



November 17, 2009

Mike O'Brien
O'Brien for Seattle
604 N 45th Street
Seattle, WA 98103

Re: Case No. 09-2-1023-1

Dear Mr. O'Brien:

We received your complaint dated October 23, 2009, alleging coordination between Forward Seattle, a continuing political committee, and the Rosencrantz for City Council campaign. Based on our inquiry, we do not find reasonable cause to believe that either Forward Seattle or the Rosencrantz campaign violated the City's Elections Code.

Facts

You and Robert Rosencrantz campaigned throughout 2009 for election to City Council Position 8. A political committee which endorsed your election bid, Friends of Seattle – not to be confused with Forward Seattle – recorded its endorsement interview with you on July 21, 2009. Friends of Seattle subsequently posted that video to YouTube and embedded the video on the Friends of Seattle web site, making it publicly available to anyone with access to the Internet. In that endorsement interview, you spoke favorably about tolling roads.

People involved with Forward Seattle viewed the Friends of Seattle video. Forward Seattle conducted a poll in late September testing several potential campaign messages. The poll showed that voters responded negatively when told of your support for tolling. In light of those results, the group decided to make tolling the focus of direct mail pieces that they planned to spend in support of the Rosencrantz campaign.

Forward Seattle's mail pieces were designed, printed and prepared for mailing in Utah, using lists of voters purchased from the state Democratic Party. The pieces were mailed to approximately 50,000 women who had voted in three of the past four odd-year general elections.

Forward Seattle also built a web site around a portion of the YouTube video in which you say that you would toll "everywhere."

Don Stark, the treasurer of Forward Seattle, told us that Forward Seattle did not coordinate with the Rosencrantz committee and both he and Joe Quintana, who manages Forward Seattle's affairs together with Mr. Stark, signed affidavits under penalty of perjury in which they asserted that they did not coordinate with the Rosencrantz campaign. (These affidavits are required of each officer of a committee that makes independent expenditures under SMC 2.04.275.A.)



People involved with the Rosencrantz committee also viewed the Friends of Seattle video. Tamara Broadhead, who managed the campaign, told us that the campaign saw tolling "everywhere" as a "central theme" of the campaign immediately upon seeing the video.

According to Ms. Broadhead, at the end of September, with media interest in the tolling issue waning, the campaign decided to do a direct mail piece to keep the tolling issue fresh in voters' minds. Ms. Broadhead and Michael Snyder, another person involved with the Rosencrantz campaign, designed the mailer. Mr. Snyder, working from lists purchased from the King County Elections office, focused first on specific precincts and then used a process of elimination to bring the list of targeted voters to 70,000.

The Rosencrantz campaign's mail piece was printed and prepared for mailing by an Oregon company.

Mr. Snyder and Ms. Broadhead both denied to us that they coordinated their efforts with Forward Seattle. In addition, the targeting strategies employed by Forward Seattle and the Rosencrantz campaign do not suggest a coordinated effort to avoid duplicate mailings to the same households.

Application

Under *Buckley v. Valeo*, 424 U.S. 1 (1976), parties are free to spend what they wish in support of a candidate so long as those expenditures are made independent of the candidate. Under *Buckley's* reasoning, restrictions on independent expenditures violate the First Amendment.

Based on the staff's investigation, I find no evidence to suggest that Forward Seattle mailings were made "with[] the prior consent, or the collusion or the cooperation, of..." the Rosencrantz campaign. SMC 2.04.010. In the absence of such evidence, I find Forward Seattle's expenditures lawful, and I am therefore dismissing your complaint.

If you disagree with this determination, you may appeal my dismissal to the full Commission. The process for filing an appeal is outlined in SEEC Administrative Rule 4, which you can find at: <http://www.seattle.gov/ethics/etpub/AdminRules.pdf>.

Thank you for your bringing this matter to our attention.

Very truly yours,



Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission
Donald Stark, Forward Seattle
Robert Rosencrantz