City of Seattle

Ethics and Elections Commission

October 29, 2007

Re: Case No. 07-2-1004-1

Dear *****:

On October 4, 2007, you e-mailed and faxed a complaint to our office alleging that an expenditure that Forward Seattle, a political action committee, was rumored to be making in support of Venus Velázquez's City Council candidacy would violate Seattle's Elections Code. You allege that (i) the candidate's spending in the primary "preclude[d] significant voter outreach," evidencing her reliance on Forward Seattle to underwrite her general election campaign, (ii) Forward Seattle "misled contributors about the intent and purpose of the PAC," and (iii) "a large expenditure on behalf of a candidate with limited or no ability to communicate with voters…is tantamount to an illegal contribution." For the reasons discussed below, I am dismissing your complaint.

Relevant Law

In 1976, the Supreme Court held in *Buckley v. Valeo*, 424 U.S. 1, that government cannot place limits on independent expenditures. In that case, Congress had enacted campaign finance reform that limited expenditures for express advocacy of candidates made independently of the candidate's campaign. The Court said that "the independent expenditure ceiling… heavily burdens core First Amendment expression….Advocacy of the election or defeat of candidates for…office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." The Court went on to hold that the law's "independent expenditure limitation is unconstitutional under the First Amendment."

Consistent with this decision, our office cannot limit independent expenditures in support of candidates. Only if there is evidence of "consultation, collusion or cooperation" with a candidate's campaign – in other words, evidence that the expenditure is *not* independent – can our office treat an expenditure as a contribution, subject to the Elections Code's $700 limit.

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GCIU 804-M

Analysis

In this case, there is no evidence of "consultation, collusion or cooperation" to support the initiation of a full investigation. Your complaint offers as circumstantial evidence of such "consultation, collusion or cooperation" the fact that the Velázquez campaign spent so much in the primary election that it would be unable to conduct significant voter outreach in the general election. According to campaign finance reports filed by the Velázquez campaign on October 16, 2007, however, the Velázquez campaign will spend approximately $43,000 on direct mail for the general election. As a comparison, Bruce Harrell, Velázquez's opponent, reports spending on direct mail of approximately $47,000 for the general election, with another $1,500 for voter contact calls. The relative parity between spending by the two campaigns does not support the claim that the Velázquez campaign is forgoing voter outreach in the general election, and instead relying on Forward Seattle to pay for its general election expenses. Moreover, both of the officers of Forward Seattle, Donald Stark and Joe Quintana, submitted affidavits, sworn to under oath, that the mailing sent out in support of the Velázquez campaign was made without consultation, collusion or cooperation with the Velázquez campaign or its agents.

I must also dismiss your other complaint, that Forward Seattle has not been truthful with its donors. That claim does not allege any activity that would violate the Elections Code enforced by our office.

Conclusion

Lacking any evidence of consultation, collusion or cooperation between Forward Seattle and the Velázquez campaign, I am dismissing your complaint. If you have additional information that you believe evidences consultation, collusion or cooperation, please forward that information to me immediately. You are entitled to appeal my dismissal under Seattle Ethics and Elections Commission Administrative Rule 2.6.[1] Please be advised that if you elect to file an appeal under Administrative Rule 2.6, we will no longer be able to preserve your anonymity.

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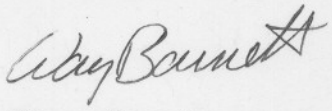
[1] 2.6 Appeal of Executive Director Dismissal Decisions
(1) Upon the written request of a party aggrieved by an Executive Director's decision to dismiss a complaint, the decision may be reviewed by the Commission.
(2) A request for review shall be served at the office of the Commission no later than twenty one (21) days after the date of mailing the decision of which review is sought.
(3) A request for review shall state the grounds therefore, and shall be no longer than twelve 8 1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than twelve characters per inch.
(4) When a request for review is served, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the Commission has acted on the request for review.
(5) The Commission shall act on the request at the next meeting at which it may be practicable by:
(a) deciding whether to review the Executive Director's decision; and
(b) if it decides to do so, either affirming, reversing, or amending the decision.
(6) In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.

Thank you for bringing this matter to our attention.

Very truly yours,



Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission *(complainant's name and address withheld)*
Venus for Seattle City Council *(complainant's name and address withheld)*
Joe Quintana, Forward Seattle *(complainant's name and address withheld)*
Donald Stark, Forward Seattle *(complainant's name and address withheld)*