

Ben Lund replied Mon, 18 Dec 2023

To: PDC Support" <pdcc@pdc.wa.gov>

Dear Sirs,

My name is Ben Lund, a private citizen and this ad was paid for with my private funds, not a PAC. This is my first time making a PSA (public service announcement). Under the First Amendment of the Constitution of the United States of America, I have every right to do so.

The reason for leaving my name off of the ad is because of Al Merkel's behavior of manipulation, stretching the truth, argumentative and his unwillingness to respond to the demands of the City of Spokane Valley to remove his signs. More evidence of his behavior is this complaint. He won anyway, so why the push pack now?

Enclosed you will find the demand letter written by Lukins and Annis demanding he remove them. Al Merkel never removed his signs and the City in cooperation with Washington State DOT removed them for him. His attitude cost the citizens of Spokane Valley \$1000 of dollars. Also, Al Merkel had multiple complaints from the Citizens of Spokane Valley and Otis Orchards. Please do your do-diligence and research his complaints filled with the City of Spokane Valley. That is public information. Again, more evidence why I left my name off the ad.

Let me be perfectly clear. As a concerned private citizen I have every right to make a public service announcement (not accusations, but facts and evidence) of an individual that breaks the law, refuses to follow demands by the City of Spokane Valley and is running for office.

How much evidence do you need to prove this Alleged Violation is false and inaccurate? It is not a political action committee, nor am I in charge of one, but a private individual who is concerned for the safety of the community (Al Merkel signs presented a huge public safety issue that the public needed to be informed of), and having candidates that are honest and of high character running for office. Al Merkel is not one of those and I have every right as a private citizen to expose those facts.

Further evidence can be provided, if required.

Ben Lund

October 6, 2023

KELLY E. KONKRIGHT  
Admitted in Washington  
Direct Fax: (509) 363-2484  
Direct Dial: (509) 623-2011SENT VIA EMAIL AND U.S. FIRST CLASS MAILAl (Albert) Merkel  
Candidate for City of Spokane Valley Council Position No. 3  
3927 S Sunderland Dr.  
Spokane Valley, WA 99206  
[Al@alforval.com](mailto:Al@alforval.com)

Re: Campaign Signs on Traffic Islands Within Rights-of-Way

Dear Mr. Merkel,

As you know, I am outside legal counsel for the City of Spokane Valley (i.e. "the City"). The City has received multiple complaints from the public regarding your campaign signs placed on islands within the rights-of-way at the following locations in the City:

- The two signs on the east and west islands of Sprague Avenue at the I-90 underpass;
- The sign on the island of Sprague Avenue that is west of the railroad underpass, which underpass is situated at or near Argonne Road; and
- The two signs on the north and south islands of Argonne Road at the railroad underpass, which underpass is situated between Montgomery Avenue and Trent Avenue.

As stated in the August 7, 2023, letter sent to all candidates, along with the follow up letter sent to you on September 14<sup>th</sup>, the City does not prohibit the placement of temporary campaign signs along the outside of streets within the City only when they adhere to applicable law, including but not limited to Title 22, Chapter 110, of the Spokane Valley Municipal Code (SVMC 22.110 *et seq.*). As explained below, placing signs within traffic islands which divide lanes of vehicular traffic is prohibited by the Revised Code of Washington as well as SVMC 22.110.020(B).

Islands<sup>1</sup> are "traffic control devices"<sup>2</sup> as defined by the Manual on Uniform Traffic Control Devices for Streets and Highways ("MUTCD"). The MUTCD and the requirements thereof are

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<sup>1</sup> An "island" is "a defined area between traffic lanes for control of vehicular movements, for toll collection, or for pedestrian refuge. It includes all end protection and approach treatments. Within an intersection area, a median or an outer separation is considered to be an island." MUTCD, Section 1A.13.98.

binding upon Washington municipalities.<sup>3</sup> The purpose of traffic control devices “is to promote highway safety . . .” MUTCD, Section 1A.01. Traffic control devices accomplish this purpose by, among other things, providing “guidance needed for the uniform and efficient operation of all elements of the traffic stream in a manner intended to minimize the occurrences of crashes.” MUTCD, Section 1A.01.

Accordingly, the MUTCD expressly states “[t]raffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.” MUTCD Section 1A.01 (emphasis in original). The MUTCD further provides that “[s]igns and other devices that do not have any traffic control purpose that are placed within the highway right-of-way shall not be located where they will interfere with, or detract from, traffic control devices.” MUTCD, Section 1A.08 (emphasis in original). Likewise, RCW 47.36.130 states that “[n]o person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control signal, traffic device or railroad sign or signal, or any inscription, shield, or insignia thereon, or any other part thereof.” RCW 47.36.130 (emphasis added). Your signs placed within islands are not related to traffic control, and constitute an alteration of the traffic control device. As such, the signs at issue violate both the MUTCD and RCW 47.36.130.

In addition to the above, signage on traffic islands violates SVMC 22.110 *et seq.* In pertinent part, SVMC 22.110.020, with the heading “Prohibited Signs,” states:

The following signs are prohibited:

...

B. Signs that create a safety hazard for pedestrian or vehicular traffic;

....

SVMC 22.110.020(B). As determined by the MUTCD, the purpose of traffic control devices, including islands, is to promote safety and minimize the occurrence of collisions. To preserve the efficacy of these safety devices, the MUTCD and Revised Code of Washington both prohibit any non-traffic related signage on such devices. *See* RCW 47.36.130; MUTCD, Section 1A.01. Since the location of the subject signs violates the express safety standards established by the MUTCD and RCW 47.36.130, they create a safety hazard for vehicular traffic in violation of SVMC 22.110.020(B).

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<sup>2</sup> “Traffic control devices” are defined as a “device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.” MUTCD, Section 1A.13.238.

<sup>3</sup> The MUTCD is “published by the Federal Highway Administration, approved by the Federal Highway Administrator as the national standard for all highways open to public travel . . .” WAC 468-95-010. The MUTCD was adopted by the Washington state secretary of transportation (WAC 468-95-010) and is binding on Washington municipalities (RCW 47.36.030(2)).

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The City asks that you cause the signs identified above to be removed immediately. If the signs are not removed before 8:00 a.m. this coming Monday, October 9<sup>th</sup>, the City will cause them to be removed and notify you where you can retrieve them.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Konkright", with a long horizontal flourish extending to the right.

KELLY E. KONKRIGHT