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Sent via email to tonyp@atg.wa.gov

November 7, 2017

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

RE: 34th Legislative District Democrats - Alleged Violations of RCW 42.17A
SCBIL File No. 6552-014

Dear Mr. Perkins:

On behalf of the 34th Legislative District Democrats ("the Committee"), we are hereby responding to the allegations raised by Mr. Glen Morgan in the above-referenced matter.

Many of Mr. Morgan's allegations are absolutely unfounded, as described herein. Several of the unfounded allegations seem to be based in 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 anything imposing any sort of penalty beyond such a course of action.

We believe that 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.

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 conceding to his allegations, Mr. Morgan has identified a *de minimis* violation at best. The Committee asserts that any instances of late filings were never done intentionally or willfully, and were certainly not so widespread as to merit intervention by any Court.

However, the Committee expressly does *not* agree that the 29 instances of amended reports fall within this category; there is no law holding that the mere act of amending a report thereby makes it a late filing.

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.

In Mr. Morgan's "Exhibit C," 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, have flyers made or to have supplies purchased—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.

This also applies to the types of circumstances where a month later, a volunteer brings back a receipt for reimbursement, which is then reported as such—no committee can try to predict any and all possible expenditures in the way implied by Mr. Morgan's reading of the statute. 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**. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(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.

Ultimately, without conceding to his allegations, Mr. Morgan has identified a *de minimis* violation at best. 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.

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 cites some instances where the Committee did not break down expenses to a degree Mr. Morgan would have found suitable. With respect to the allegation that the Committee violated RCW 42.17A.235 by failing to disclose the quantity and purpose of various printing projects, it is worth emphasizing that *no* law or regulation *explicitly* requires this information to be reported. While WAC 390-16-037 provides three "examples," one of which contains the number of pieces produced in the "purpose" field, nowhere in the regulation or in any other law is it stated that this information is *required.*

Clearly, not all of his allegations are correct: listing a musician's name as the recipient of an expenditure cannot actually be a "failure to identify a subvendor"—because the musician *is* the vendor.

But, again, Mr. Morgan has identified a *de minimis* violation at best. Even if he were correct that subvendors should have been identified or that more information could have been provided—which we do not concede—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 lead to a finding of a mere *de minimis* violation (if anything).

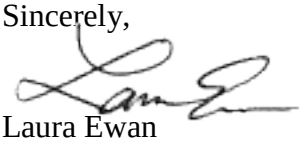
Conclusion

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 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.

However, for the foregoing reasons, we believe that it would be appropriate for the AG's office 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 straight-forward 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 34th Legislative District Democrats

cc: Tony Perkins (*via email*)
Fox Blackhorn (*via email*)