PERKINSCOIE

700 13th Street, NW
Suite 600
Washington, D.C. 20005-3960

+1.202.654.6200
+1.202.654.6211
PerkinsCoie.com

October 17, 2017

Brian G. Svoboda
BSvoboda@perkinscoie.com
D. +1.202.434.1654
F. +1.202.654.9150

Mr. Tony Perkins
Investigator, Campaign Finance Unit
Washington Attorney General's Office
1125 Washington Street, SE
P.O. Box 40100
Olympia, WA 98504
tonyp@atg.wa.gov

Dear Mr. Perkins:

On behalf of the Eastside Leadership Council (the "Committee"), we write in response to the frivolous Citizen Action Notice complaint filed by Glenn Morgan ("the Complaint"). The Committee is a single election-year committee that solely makes independent expenditures. The Complaint claims that, because the Committee disclosed the candidate it intended to support on its registration form, as the Public Disclosure Commission ("PDC") requires, all of the contributions it received became "earmarked," thus triggering violations of the reporting requirements and contribution limits. The Complaint is meritless and should be dismissed.

Eastside Leadership Council is a registered political committee[1] with the purpose of making independent expenditures in support of Manka Dhingra's candidacy for state senate. The Committee is organized as a single election-year committee.[2] Complying with the direction of the PDC, the Committee disclosed its intention to support Manka Dhingra on its Form C-1PC, which requires single election-year committees to "attach a list of each candidate's name, office sought and political party affiliation" if they will support "one or more candidates."[3] Since then, the Committee has spent funds solely to produce and disseminate independent expenditures in support of Manka Dhingra.[4] The Committee has not made or provided contributions to Manka Dhingra or her authorized committee, nor has it served as a conduit or intermediary for any contributions.[5] Indeed, the Complaint alleges no contribution made by the Committee to Manka Dhingra or her campaign, and it alleges no coordination. It simply assumes that, because the

---

[1] *See* C1PC Report, *Eastside Leadership Council*, http://web.pdc.wa.gov/MvcQuerySystem/CommitteeData/contributions?param=RUFTVExDIDA4Mw====&year=2017&type=single.
[2] *See id.*; *cf.* Wash. Rev. Code § 42.17A.005(12) (defining "continuing political committee").
[3] PDC, *Form C1PC*, https://www.pdc.wa.gov/sites/default/files/form-index/C1PC.Jan_.2012.pdf.
[4] *See generally* Expenditure Reports, *Eastside Leadership Council*, http://web.pdc.wa.gov/MvcQuerySystem/CommitteeData/expenditures?param=RUFTVExDIDA4Mw%3D%3D%3D%3D&year=2017&type=single.
[5] *See id.*

Committee made independent expenditures to support the candidate identified on its filings, all of the contributions it received were earmarked.

This claim of earmarked contributions is erroneous as a matter of law. State law provides that "earmarking" is a "designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a ***contribution being made to a certain candidate or state official***."[6] Contributions that "are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official, or political committee" are considered contributions from the donor to the ultimate recipient of the contribution.[7] The PDC has explained that an earmarked contribution involves three parties: (1) the "original contributor," (2) the "intermediary or conduit," and (3) the "benefiting candidate or committee."[8]

The funds that the Committee received are not "earmarked contributions." The Committee did not provide "all or any part of a contribution" to Manka Dhingra or her campaign. Indeed, it made no contributions to them at all, but solely independent expenditures. Nor did the Committee serve as "an intermediary or conduit" through which funds passed in order to make contributions. Rather, the Committee used the contributions it received solely to finance independent expenditures. Thus, as a matter of law, the donations the Committee received were not earmarked contributions, and hence did not violate the reporting requirements or limits that apply to such contributions.[9]

To the contrary, Washington state law expressly recognizes that independent expenditures are not contributions,[10] and that contributions "for independent expenditures" are "exempt from the contribution limits."[11] These statutes cannot be reconciled with the Complaint's sweeping claim that, simply by making independent expenditures in support of a single candidate, the Committee committed serial violations of the reporting requirements and limits.[12]

---

[6] Wash. Rev. Code § 42.17A.460 (emphasis added); *see also* Wash. Admin. Code § 390-16-240(1) (parroting statutory definition).
[7] Wash. Rev. Code § 42.17A.460.
[8] PDC, *Contributions - Earmarked*, https://www.pdc.wa.gov/learn/publications/political-committee-instructions/prohibitions-and-restrictions/contributions-1.
[9] To our knowledge, the PDC and Attorney General's Office have never construed the earmarked contribution rules as applying to contributions used by a political committee to make independent expenditures.
[10] Wash. Admin. Code § 390-16-313(1)(d).
[11] Wash. Rev. Code § 42.17A.405(15)(c).
[12] The Complaint's theory cannot be reconciled with the fact that state law *requires* communications between the initial recipient of earmarked contributions, and the candidate who benefits from them, while *restricting* communications between independent spenders and the candidates they support. *See* Wash. Rev. Code § 42.17A.270 (requiring committees to report receipts to benefiting candidates "within two working dates of receipt"); Wash. Admin. Code § 390-05-210 (restricting coordination between independent spenders and candidates).

Even if the plain text of the statutes supported the Complaint's theory—which it does not—those statutes could not constitutionally be applied to the Committee's independent expenditure activity.[13] Pursuant to the Supreme Court's clear holding, the Ninth Circuit struck down limits on contributions to groups engaged in independent expenditures.[14] The D.C. Circuit likewise held that "contributions to groups that make only independent expenditures [] cannot corrupt or create the appearance of corruption" and that the "government has no anti-corruption interest in limiting contributions to an independent expenditure group."[15] The Complaint simply asks the state to do indirectly what it cannot do directly, which is to restrict the financing of independent expenditures.

Using the earmarked contribution rules to curtail independent expenditure activity through the back door would bring liability for many single election-year political committees that make independent expenditures, and list individual candidates on their C-1PCs just as the PDC requires them to do. Under the Complaint's "heads-I-win, tails-you-lose" approach, all of these committees would have exposed themselves to serial legal violations simply by providing the required information on their forms, with no notice from the PDC. Such an approach cannot be sustained under Washington law.

For the foregoing reasons, we respectfully request that the frivolous Complaint be dismissed and no further action taken.

Very truly yours,

Brian G. Svoboda
Counsel to Eastside Leadership Council

---

[13] *See Citizens United v. FEC*, 558 U.S. 310 (2010) (invalidating limits and restrictions on the financing of independent expenditures).
[14] *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1119-21 (9th Cir. 2011) (invalidating measure limiting contributions to $500); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 698-99 (9th Cir. 2010) (invalidating measure limited contributions to $350 to $650).
[15] *SpeechNow.org v. FEC*, 599 F.3d 686, 693-95 (D.C. Cir. 2010).