

## Complaint Description

Robert Shirley (Thu, 21 Nov 2019 at 11:46 AM)

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>[1]</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>[2]</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>[3]</sup>

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>[4]</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

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[1] See the I-976 flier attached to the Morgan complaint on file with the PDC.

[2] October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

[3] On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

[4] October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

[Robert Shirley](#) (Thu, 21 Nov 2019 at 2:54 PM)

Mx. Blackhorn:

When I followed directions and submitted my complaints on the PDC form I intended to attach a copy of an I-976 flier but failed to do so. I do not know how to add it to the material sent via the PDC portal so I am sending the copy to you and would appreciate it if it can be added to the complaint filing I made this earlier today.

Please let me know if you have any questions.

Thank you.

Robert B. Shirley  
Attorney at Law  
360-556-7205

**What impact does the alleged violation(s) have on the public?**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing. Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.

**List of attached evidence or contact information where evidence may be found.**

The flier urging a "no" vote on Initiative 976 produced and mailed by individuals associated with the City of Olympia.

I will attach a copy of the flier that is poor quality because the image of the flier is cropped and missing one of the statements urging a "no" vote.

The Commission has a better copy of the flier in ODC Docket 59039, Complaints of Morgan et. al.

**List of potential witnesses with contact information to reach them.**

Mark Barber, Unnamed Individual public employees (Jane and John Does), Cheryl Selby, Nathaniel Jones, Jessica Bateman, Jim Cooper, Clark Gilman, Lisa Parshley, Renata Rollins

All can be reached at:  
P.O. Box 1967  
Olympia, WA 98507-1067

**Complaint Certification:**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Jessica Bateman  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Jessica Bateman is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Jessica Bateman violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Jessica Bateman violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Jessica Bateman violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Mark Barber  
In his Individual Capacity

Complaint for Violation of RCW  
42.17A.255 and RCW 42.17A.550 and  
seeking penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber contends that “**Vote No on Initiative 976**” is a *fact*.

There is no indication a political committee was established to make the \$7,183.00 expenditure necessary to produce and mail the I-976 flier at issue. Expenditures made by other than committees registered with the PDC are an “independent expenditure” and must be reported to the PDC by the person making the independent expenditure. In the absence of a committee through which Attorney Barber was operating, then the value of his legal services was an independent expenditure.

As recently as May 2019 Division Two of the Washington Court of Appeals determined that the value of legal services provided by an attorney for a public agency in support or opposition to a ballot initiative are an expenditure that must be reported to the PDC. Division Two followed Washington Supreme Court precedent established in January 2019.<sup>5</sup>

The election that decided I-976 was held on November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>5</sup> See *State v. Economic Development Board for Tacoma-Pierce County*, 9 Wn. App. 2d 1 (2019) (“Relevant here, our Supreme Court held that the value of legal services in support of a ballot proposition are independent expenditures under RCW 42.17A.255 and that the reporting requirements of RCW 42.17A.255 do not violate the First Amendment. *Evergreen*, 192 Wn.2d at 795-96, 801.”). Note complainant has determined the Evergreen Freedom Foundation filed a petition for Certiorari with the Supreme Court of the United States but complainant was unable to determine the decision on that petition.



production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

### **RCW 42.17A.550**

RCW 42.17A.550 prohibits public employees from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.

Attorney Barber is an employee of a public agency.

In addition to RCW 42.17A.550 with which Attorney Barber would have been aware at the time the flier was produced and mailed, as recently as October 18, 2019 Attorney Barber was copied on a letter that reiterated the essential prohibition in RCW 42.17A.550. See PDC Case 55901, Letter of October 18, 2019 from PDC to James Lazar and copied to City Attorney Mark Barber that stated on page 2: “However, the PDC staff is reminding the City of Olympia about the prohibitions of using city employees and facilities to support or oppose any candidate or ballot proposition...”

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to

RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief complainant alleges Attorney Barber violated RCW 42.17A.255 when he chose to provide legal services related to efforts that resulted in a mailer sent to about 15,000 households at a cost of \$7,183.00 urging Olympia voters to vote “No” on I-976 and failed to report the value of his legal service to the Public Disclosure Commission within five days after the independent expenditure.

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief complainant alleges Attorney Barber violated RCW 42.17A.255 when he sent, prior to election day November 5, 2019, a letter to the PDC that was in furtherance of an effort to influence voters to vote “no” on I-976 and failed to report the value of his legal services used between the date the flier was mailed and October 29, 2019 (see footnote 1).

### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief complainant alleges Attorney Barber violated RCW 42.17A.550 when he used public facilities (his salary) by giving legal services related to producing and mailing the I-976 flier.

### **FOURTH ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief complainant alleges Attorney Barber violated RCW

42.17A.550 when he used public facilities (his salary) by giving legal services related to preparing his October 29, 2019 to the PDC with the purpose of furthering the effort, begun with the mid-October flier, to encourage voters to vote ‘no’ on I-976.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing. Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>6</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Jim Cooper  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Jim Cooper is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Jim Cooper violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Jim Cooper violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

### **THIRD ALLEGATION**

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Jim Cooper violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley

Against

Jane Does and John Does, employees of  
the City of Olympia

Each in their Individual Capacity

Complaint for Violation of RCW

42.17A.320(2)(a) and RCW42.17A.555,  
and seeking penalties against unnamed  
individuals

### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.



The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber contends that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

Complainant does not know the names of City of Olympia employees that participated in producing and mailing the I-976 flier.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits **elective officials** from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

The Jane Does and the John Does are employed by a public agency.

### **PDC MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and alleges each individual Doe violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and alleges each individual Doe violated RCW 42.17A.550 by sending about 15,000

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and alleges that each individual Doe has violated RCW 42.17A.255 because no Doe reported an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media rather than the firm.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Clark Gilman  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Clark Gilman is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Clark Gilman violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Clark Gilman violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Clark Gilman violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

# Vote NO

## Initiative 976

*The Olympia City Council urges a "NO" vote on I-976.*

### Why Vote No?

- This measure would result in a major funding loss for City street improvements and repairs.
- Pavement conditions would suffer and planned projects would not be completed.
- The safety and performance of our transportation system would be at risk.

**Loss of funding from car tab fees limits our ability to repair streets like the examples below.**



### Local Funds for Local Streets

The purpose of the \$40 car tab fee is to raise funds at the local level to address our community's specific street repair needs.

### What is Initiative 976?

Initiative 976 concerns motor vehicle taxes and fees. If enacted, it would repeal, reduce or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle-license fees to \$30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.



**Street repair is the single largest transportation expense in our City.**

Your \$40 car tab fee makes up nearly half the City's street reconstruction and repair budget, about \$1.5M/year. If the measure passes, that funding would go away.

**Typical Total Street Repair Budget:**  
**\$3,750,000/yr**







City of Olympia  
PO Box 1967  
Olympia, WA 98507-1967

**Vote NO**  
Initiative 976

Car tab fees help repair our streets.



## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Nathaniel Jones  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Nathaniel Jones is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Nathaniel Jones violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Nathaniel Jones violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Nathaniel Jones violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Lisa Parshley  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Nathaniel Jones is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Lisa Parshley violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Lisa Parshley violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.



### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Lisa Parshley violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Renata Rollins  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Renata Rollins is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Renata Rollins violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Renata Rollins violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Renata Rollins violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.

## BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION

Complaint of Robert B. Shirley  
Against  
Cheryl Selby  
In her Individual Capacity

Complaint for Violation of RCW  
42.17A.255, RCW 42.17A.320(2)(a),  
and RCW42.17A.555, and seeking  
penalties

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### PURPOSE OF COMPLAINT

It is the purpose of this complaint to have the Public Disclosure Commission (PDC) penalize elective officials and public employees for campaign advertising, public expenditure, and expense reporting infractions rather than have the PDC levy fines against an institution, the City of Olympia, because the city would pay fines with taxpayer dollars.

### INTRODUCTION

In mid to late October 2019 voters in Olympia Washington received a flier in their mail that urged them to “**Vote No on Initiative 976**” (bold in original).<sup>1</sup> Olympia City Attorney Mark Barber stated to the PDC on October 29, 2019 that the flier urging “**Vote No on Initiative 976**” was sent to approximately 15,000 households.<sup>2</sup> The cost identified by Attorney Barber is \$7,183.00.<sup>3</sup>

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<sup>1</sup> See the I-976 flier attached to the Morgan complaint on file with the PDC.

<sup>2</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

<sup>3</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the value of employee time to produce the mailer, including the value of legal services, and also does not include an estimated amount for the value of employee time spent, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The position expressed by Attorney Barber is that the flier is a “fair presentation of the *facts*”<sup>4</sup> (italics added) about I-976; that is, Attorney Barber has taken the position that “**Vote No on Initiative 976**” is a *fact*.

The election that decided I-976 was November 5, 2019.

#### **RCW 42.17A.255**

RCW 42.17A.255 requires that independent expenditures on campaigns be reported to the PDC. Money expended for production and mailing a flier urging a “yes” or “no” vote on a ballot proposition is an independent expenditure. No one has filed the required forms with the PDC to report the expenditures for the production and mailing of the I-976 flier or any as yet unidentified expenditures including the value of public employee time used to produce and mail the flier or to report the value of public employee time required, for e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.

The expenditures must be reported within five days after the independent expenditure.

#### **RCW 42.17A.320(2)(a)**

RCW 42.17A.320(2)(a) requires that a flier like the one received by Olympia voters include “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’” The I-976 flier did not contain that statement.

#### **RCW 42.17A.550**

RCW 42.17A.550 prohibits elective officials from taking certain actions:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of

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<sup>4</sup> October 29, 2019 letter from Olympia City Attorney Mark Barber to the Public Disclosure Commission, page 1.

stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.<sup>5</sup>

Cheryl Selby is an elective official.

### **COMMISSION MAY LEVY FINES**

The PDC has authority to levy fines for violations of RCW 42.17A.

Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

WAC 390-37-182(5).

A reasonable suggestion for determining an appropriate level of total fines would be that the minimum total should at least equal the actual dollar expenditure of \$7,183.00. Circumstances suggest much more is warranted.

### **FIRST ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Cheryl Selby violated RCW 42.17A.550 by sending about 15,000 Olympia households a flier concerning I-976 that included the statement “**Vote No on Initiative 976**” (bold in original).

### **SECOND ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Cheryl Selby violated RCW 42.17A.320(2)(a) by failing to include on the I-976 mailer the required statement “The statement: ‘No candidate authorized this ad. It is paid for by (name, address, city, state).’”

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<sup>5</sup> On information and belief, complainant asserts the \$7,183.00 cost identified by the City Attorney does not include the cost of employee time to produce the mailer and also does not include an estimated amount for the cost of employee time spent cleaning up the mess made by the mailer, e.g., responding to PDC complaints, responding to public records requests, responding to media inquiries.



### **THIRD ALLEGATION**

Complainant incorporates in this allegation the statements made above and on information and belief alleges that Cheryl Selby violated RCW 42.17A.255 because she did not report an independent expenditure to the PDC.

### **DAMAGE TO THE PUBLIC**

The public is damaged when taxpayer funds are used to direct voters to vote for or against a ballot proposition and the expenditure of taxpayer funds used in that effort is not reported to the PDC. People, not cities, design fliers and authorize payment for printing and mailing.<sup>6</sup> Taxpayers are harmed if PDC fines are paid with taxpayer funds rather than funds from those responsible for the illegal activity.<sup>7</sup>

I certify under penalty of perjury under the laws of the State of Washington that information provided in this complaint is true and correct to the best of my knowledge and belief.

Robert B. Shirley: \_\_\_\_\_ November 21, 2019.

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<sup>6</sup> An example of fining individuals rather than, or in addition to, an entity is the Moxie Media case in which the PDC fined the principals of Moxie Media.

<sup>7</sup> In a separate, contemporaneous complaint, complainant alleges that Olympia city Attorney Mark Barber provided legal services to those individuals responsible for producing and mailing the I-976 flier. If Attorney Barber did not provide legal services to those involved in producing and mailing the I-976 flier prior to the time it was mailed, then those persons who were involved in the production and mailing of the I-976 flier cannot plead that they took actions in this matter up to the time the flier was mailed based on the advice of counsel.