenditures” prong, one of its primary purposes must be “to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions” *Evergreen Freedom Foundation v. WEA*, 111 Wn. App. 586, 599 (2002), review denied 148 Wn.2d 1020 (2003); *Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 425 (2016).

³² Available on YouTube at <https://www.youtube.com/watch?v=KjG7uwk5yS8> and <https://www.youtube.com/watch?v=7q6KuG7k7eA>.

³³ Available at: <https://www.youtube.com/watch?v=g4wGBYu8fIw>; <https://www.youtube.com/watch?v=4beAUslIRak&t=2s>; and <https://www.youtube.com/watch?v=YSwbFEOZH0&t=3s>.

³⁴ Available at <https://www.wethegoverned.com/david-madore-part1-businessman/>; <https://www.wethegoverned.com/david-madore-part2-supporting-charity/>; and <https://www.wethegoverned.com/298-2/>.

³⁵ Mr. Madore’s PDC candidate registration is available at <https://web.pdc.wa.gov/rpting/default.aspx?docid=4554705>.

³⁶ We the Governed ran many posts supporting Mr. Madore during his candidacy, including adding favorable references to Mr. Madore across other posts and providing unfavorable coverage of media outlets that criticized Mr. Madore before the election. For example, in “Clark County Deputy Prosecutor arrested, convicted, probation, donates to political campaign, continues to manage department,” June 6, 2016, available at <https://www.wethegoverned.com/clark-county-deputy-prosecutor-arrested-convicted-probation-donates-to-political-campaign-continues-to-manage-department/>, We the Governed declares:

However, this is a story about the Columbian soft-pedaling stories about scandals involving elected officials like Clark County Prosecutor Golick and a completely different treatment of elected officials like Clark County Commissioner David Madore over far less significant issues. By all reports Prosecutor Golick is personal friends with the Columbian’s editor Lou Brancaccio, so he will get a pass from this newspaper on the various scandals in his office. David Madore, by all accounts, helped kill the Columbia River Crossing boondoggle fiasco, which the Columbian long championed, and there will never be any forgiveness for that capital offense. To make matters worse for Commissioner Madore, he stepped on the toes of the Central Planners in Clark County by proposing alternative comp plans, asking too many questions, reducing taxes, and reducing bureaucracy and taxes on new commercial construction. These were unforgivable offenses to the powers that control that paper[.] (emphasis in original).

There are four factors to consider in the primary purpose analysis: “(1) the content of the stated goals and mission of the organization; (2) whether the organization’s actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals and mission.” *WEA*, 111 Wn.App. at 600.

Applying the first factor, the “appropriate framework for determining whether electoral political activity is one of an organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity was a primary means of achieving the stated goals and mission during the period in question.” *WEA*, 111 Wn. App. at 599. “If electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary purposes.” *Id.* at 600.

The second factor focuses on an organization’s activities, rather than its stated goals. *WEA*, 111 Wn. App. at 600. Under this approach, a court determines an organization’s primary purpose by identifying the activity or activities that occupy more of an organization’s time and resources than other activities. *Id.* at 1011.

The remaining two factors are essentially methods of confirming that the results of the mission and activities factors yield appropriate results. Does a favorable outcome in an upcoming election substantially achieve the organization’s goals? Does the organization use non-electoral means to achieve its stated goals?

Regarding the first factor, We the Governed’s “stated goals and mission” are very clear. We The Governed does not have a formal mission statement on its website, but it does declare, in the footer

About Us

Our constitution begins with the phrase “we the people.” it was the founder’s intent that government be created by the people, to serve the people. It wasn’t their intention for the people to serve the government. It was always intended that government which failed to serve the people should be “altered or abolished.” Until we return to the founder’s intent, we remain we the governed...³⁷

We the Governed’s YouTube page similarly declares:

We are dedicated to helping government whistleblowers expose the truth in local government and Washington State. We aspire to more open, honest, and efficient local, state and Federal government. We want to encourage elected officials and bureaucrats who are willing to do the right thing. We will expose those who won't. We are located in Olympia, Washington, but these principles are universal. Our

³⁷ Available at <https://www.wethegoverned.com/>.

aspiration is to bring common sense reforms and solutions to governing problems so that We the Governed can begin to live like We the People...³⁸

Electoral activity, like the kind We the Governed engages in every time it posts supporting or opposing candidates and ballot measures, is central to We the Governed's stated mission. Taking positions on elections, including advising readers how to vote, is critical to achieving the goal and mission of "alter[ing] or abolish[ing]" the current government, and to "bring[ing] common sense reforms and solutions to governing problems," the organization's stated purpose.

Regarding the second factor, it is apparent that much of We the Governed's activity is posting blogs and creating YouTube videos that explicitly endorse or oppose candidates and ballot measures. While not every post falls into this category (for example, many attack sitting politicians who are not currently candidates), the percentage of blogs that constitute independent activity spikes before an election. For example, from June 1, 2016 until the November 8, 2016 election, about two-thirds of We The Governed's posts are independent expenditures – rendering We the Governed a PAC for 2016 election season. This type of cycle is expressly contemplated by the PDC's filing deadlines, which presume that in the lead up to an election, candidates – and PACs – will have more to report. The fact that We the Governed's political activity falls off after an election should not excuse We the Governed from complying with disclosure requirements.

Understanding that We the Governed essentially has two tactics that it uses to "alter[]" or abolish[]" the current government helps analyze the third and fourth factors. We the Governed's dual tactics are: (1) during election season, get certain politicians elected; and (2) during the rest of the year, encouraging elected officials to adopt certain policy measures. An example of this approach is found in June 15, 2016's "Thurston County Discovers New Cash Cow in the 'Crap' Tax."³⁹ The post ends by imploring readers to take the following steps:

1. Tell the Thurston County [lame duck] Commissioners "what you think."
2. "Also make sure you vote and get twenty of your closest friends to vote, as well, in August (primary) and November. Remind these lame duck commissioners that no law they pass is safe from rejection by future councils, and send a message that we won't elect politicians who just want to tax crap."
3. Read more about the hearing and read any follow-up articles.
4. "email all three commissioners and tell them what you think." Of the three Commissioners, one was not up for reelection, and the other two were lame ducks.
5. "contact Jim Cooper, who loves these taxes as well...."

Of these calls to action, two specifically relate to election activity, two relate to contacting the current Commissioners, and one involves staying up to date with We the Governed.

Turning now to the third and fourth factor, We the Governed's goal of electing particular politicians cannot be achieved by means other than the tack We the Governed has taken – explicitly endorsing and opposing particular candidates. When We the Governed is advocating for change during non-election season, or when it is attacking sitting elected officials who, for whatever reason, are not up for reelection, then We the Governed uses its other tactic – imploring existing

³⁸ Available at <https://www.youtube.com/channel/UCKiKwF7OnUMfGPLUfUWUyUA/about>.

³⁹ Available at <https://www.wethegoverned.com/thurston-county-discovers-new-cash-cow-in-the-crap-tax/>.

politicians to adopt particular policies. But for the period before an election, We the Governed's primary activity is asking its readers to "get twenty of your closest friends to vote" and to "vote for these guys."⁴⁰ The very fact that so many of We the Governed's posts implore readers to vote in a certain way emphasizes that electing politicians who "who are willing to do the right thing"⁴¹ is the most effective way to "return to the founder's intent."⁴²

Finally, as has already been explored, it is true that We the Governed does sometimes encourage readers to contact sitting politicians, rather than voting them out of office. However, We the Governed employs this tactic when the politicians in question are not up for reelection, or when candidates for the next election have not been announced. During the time periods in which there are active candidates, We the Governed employs electoral means to advance its goal of "alter[ing]" the government.

In light of the above, it is clear that We the Governed both makes expenditures for electoral political activity and has electoral political activity as one of its primary goals. Consistent with the fact that it actually registered as a political committee, this is sufficient to justify the PDC in concluding that We the Governed is, in fact, a political committee and thus needs to be held accountable for its repeated failure to file timely C-4 and C-3 forms as appropriate.

WE THE GOVERNED RECEIVES CONTRIBUTIONS TO FURTHER ITS ELECTORAL POLITICAL GOALS.

Separately, We the Governed also satisfies the second prong of being a political committee by receiving and having the expectation of receiving contributions to further political electoral activity. Reports from at least two other PACs reflect several contributions received by We the Governed, because We the Governed did not file any reports itself.

First, DOVE Whatcom, a registered PAC, reported a contribution of \$5,000 on September 22, 2015, to We the Governed on its Amended C4 (Report 100668445) for the production of two political videos.⁴³

Then, on nine separate occasions in 2018, the Citizens' Alliance for Property Rights PAC reported expenditures to We the Governed (Reports 100828011, 100836271, 100844655, 100857139, 100857139, 100862945, 100873607, 100875839, and 100880039).⁴⁴

⁴⁰ See "Hirst Decision by Supreme Court unleashes wrath of 'Futurewise' upon property owners by taking their water," Oct. 20, 2016, available at <https://www.wethegoverned.com/hirst-decision-by-supreme-court-unleashes-wrath-of-futurewise-upon-property-owners-by-taking-their-water/>.

⁴¹ See <https://www.youtube.com/channel/UCKiKwF7OnUMfGPLUfUWUyUA/about>.

⁴² See footer at <https://www.wethegoverned.com/>.

⁴³ Available at: <https://web.pdc.wa.gov/rptimg/default.aspx?docid=4534594>.

⁴⁴ Available at: <https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100828011>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100836271>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100844655>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100857139>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100857139>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100862945>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100873607>,
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100875839>, and
<https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100880039>

CANDIDATE/COMMITTEE NAME	CANDIDATE OR COMMITTEE	RECIPIENT NAME	EXPENDITURE DATE	ELECTION YEAR	AMOUNT
DOVE WHATCOM COMMITTEE	Political Committee	WE THE GOVERNED	09/22/2015	2015	5,000.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	04/26/2018	2018	158.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	05/31/2018	2018	158.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	06/30/2018	2018	158.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	07/31/2018	2018	200.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	08/31/2018	2018	200.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	09/30/2018	2018	200.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	10/31/2018	2018	307.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	11/30/2018	2018	200.00
CIT ALLIANCE FOR PROPERTY RIGHTS PAC	Political Committee	WE THE GOVERNED	12/31/2018	2018	307.00

We the Governed also *solicits* donations to further its activity through its website, including “one Time Contribution[s],” “Monthly Contributions,” and by check.⁴⁵ And, as explained throughout this response, We the Governed conducts activity clearly designed to support or oppose candidates and ballot measures. These solicitations for donations therefore underscore that We the Governed has the expectation of receiving contributions to further its political electoral activity.

Under this prong, as well, We the Governed was obligated to file timely C-3 and C-4 reports. In particular, We the Governed should have reported all ten of the above-referenced contributions to it on timely C-3 and C-4 filings. Its failure to do so should be appropriately sanctioned by the PDC.

CONCLUSION

We the Governed is a PAC. It is registered as a PAC. It engages primarily in political activity, advocating for certain outcomes in elections as a means of achieving “common sense reforms and solutions to governing problems” to ensure a government “created by the people, to serve the people. The fact that We the Governed does not have its own bank account or spent any cash in producing and distributing independent expenditures, and has instead merely expended staff time (e.g., the time spent by “Executive Director” Glen Morgan in producing the independent expenditure advertising) is irrelevant. Instead, the PDC should focus on the content of We the Governed’s posts and YouTube videos, which explicitly tell readers how to vote. Because We the Governed is a PAC, it is required to file disclosures, such as (but not limited to) C-3 and C-4 reports acknowledging its receipt of \$2,500 on September 22, 2015, from DOVE Whatcom, as well as C-3 and C-4 reports acknowledging its receipt of in-kind and monetary donations from Mr. Morgan and others, value and money that must necessarily have been received in order for We the Governed to have engaged in all of the activities it has engaged in. It has failed to do so.

Even if the PDC does not agree that We the Governed is a PAC, We the Governed nonetheless has posted more than three years’ worth of blogs that constitute independent

⁴⁵ See <https://www.wethegoverned.com/support/>. Monthly contributions are sought at the following levels: \$10, \$25, \$50, \$100, and \$200. See <https://www.wethegoverned.com/support/#1515725231718-e4b56bd5-f20b>.

expenditures. Such expenditures should have been, but were not, reported on C-6 filings. Additionally, it should be held accountable for its failure to include proper disclaimer language, per RCW 42.17A.320(2)(a), on the independent advertisements it published in support of or opposition to candidates.

We respectfully ask the PDC to hold We The Governed accountable for all of these violations of the Fair Campaign Practices Act.

Sincerely,

Peter Starzynski
Executive Director
Northwest Accountability Project