Geoffrey Bracken
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September 5, 2018

Erick O. Agina
Compliance Officer
Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

RE: Katherine Burke – Alleged Violations of RCW 42.17A

Dear Mr. Agina:

On behalf of People for Kate Burke ("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.

As discussed in more detail below, the Attorney General should refer this matter to the PDC for enforcement. The violations alleged by Mr. Morgan are either unmeritorious or involve de minimis and technical violations that do not warrant judicial enforcement.

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 **twenty-one** late filings, including nine which were 1 – 2 days late and several duplicate claims. These filings pale in comparison to the overwhelmingly successful and timely filings over the Committee's reporting history. 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.

Additionally, Mr. Morgan identifies one filing which he claims was 189 days late. This is the result of an amendment to the C4 which was filed on-time in accordance with the law. The amendment updated the description of expenditures made by the Committee to Geoffrey Bracken which more accurately reflect the service provided. This involves a de minimis error made in good faith while making every effort to comply with the law.

In sum, these allegations are either not meritorious or of the type that the PDC is fully capable of investigating and enforcing.

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 "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 venue 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 Fair Campaign Practices Act ("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.

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 391-16-037)*"

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. Even if he were correct that subvendors should have been identified, the public was not deprived of meaningful information by this failure.

With respect to the allegation that the Committee violated RCW 42.17A.235 and .240 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 mail pieces produced in the "purpose" field, nowhere in the regulation or in any other law is it stated that this information is *required.*

Ultimately, the Committee contends that its reporting was clear and sufficient under the requirements of the FCPA, and if it was not, it was so *de minimis* in nature as to be insufficient for action on this claim.

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 else we can do to be of assistance to you, please do not hesitate to contact us.

Sincerely,
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CC: Katherine Burke (via email)