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June 20, 2018

VIA E-MAIL

Micaiah Titus Ragins
Compliance Coordinator
Public Disclosure Commission
pdc@pdc.wa.gov
1.360.753.1111

Re: Complaint by Conner Edwards against the Public Defender Association

Dear Mr. Ragins:

We represent the Public Defender Association (“PDA”), which administers the “Yes to SCS” policy project in support of safe consumption spaces for people addressing drug addiction. On April 9, 2018, the Public Disclosure Commission informed the PDA of a complaint filed by Mr. Conner Edwards for purported violations of chapter 42.17A RCW. We were subsequently notified that a similar complaint had been filed by Mr. Edwards with the Attorney General’s Office pursuant to RCW 42.17A.765, and that review by the PDC would be paused until that Office completed its review. On June 11, 2018, we received notification from the Attorney General’s Office that Mr. Edwards’ complaint should be left to the discretion of the PDC. This letter is therefore in response to Mr. Edwards’ original complaint.

As an initial matter, the core of Mr. Edwards’ complaint relies on his mistaken belief that the Yes to SCS project constitutes a “political committee” and that it has engaged in “political advertising” as defined in the statute. The complaint further errs in asserting that the work of the Yes to SCS project was done in opposition to former King County Initiative 27 (the “Initiative”). These assertions are plainly incorrect. As discussed in further detail below, the PDA began its work on the Yes to SCS project in November 2015, well before the Initiative was contemplated and subsequently filed in April 2017. During the entirety of the project, the PDA has pursued its support of safe consumption spaces as a public policy matter consistent with the organization’s overall mission. It has never directed its work towards opposing the Initiative or coordinated

with those efforts in any manner. Yes to SCS is in no way a political organization or entity under the Campaign Disclosure and Contribution statute.

For these reasons and the reasons set forth below, the allegations in the complaint are speculative and false. No further action by the Public Disclosure Commission is warranted in this matter.

I. Brief Factual Background

The Public Defender Association and “Yes to SCS” Project

The Public Defender Association is a non-profit corporation founded in 1969 and based in King County, Washington. The organization is a private entity entirely funded through a variety of public and private grants, contracts, and donations. The PDA advocates for social and racial equity and community health through reform of the criminal justice system, primarily through a variety of public policy initiatives. Over its many years in operation these critical policy efforts have included the Racial Disparity Project (RDP), aimed at reducing racial disparity in the justice system, and the Law Enforcement Assisted Diversion (LEAD) program, a collaboration with local law enforcement agencies that provides alternative outcomes for people that commit minor law violations due to unmet behavioral health needs. Two of its staff were appointed to the Heroin and Prescription Opiate Addiction Task Force convened by the King County Executive and the Mayors of Seattle, Auburn, and Renton in March 2016.

The PDA’s efforts in support of safe consumption spaces for individuals living with drug addiction are part of this tradition and mission. The Yes to SCS project was initiated by the PDA staff in November 2015, as a way to help reduce overdose death, public drug use, and the spread of disease. The work on this project, which continues today, involves a variety of advocacy efforts through education, public forums, advertising campaigns, volunteer training, legislative advocacy, and social media engagement. Importantly, neither the Yes to SCS project nor PDA through its other projects have ever undertaken efforts to oppose or address the now defunct King County Initiative 27.

King County Initiative 27

Initially filed on April 14, 2017, and approved for the ballot on May 2, 2017, King County Initiative 27 sought to prevent King County from opening safe consumption spaces. However, on August 21, 2017, a coalition of community health advocates formed a group called Protect Public Health and filed a lawsuit challenging the legality of the Initiative, arguing that it unlawfully usurped the authority of county officials to make public health decisions. The King County Superior Court agreed, ruling on October 16, 2017, that “I-27 in its entirety, is invalid,

null, and void,” and further enjoined the Initiative from being placed on the ballot.¹ This matter is currently on appeal.

The statute defines a “ballot proposition” to include any initiative proposed to be submitted to any state or local voting constituency “from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.” RCW 42.17A.005(4). As the Initiative was declared void and stopped from being placed on the ballot, it was therefore only a ballot proposition from April 14, 2017, through October 16, 2017.

II. Analysis

The complaint by Mr. Edwards raises four alleged violations of RCW 42.17A. Each is without merit.

Allegation One: Violation of RCW 42.17A.255 – Failure to Timely Disclose Independent Expenditures (C-6 Reports)

The Yes to SCS project had no obligation to report expenditures pursuant to RCW 42.17A.225, as it did not make “independent expenditures” as defined in this statute. The allegation in Mr. Edwards’ complaint to the contrary is based on a false understanding of the work of the PDA and the Yes to SCS project.

“Independent expenditures” are expenditures “made in support of or in opposition to any candidate or ballot proposition” that are not otherwise required to be reported. RCW 42.17A.225(1). As previously described, the Yes to SCS project began well before the Initiative was filed and none of its work is directed towards the Initiative in any manner. Beyond addressing the same general subject matter, the work of the Yes to SCS project has no direct or indirect relationship to the Initiative.

For example, Mr. Edwards cites the Yes to SCS social media accounts on Facebook and Twitter as independent expenditures, despite the fact that both accounts began promoting safe consumption spaces in October 2016, six months prior to the filing of the Initiative, and neither contains any postings by Yes to SCS in opposition to the Initiative. Indeed, none of the items listed in section 1 of Mr. Edwards’ complaint as “independent expenditures” make any reference to the Initiative. Each of the videos listed in the complaint were created and made public in August and September 2017, and none refer to the Initiative in any manner. Instead, consistent with the PDA’s work in support of past policy initiatives, the videos are testimonials about the value of a specific public policy objective, in this case, safe consumption spaces.

¹ See Order Granting Plaintiff’s Motion for Declaratory Judgment and Injunctive Relief, *Protect Public Health v. Freed et al.*, King Cnty. Sup. Ct., No. 17-2-21919-3 SEA (Oct. 16, 2017).

Moreover, the rationale relied on in the complaint to establish the alleged violations would lead to absurd results. Under the reasoning of the complaint, every organization engaged in public policy advocacy would immediately become an entity subject to the requirements of the campaign disclosure laws after a ballot proposition is filed relating to a similar subject, even if the entity never engages in electoral advocacy. Washington's campaign disclosure laws were clearly not intended to create such a result.

As none of the work by the PDA and the Yes to SCS project was done in opposition to a ballot proposition, this allegation is without merit.

Allegation Two: Violation of RCW 42.17A.205 – Failure to Timely File the Statement of Organization (C-1pc Reports); and

Allegation Three: Violation of RCW 42.17A.235 – Failure to Timely and Accurately File C-3 and C-4 Reports

Both of the statutes referenced in the second and third allegations in the complaint impose reporting obligations on “political committees.” But the Yes to SCS campaign is not a “political committee” as defined in the statute. It therefore had no obligation to file C1pc, C3, or C4 reports.

Pursuant to this statute, a “political committee” is defined as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” RCW 42.17A.005(37). The Washington Supreme Court addressed this definition in *Utter v. Building Industry Association of Washington*, 182 Wn.2d 398 (2015). First, the Court recognized that an entity only becomes a “political committee” with reporting requirements if it “‘expects’ to ‘receiv[e] contributions’ or ‘mak[e] expenditures’ *regarding an upcoming election.*” (emphasis added). *Id.* at 413. Next, the Court addressed the limited prior jurisprudence interpreting this definition, making clear that an entity may meet the definition of a “political committee” under either the “receiving contributions” or “making expenditures” prong of the definition. *Id.* at 416. Lastly, and most importantly here, the Court held that there is an additional test inherent in the definition, that the entity have influencing the election of a candidate or ballot initiative as “one of their primary purposes.” *Id.* at 427, 435.

The *Utter* decision makes clear that the PDA's Yes to SCS project is not a “political committee” under the statute. Created as a policy project long before the Initiative was filed, Yes to SCS has never had as a purpose, let alone a primary purpose, defeating the Initiative or otherwise engaging in electoral activities. All of its work was in advance of a policy goal the PDA has long supported, which did not alter during short existence of the Initiative, and has never included any direct or indirect support or opposition to any electoral issue. The complaint makes no showing to the contrary.

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Allegation Four: Violation of RCW 42.17A.320 – Failure to Include Sponsor ID and List Top 5 Contributors

The fourth allegation in the complaint fails for the same reasons. RCW 42.18A.320 requires “political committees” to include their top five contributors when conducting “political advertising.” RCW 42.18A.320(1). But the Yes to SCS project is not a “political committee,” nor has it ever engaged in “political advertising.” It therefore had no obligation to identify the entities and individuals that provide support for the organization.

“Political advertising” includes a variety of forms of advertising when “used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.” RCW 42.17A.005(36). Here the complaint fails for two reasons. First, the public engagement by the PDA and the Yes to SCS project consists primarily of policy information disseminated through its website, social media accounts, press releases, and public events. As such, only a small scope of its engagement would constitute “advertising” of any form. Second and more importantly, the Yes to SCS project has never engaged in advertising related to the Initiative or any other election campaign. Once again, the complaint makes no showing to the contrary.

In conclusion, the Public Defender Association and the Yes to SCS project have not violated any provision of the Campaign Disclosure and Contribution statute, RCW 42.17A. Each of the allegations set forth in the complaint are baseless and no further action by the Public Disclosure Commission is warranted.

Thank you for your consideration of this response to the complaint. Please let us know what, if any, additional information you may require to complete your review of this matter.

Sincerely,

PACIFICA LAW GROUP LLP



Nicholas W. Brown