

Complaint Description

Glen Morgan (Fri, 6 Dec 2019 at 4:50 PM)

I made two typos in the first paragraph underneath the introduction of the violation. I should have referred to the "Washington State Transit Association" in that paragraph and instead I had referred to the Garfield County Transportation Authority, and again later in the paragraph, just to be more confusing, I referenced Intercity Transit. Anyway, as correctly referenced throughout the rest of the complaint, this one applies to the violations committed by the Washington State Transit Association.

Glen Morgan (Fri, 6 Dec 2019 at 3:51 PM)

To whom it may concern,

It has come to my attention that the Garfield County Transportation Authority board, legal counsel, and senior staff all recently violated Washington State's campaign finance laws during the recent 2019 election cycle (**RCW 42.17A**).

1). Misuse of public resources to oppose an initiative (Violation of RCW 42.17A.555)

The Garfield County Transportation Authority board, legal counsel, and senior staff have clearly and unambiguously violated **RCW 42.17A.555** by using public employees to prepare a legal challenge to I-976 before Nov. 5 and by filing such challenge before the end of the election and the effective date of the initiative. These expenditures include use of public facilities to host meetings, emails and phone calls to internal sources and external allies, press conferences, meetings with legal counsel, and other activities conducted by all these entities while preparing for a lawsuit which was filed in King County Superior Court a few weeks ago (See attached copy of lawsuit attached, where the Garfield County Transportation Authority is identified as a plaintiff).

There is no doubt they committed this violation. There have been news articles about this lawsuit on every major media platform in Washington State since November 13th at least, and the violations clearly began long before this date as the city needed to use taxpayer funded resources to prepare this lawsuit, organize the media blitz, etc.

The only question the PDC needs to resolve is just how large a violation was committed in this case.

For more background on why this is a violation, please see as follows:

Legal expenses to invalidate a ballot measure are "independent expenditures" under RCW 42.17A RCW.255 :

(1) For the purposes of this section **the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW**

42.17A.225, 42.17A.235, and 42.17A.240. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, **the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.**

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Please see for

reference: *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 798, 432 P.3d 805 (2019):

"Moreover, where litigation is being employed as a tool to block adoption of an initiative or to force an initiative onto the ballot, as was attempted here, the finances enabling such support (or opposition) would indeed appear to fall within the 'any expenditure,' triggering the reporting obligation [in **RCW 42.17A.255**]. The

contention that litigation support does not qualify as a reportable independent expenditure ignores the express purpose of the FCPA in the context of modern politics."

***State v. Economic Development Board for Tacoma-Pierce County*, 441 P.3d 1269, 1277 (2019)**

"[T]he phrase 'in opposition to' [in **RCW 42.17A.255**] is also unambiguous. Chapter 42.17A RCW lacks a definition of 'in opposition to.' However, looking to the dictionary definition, 'opposition' is defined as 'hostile or contrary action or condition: action designed to constitute a barrier or check.' WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1583 (2002)."

"Litigation expenses incurred to seek a judicial directive regarding whether measures may be placed on the ballot are reportable under **RCW 42.17A.255**. *See Evergreen, 192 Wn.2d at 787*. And **RCW 42.17A.255** unambiguously defines 'in opposition to' to include pre-election litigation expenditures on legal services to block an initiative. Thus, **expenditures on legal services to block an initiative are necessarily independent expenditures subject to the statute's reporting requirements.**"

Legal expenses to strike down a ballot measure during an election or before the ballot measure takes effect are "independent expenditures."

RCW 42.17A specifies when activities in support of or opposition to a ballot measure become reportable, but does not specify when such expenses need no longer be reported/when something is no longer a ballot measure.

i.RCW 42.17A.005(4):

"Ballot proposition" means any "measure" as defined by **RCW 29A.04.091**, or any initiative, recall, or referendum proposition **proposed to be submitted** to the voters of the state or any municipal corporation, political subdivision, or other 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.

ii.RCW 29A.04.091

"Measure" includes any proposition or question submitted to the voters.

iii.RCW 42.17A.005(19)

"Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

b.Although **RCW 42.17A** does not specify when something ceases to be a "ballot measure," it seems unlikely that courts would conclude that something is a "ballot measure" *after* it takes effect and becomes law. Nevertheless, it can reasonably be argued that legal expenses to oppose a ballot measure during an election or before it takes effect are reportable "independent expenditures."

i.While the formal date of the 2019 general election was November 5, 2019, the

election did not conclude on that day. In fact, it is still going on until it is certified by the Secretary of State on December 5, 2019.

ii. Washington's 2019 general election results will be certified by counties on November 26. The results will be certified by the Secretary of State on December 5. <https://results.vote.wa.gov/results/current/>

iii. The earliest that any portion of I-976 will take effect is December 5, 2019.

3. Public officials may not use public facilities, including staff time or legal services, to oppose a ballot proposition.

a. RCW 42.17A.555

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...

b. *State v. Economic Development Board for Tacoma-Pierce County*, 441 P.3d 1269, 1277 (2019)

"...[T]he Port made expenditures for legal services in opposition to the STW ballot propositions. Accordingly, the Port's use of its financial resources to oppose the STW ballot propositions falls within the conduct regulated by **RCW 42.17A.555**. The only question then, is whether an exception applies... The Port's lawsuit in opposition to the STW ballot propositions was neither 'normal and regular conduct' of the Port, nor merely a vote to express collective disapproval of the ballot propositions. As a result, the trial court erred by summarily dismissing the State's complaint regarding the Port's use of public funds to oppose the ballot propositions."

4. The Garfield County Transportation Authority board, legal counsel, and senior staff violated RCW 42.17A.555 by using public employees to prepare a legal challenge to I-976 before Nov. 5 and by filing such challenge before the end of the election and the effective date of the initiative.

Accordingly, all of their legal filings, claims of standing, and requests for a preliminary injunction preventing I-976 from taking effect are illegal and inappropriate. Government plaintiffs may not file legal challenges to I-976 before the initiative's effective date.

The fact that the Garfield County Transportation Authority and senior staff have clearly violated this statute is shocking particularly concerning how this violation has occurred so quickly after the Washington State Supreme Court decision in both the 2019 Evergreen Freedom Foundation case and the 2019 Economic Development Board for Tacoma-Pierce County case. Clearly, Garfield County elected officials and senior staff did so willingly, knowingly, and in full recognition they were breaking the law. They presumed that their political power in the state would insulate them from being held accountable for their unlawful actions.

It remains to be seen if the PDC will bow to the political pressure and allow this group of lawbreakers to get away with this and continue to do so in the future. I hope the PDC will apply the law equally.

Please let me know if you need any further information on this issue. I can forward links to dozens of news reports if staff is not aware of this very high profile case, but for ease of file management, I only attached the first primary filing which was posted on the King County taxpayer funded website.

Best Regards,

Glen Morgan

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

The public has a right to know when the local government squanders taxpayer dollars on political activity in such an egregious and public manner such as this case. This is particularly true when both the elected officials and the senior staff chose to break the law in this manner knowingly and willfully despite the recent clear state supreme court decisions prohibiting this type of behavior.

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

Lawsuit attached

List of potential witnesses with contact information to reach them.

All elected officials and senior staff at this taxpayer funded entity

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.