



Smith & Dietrich Law Offices

South Sound Community Lawyers

Members
Walter Smith
Steve Dietrich

August 4, 2017

Via Electronic Delivery

Address
400 Union Ave. SE
Suite 200
Olympia, WA 98501

Bob Ferguson, Attorney General

judyg@atg.wa.gov

Jon Tunheim, Thurston County Prosecuting Attorney

tunheij@co.thurston.wa.us

Telephone
(360) 918-7230

Re: *Citizen Action Notice Against Glen Morgan, Friends of Jimmy, and We Want to Be Friends of Jimmy Too*

Dear Counsel,

I write to notify you that there is good reason to believe several violations of chapter 42.17A RCW, Washington State's campaign finance law, have been committed by Glen Morgan and two political committees he created, Friends of Jimmy and We Want to Be Friends of Jimmy Too (the "Respondents"), in late 2016. Please note that, as provided by RCW 42.17A.765(4), in the event that you do not initiate an action against the Respondents within the applicable statutory notice periods for this Citizen Action Notice, I intend to satisfy any applicable notice requirements and proceed with an action in the name of the State. This message is being sent to each of you at the e-mail address you have provided to the Washington State Bar Association to ensure you receive notification of these allegations as required by RCW 42.17A.765(4).

In a complaint submitted to the Public Disclosure Commission on October 28, 2016 (later assigned ticket number 9379), Kevin Hamilton complained that Mr. Morgan and his committees engaged in a deceptive campaign to mislead voters in the race for Thurston County Board of Commissioners. The substance of the facts referenced here was also reported in *The Olympian* on October 26, 2016. No known action has been taken to date to remedy the apparent violations those sources described. I now bring this separate and distinct citizen action notice to seek an appropriate remedy for Respondents' violations.

A. Violation(s) of concealment statute (RCW 42.17A.445)

As the concealment statute within Washington's campaign finance law provides:

No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal

the identity of the source of the contribution or in any other manner so as to effect concealment.

RCW 42.17A.445.

In short, and as Mr. Hamilton's previous complaint and Mr. Morgan's response show, it appears Respondents intentionally violated the concealment statute. First, Mr. Morgan registered two committees named Friends of Jimmy and We Want to Be Friends of Jimmy Too on September 2, 2016. The committees' names were apparently intended to lead the public to the erroneous belief that they were supporting Mr. Cooper, or perhaps authorized by him (Cooper's own authorized committee for the ongoing race was known as Friends of Jim Cooper). It is an open question whether the contributors to We Want to Be Friends of Jimmy Too were aware that they were actually contributing to the opposition against Mr. Cooper, as opposed to supporting him. On the other hand, if the contributors were aware their contributions would be passed through to Friends of Jimmy, it would appear that the contributors themselves may have acted in a manner to conceal their support of Friends of Jimmy.

Second, after establishing the committees, Mr. Morgan obtained contributions to We Want to Be Friends of Jimmy Too, then gave all but \$5 of those funds to Friends of Jimmy, which sponsored robocalls directed against Jim Cooper. We Want to Be Friends of Jimmy Too was apparently used strictly as a conduit for channeling contributions to Friends of Jimmy. All but \$5 of the contributions received by We Want to Be Friends of Jimmy Too were paid out as contributions to Friends of Jimmy. On the other hand, all but \$100 of the contributions received by Friends of Jimmy were from We Want to Be Friends of Jimmy Too (the remaining \$100 came from Mr. Morgan). In this way, Respondents used the shell committee, We Want to Be Friends of Jimmy Too, to launder funds to avoid reporting the specific contributors to Friends of Jimmy—or the robocalls as expenditures of We Want to Be Friends of Jimmy Too. Using two committees, both created and controlled by the same individuals and both opposing Jim Cooper, was apparently a ruse to bifurcate the contributions raised from the expenditures made by a single campaign. The structure concealed the original contributors' identities from direct public disclosure in connection with the robocall expenditures.

Third, as Mr. Morgan admitted in his response to Mr. Hamilton's complaint, the committees were intentionally used to conceal what would otherwise be reportable during campaign robocalls as the top five contributors to Friends of Jimmy. As Mr. Morgan put it, he chose the two-committee structure because he believed that down the road, "the top 5 contributors list had the potential to change, which would then require frequent changes in the Robocall messages...." Response to PDC Complaint, 1. Apparently, to avoid the need to disclose information about Friends of Jimmy's top five actual contributors as required by law, Mr. Morgan intentionally acted to hide that information from the public by laundering funds through a shell committee. It is irrelevant whether or not choosing to hide the Top Five Contributors resulted in a lower "workload for [Mr. Morgan] and the Public Disclosure Commission in responding to frivolous complaints" as he claims it did in his response to Mr.

Hamilton's complaint. His intentional concealment of what should have been reported as the top five contributors to Friends of Jimmy has already been admitted.

Finally, the content of the robocalls Mr. Morgan's committees sponsored provide further evidence of a scheme or plan to conceal. Callers were apparently informed that the calls were paid for by Friends of Jimmy, a political committee. The misleading suggestion planted by the committee's name was worsened by Respondents' failure to list Mr. Morgan's name when they identified the robocalls' sponsor. RCW 42.17A.320(2)(c). Apparently, the only person that would be reported in the list of Top Five Contributors during the robocalls was We Want to Be Friends of Jimmy Too. Per Mr. Hamilton's complaint and Mr. Morgan's response, Friends of Jimmy listed the Thurston County Democratic Party's telephone number as the return number during certain robocalls placed by Friends of Jimmy. This once again concealed the true nature of the committees as opponents to Mr. Cooper's campaign, and gave the impression that the robocalls were associated with the County Democratic Party, which was not the case.

It should be noted that, while by law a sponsor of independent expenditures must include in an audio piece like the robocalls here the statement that "[n]o candidate authorized this ad," RCW 42.17A.320(2)(b), a listener would naturally be confused where the candidate's authorized committee has a nearly identical name to the committee sponsoring the independent expenditure. Even where the committee complies with the requirement, the listener would likely be left with the impression that there is a connection between the candidate and the ad. This was apparently the point of naming the committees as Respondents did.

To summarize, the Respondents intentionally concealed 1) the fact that Dream Weavers, Inc. was a Top 5 Sponsor of the robocalls paid for by Friends of Jimmy; 2) the fact that \$3,460.22 worth of expenditures by Friends of Jimmy were effectively expenditures by We Want to Be Friends of Jimmy Too; 3) the fact that \$3,355.22 worth of contributions to We Want to Be Friends of Jimmy Too were effectively contributions to Friends of Jimmy; 4) the identities of the eleven persons that would have been reported as contributors to Friends of Jimmy but for Respondents' use of a shell entity to conceal that fact from the public; 5) Mr. Morgan's sponsorship of both committees as their creator and manager, which should have been disclosed by adding his name to the names of both committees per RCW 42.17A.320(2)(c), and the fact that, at the time they obtained contributions and made expenditures, the committees were *opposed* to the candidacy of Jim Cooper.

B. Violation(s) of sponsor identification statute concerning Top 5 Contributors (RCW 42.17A.320(5) and WAC 390-18-025)

The top five contributors contributing over \$700 to a committee would need to be disclosed at the time an independent expenditure such as the robocalls made by Respondents. RCW 42.17A.320(5), WAC 390-18-025. A business called Dream Weavers Inc. in Rochester, Washington reportedly contributed over \$1,000 to We Want to Be Friends of Jimmy Too, which then contributed practically all those funds to Friends of Jimmy. As Mr. Morgan's response to Mr. Hamilton's PDC complaint indicates, the purpose of setting up the committees in this way was to conceal the sponsorship of entities like Dream Weavers Inc. from disclosure in the list of

Top 5 Contributors of Friends of Jimmy when it made its robocalls. It appears that Dream Weavers Inc. was not listed as a Top 5 Contributor in the robocalls.

Respondents were obligated not only to avoid concealing the true Top 5 Contributors of Friends of Jimmy, but to *disclose* those contributors. It appears that, on an unknown number of occasions, robocalls placed by Friends of Jimmy failed to disclose what should have been listed as the Top 5 Contributors to that committee, including Dream Weavers Inc.

C. Failure to disclose in political advertising identity of the person who established, maintains, or controls the sponsoring committee (RCW 42.17A.320(2)(c))

When a political committee sponsors political advertising in the form of independent expenditures or electioneering communications—like the robocalls here—it must disclose the identity of any individual by which the committee was “established, maintained, or controlled directly, or indirectly through the formation of one or more political committees.” RCW 42.17A.320(c). Here, Mr. Morgan apparently established, maintained, and controlled both committees, yet failed to disclose this fact at the time of Friends of Jimmy’s robocalls.

D. Failure to report pledge to Friends of Jimmy (RCW 42.17A.235 and .240)

It appears that We Want to Be Friends of Jimmy Too collected contributions starting on September 6, 2016 that Mr. Morgan knew he would later give to their other committee, Friends of Jimmy. Seen the other way, the Respondents knew that Friends of Jimmy could count on We Want to Be Friends of Jimmy Too for over \$100 in contributions. By the end of September, We Want to Be Friends of Jimmy Too collected and deposited some \$2,305 in contributions, \$2,300 of which it would soon turn around and give to Friends of Jimmy on October 12, 2016. As such, a reportable pledge existed from We Want to Be Friends of Jimmy Too to Friends of Jimmy as of the end of September 2016, which was not reported on Schedule B to form C-4. A report to disclose this unreported pledge is still outstanding.

E. Failure to disclose affiliation relationship between Friends of Jimmy and We Want to Be Friends of Jimmy Too on forms C-1PC (RCW 42.17A.205(2)(b))

Mr. Morgan apparently knew from when he formed both committees that an affiliation relationship existed between them in that We Want to Be Friends of Jimmy Too would simply give its contributions to Friends of Jimmy, and both committees were created and controlled by the same individuals. Yet on the forms C-1PC they filed to register their committees, Respondents failed to disclose the existence of the affiliation relationship as required by law. RCW 42.17A.205(2)(b); WAC 390-16-309(3). Respondents must amend their incorrect forms C-1PC to reflect the affiliation.

Conclusion

It would set an unfortunate precedent for campaigns in Thurston County and around our state if Respondents’ behavior here is deemed an acceptable practice. At least one similar enforcement case has been filed in the past on analogous facts. *State v. Moxie Media*, Thurston County Superior Court No. 10-2-02428-7, Complaint filed October 29, 2010, ¶ 3.8 (“The purpose of creating two new political committees was for one to receive contributions and then

contribute them to the second committee to obscure the true source of funding for the political activity.”).

Respondents’ acts clearly violated the campaign finance law. In the absence of an enforcement action, other campaigns seeking to avoid disclosing their contributors, including in Top 5 Contributors disclosures, could simply evade applicable legal requirements by laundering funds through a shell entity as Respondents did here—or through a series of shell entities. This defeats the pro-transparency purpose of the campaign finance law.

The apparent misconduct here goes beyond simply treating one committee as a shell, however. Naming one’s committee in such a way to suggest that it is authorized by or associated with the very opponent against which the committee distributes attack ads contributes to the Respondents’ intentional concealment of the nature of their committees’ organization. It is doubtful that the impression created by that misleading naming would be cured by including the mandatory disclaimer on a campaign robocall that the independent expenditure is “[n]ot authorized by any candidate.” Allowing campaigns to adopt such misleading committee names is contrary to the purpose of the campaign finance law that “public confidence in government at all levels is essential and must be promoted by all possible means.” RCW 42.17A.001(5).

Respondents will likely argue that they did not violate the law because a diligent researcher would be able to locate the contributors to We Want to Be Friends of Jimmy Too. This is no answer to the allegations of concealment as to the contributors to Friends of Jimmy and their connection to the expenditures of Friends of Jimmy. Respondents’ actions hid the identities of the true Top 5 Contributors, among other facts, from the public. Even to the extent that the public might conceivably have been able to figure out information Respondents concealed through their own efforts, Respondents still violated the statute by knowingly acting to conceal that information required for reporting by law. Nor should the public be required to conduct extensive research to figure out that Respondents’ committees were not authorized by or associated with Mr. Cooper’s campaign.

Mr. Morgan’s response to Mr. Hamilton’s complaint unconvincingly claims that deliberately using a shell entity to conceal otherwise reportable top five contributors and related information is a normal campaign practice. On the contrary, the State filed an enforcement action against Moxie Media for conduct essentially identical to Respondents’ here. In that other enforcement action, the State alleged that the defendants violated the law where they knowingly created and managed two committees to bifurcate contributions from expenditures, Compl. ¶ 3.8; they did not report a pledge created by dedicating the first committee’s funds to the second committee, Compl. ¶ 3.10; and failed to disclose as a sponsor of the committee an individual who established, maintained, and controlled it. Compl. ¶ 3.24. Deliberately creating multiple committees to “game” the reporting system and launder funds should be recognized as an intentional violation of the campaign finance law.

The irony of this situation is likely lost on no one. Mr. Morgan’s campaign to vigorously assert campaign finance law violations against others shows that he, far more than the average

citizen, is aware of the requirements of the campaign finance law. Nor would this be the first instance in which Mr. Morgan has been caught in violation of the law; that would apparently be PDC Ticket No. 14-072 (\$150 suspended penalty remains outstanding).

I hope you will agree that Respondents' course of conduct violates both the spirit and the letter of the campaign finance law and should be addressed through a formal investigation and enforcement action.

Sincerely,



Walter M. Smith

Enclosures: Complaint to Public Disclosure Commission Filed by Kevin Hamilton
Response to Complaint from Glen Morgan

cc: Linda A. Dalton, Senior Counsel, Attorney General's Office (via e-mail)
Public Disclosure Commission staff (via e-mail)