As discussed at the pre-hearing, the campaign erroneously classified the initial contribution as a loan on September 14, 2019 . In the ensuing months the campaign realized this characterization resulted in a large liability being shown to the public reviewing its finances on the PDC website. In reality the campaign was never in debt and in fact Mr. Freed was donating large sums of money to support his own campaign.

Because of this persistent misconception, the campaign cleared out the mischaracterized contribution on 1/31/2020. The same day Mr. Freed donated $50,000 to his campaign and has subsequently contributed an additional $155,500 for a total of $205,500.

At the pre-hearing PDC staff articulated a concern that this correction and refiling would not technically adhere to the loan repayment limitations of the FCPA.

But in interpreting this requirement it is critical to understand the policy rationale behind the loan restriction. The provision was created to prevent candidates from loaning large sums of money that could be repaid through campaign contributions after or close to the election, thus depriving voters of timely and accurate information about who is supporting a candidate before they vote.

Neither of those harms are present in this case. Mr. Freed made a donation that was mischaracterized, he subsequently refunded it to himself eight months before the election. He has since has donated over $200,000 to the campaign. No voter has been deprived of any information about the Freed campaign or who is supporting it – indeed voters actually have a more accurate view of the campaign's finances.

All campaign finance regulations are subject to "exacting scrutiny" under Buckley v. Valeo, 424 U.S. 1, 64-68, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). The Buckley Court identified only three interests of sufficient "magnitude" which would permit a campaign finance regulations to survive exacting scrutiny; none of which are present in the instant case and only one of which is worth discussing. "First, disclosure provides the electorate with information" that assists voters in "plac[ing] each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches [and]. .. alert[ing] the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." [Emphasis added].

Here Mr. Freed is supporting himself - there is no information given to the voters about any "interests" in a contribution to himself. For these very reasons candidates are permitted to make unlimited contributions to their own campaigns under both existing Washington law and controlling precedent. There simply is no constitutionally valid reason for preventing a candidate for acting as he did.

As I indicated at the pre-hearing we are open to amending the reports further if staff believes this is required but otherwise believe that the campaign has acted in a manner to enhance transparency and provide voters with timely and accurate information.

Please feel free to contact me with any additional questions or concerns.

Thank you.

Best,

Mark Lamb

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