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June 27, 2016

Jacob Berkey
Public Disclosure Commission
711 Capitol Way Rm. 206
PO Box 40908
Olympia, WA 98504-0908

Via email and US Mail.

Subject: Represent Okanogan County

Dear Mr. Berkey,

I am writing in response to your email to Represent Okanogan County (“ROC”) dated June 20, 2016, in which you request that ROC respond to the complaint filed against it by Nicole Kuchenbuch, President of the Okanogan County Farm Bureau (“Farm Bureau”).

ROC has been very careful to comply with the campaign finance laws and is glad to have the opportunity to respond to the Farm Bureau’s complaint. However, this response will be brief because the complaint offers no basis for its claim that ROC is required to register as a political committee.

ROC was created to increase civic participation and educate voters about issues facing Okanogan County. It has no intention to advocate for the election of any candidates. Thus, it does not meet the definition of a political committee under RCW 42.17A.005(37) (“Political committee” means 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.”) (emphasis added). All of ROC’s fundraising is intended to support ROC’s public participation and voter registration work. None of the funds are being raised to support or oppose candidates.

The organization’s mission is stated on its website: “Represent Okanogan County is a nonpartisan organization offering technical and issue oriented support to County Commissioner candidates dedicated to government that is transparent, responsive, and accountable to all constituencies. ***Our efforts focus on voter education, registration, and participation.***” (emphasis added). ROC has educated voters about the opportunity to run for county commission and the issues facing Okanogan County, and it has conducted non-partisan voter registration and information campaigns, such as the non-partisan candidate forum discussed in the complaint.

The complaint admits that ROC actively recruited both the Farm Bureau and the League of Women Voters to participate in its non-partisan candidate forums, demonstrating that the ROC seeks to be a non-partisan source of information, not a political committee. Similarly, ROC’s website provides non-partisan information that is available to all voters and commission candidates.

The complaint notes that ROC has done issue advertising, but the short ads that ROC prepared do not advocate for or against any candidate, nor do they identify any candidate by name. They are nothing close to the advertising campaign analyzed in *Voter Educ. Comm. v. Pub. Disclosure Comm'n.*, 161 Wn.2d 470 (2007). There, the advertisement slammed the candidate and concluded that “Deborah Senn Let Us Down.” Because Senn was not an incumbent, the Court held that the advertising “had contemporary significance only with respect to Senn’s candidacy for attorney general.” 161 Wn.2d at 791. Here, in contrast, ROC has put out no information that explicitly or implicitly asks voters to cast their ballot for or against any candidate. ROC’s issue advertising does not support any challengers nor overtly criticize the incumbents running for office. Raising questions about how the county commission is handling issues such as forest fires does not constitute electoral communications and does not seek to support or oppose any candidates. ROC is seeking to elevate these issues in the debate so that the Board of County Commissioners will take proper action.

The issue adds fall squarely within *FEC v. Wis. Right to Life, Inc.*, 127 S.Ct. 2652, 2667 (2007):

[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL's three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

Given that the Farm Bureau’s complaint asserts no facts supporting its claim that ROC should register as a political committee, we ask that you reject the complaint. We are happy to provide further information if needed.

Very Truly Yours,

SMITH & LOWNEY, P.L.L.C.

By  _____
Knoll Lowney
Attorneys for Represent Okanogan County

Cc: Represent Okanogan County