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Sent via email to tonyp@atg.wa.gov

December 13, 2017

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

RE: 48th Legislative District Democrats - Alleged Violations of RCW 42.17A
SCBIL File No. 6836-001

Dear Mr. Perkins:

On behalf of the 48th Legislative District Democrats ("the Committee"), we are hereby responding to the allegations raised by Mr. Glen Morgan in the above-referenced matter.

Mr. Morgan's allegations are unfounded, as described herein. Several of the 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 **three** late filings, including one that was one day late. 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,

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and were certainly not so widespread as to merit intervention by any court. This allegation should be dismissed outright or referred to the PDC for further review.

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

Mr. Morgan's position here with respect to the majority of his examples purportedly supporting this allegation is simply not supported by Washington state law. Regardless, the *two* "violations" he cites do not merit further action by any agency or court of law.

In Mr. Morgan's "Exhibit B," he appears to confuse "expenditures"—which were, in fact, properly reported subsequent to being made—and "debt," which only occurs, *e.g.*, where a commitment to pay has been made, with an agreement that payment be made on a specified date, yet payment is not made on that date, and the money is therefore now owed by the campaign committee (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, for example, rent caucus space—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, if anywhere near the C4 filing date, a committee should be 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.

RCW 42.17A.005(20) goes on to say:

> "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, **agreements to make expenditures, contracts, and promises to pay <u>may</u> be reported as estimated obligations until actual payment is made**. …

(Emphasis added.) The word "may" is permissive here, and this should be taken into account.

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 his allegations, Mr. Morgan has identified a handful of "violations." 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 also 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, on their face, not incorrect, as, for example, there were no subvendors to identify. But, again, even if he were correct that, in some instances, subvendors should have been identified or that more information could have been provided—which we do *not* concede is correct—the public was not deprived of meaningful information by the Committee's actions here.

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. 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 to refer this matter to the PDC for their 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 48th Legislative District Democrats

CC: Micaiah Titus Ragins (*via email*)