

*Schwerin Campbell Barnard Iglitzin & Lavitt LLP*

ATTORNEYS AT LAW

*Of Counsel* Lawrence Schwerin

James D. Oswald

DMITRI IGLITZIN

*Iglitzin@workerlaw.com*

*Original via email to:*

*pdcc@pdcc.wa.gov and peter.lavallee@pdcc.wa.gov*

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Peter Lavallee  
Executive Director  
Washington State Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

Re: False and Misleading Political Advertisement  
Complaint against Glen Morgan, Send a Message PAC, and Conscience of the  
Progressives PAC, A Brighter Thurston County PAC, and Real Progressives in  
Thurston County PAC  
Our File No. 2800-999

Dear Mr. Lavallee:

It has come to our attention that four PACs funded and managed by Glen Morgan have engaged in a last minute dirty tricks campaign in support of the Republican candidates running in the 6th, 19th, and 26th legislative districts, as well as Thurston County. These ads, funded by self-proclaimed transparency advocate Glen Morgan, are a blatant attempt to mislead voters who might otherwise vote for the Democratic candidate in each race into casting “throwaway” votes to the benefit of the GOP. These ads contain misleading, defamatory, and otherwise unlawful information, and have been disseminated broadly to over 100,000 voters across the State of Washington.

Specifically, these ads falsely communicate to voters that the undersigned organizations have endorsed Teresa Purcell, Joe Pakootas, Nathan Schlicher, and/or EJ Zita in the 2018 elections, despite the fact that those candidates are not running in these races, and when in nearly every instance, each of the organizations listed has actually endorsed the Democratic candidate running in the 2018 election. Specifically, the ads contain the following false assertions:

- i The attack ad on Jessa Lewis suggests that UFCW 21, Fuse Washington, the Washington State Labor Council, AFL-CIO, and the Progressive Voters Guide (a project of Fuse Washington) have endorsed Joe Pakootas for Senate in Washington’s 6<sup>th</sup> Legislative District, when in fact each of those organizations has endorsed Jessa Lewis. In fact, Pakootas has never even run for state legislature and instead ran for Congress in 2016.

- i The attack ad on Erin Frasier suggests that AFSCME Council 28, Fuse Washington, the Progressive Voters Guide, and Planned Parenthood Votes Northwest and Hawaii have endorsed Teresa Purcell for House in Washington's 19<sup>th</sup> Legislative District when in fact each of those organizations has endorsed Erin Frasier.
- i The attack ad on Connie FitzPatrick suggests that Fuse Washington, the Washington State Labor Council, AFL-CIO, Planned Parenthood Votes Northwest and Hawaii, and AFT Washington have endorsed Nathan Schlicher for the House of Representatives in Washington's 26th Legislative District when in fact nearly each of those organizations has endorsed Connie FitzPatrick.
- i The attack ad on Tye Menser suggests that Fuse and the Progressive Voters Guide have endorsed EJ Zita for Thurston County Commissioner, when in fact they have endorsed Tye Menser and have *never* endorsed Zita for Thurston County Commissioner, although they did endorse her in 2017 when she ran for the entirely different office of Port of Olympia Commissioner.

The attack ads mailed out in the 6th, 19th, and 26th legislative districts were paid for by Conscience of the Progressives PAC, sponsored and solely funded by Send a Message PAC. The attack ads mailed to Thurston County voters were paid for by Real Progressives in Thurston County, sponsored and solely funded by A Brighter Thurston County PAC. Mr. Morgan is the campaign manager for all four PACs.

The ads constitute several blatant violations of Washington's campaign finance laws that the PDC should immediately act on to ensure that Glen Morgan is not successful in committing further violations aimed at misleading voters before the impending elections.

**1. Morgan's Ads Falsely Convey to Voters that Purcell, Pakootas, Schlicher, and Zita Have the Endorsement of the Undersigned Organizations in the 2018 Elections.**

Washington's Fair Campaign Practices Act makes it unlawful to sponsor political advertising or political communication that, "makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement." RCW 42.17A.335(c). Mr. Morgan has done precisely that by asserting that Purcell, Pakootas, Schlicher, and Zita are endorsed by the undersigned organizations, when in fact none of the organizations have endorsed those candidates in the 2018 election and have in fact endorsed the candidates that Morgan's ads attack.

Mr. Morgan may rely upon the fact that the organizations have previously endorsed Purcell, Pakootas, Schlicher, and Zita, in previous years' elections when those candidates were actually running for office (though for an entirely different office than that targeted in Morgan's ads, in the case of Zita and Pakootas). However, such a defense fails in light of the liberal construction that must be given to the FCPA. RCW 42.17A.001. Moreover, the statute forecloses this argument by making it unlawful to *imply* the support of an organization, either directly or

indirectly. RCW 42.17A.335(c). Moreover, the statute is clear that a violation occurs where a candidate does not “*have* such support or endorsement.” Former candidates Purcell, Pakootas, Schlicher, and Zita do not “have” – *e.g.*, they do not presently enjoy – the support of the undersigned organizations. Instead, those organizations have each endorsed other candidates (the current Democratic candidate) for the office once sought by Purcell, Pakootas, Schlicher, and Zita.

Mr. Morgan’s suggestion that Purcell, Pakootas, Schlicher, and Zita are endorsed by the undersigned organizations carries with it the indirect suggestion that Frasier, Lewis, Menser and/or FitzPatrick do *not* enjoy their support. This false suggestion that the undersigned organizations oppose Frasier, Lewis, FitzPatrick, and Menser will cause immeasurable and irreparable harm. In precisely the same way the Legislature explained that falsely suggesting that a candidate is an incumbent “deprives the *actual* incumbent...of the benefit of the public confidence,” Mr. Morgan’s suggestion that Purcell, Pakootas, Schlicher, and Zita are endorsed by progressive organizations deprives the *actual* candidates who have been endorsed by those organizations of the confidence and benefit that holding those endorsements carries.

Voters who trust and rely upon the recommendations of organizations like Fuse, the Washington State Labor Council, AFL-CIO, Planned Parenthood Votes Northwest and Hawaii, UFCW 21, AFT Washington, and AFSCME Council 28 may well follow Mr. Morgan’s advice and write in the names of the write-in candidates to the very real detriment of the actual candidates running in those races. Indeed, Mr. Morgan’s entire subterfuge is based entirely upon the assumption that voters will be misled into voting for his spoiler candidates.

The false implication of enjoying progressive organizations’ support not only harms the candidates, it also does harm to the organizations as well. The fake ads imply to voters that the undersigned organizations are attempting to sabotage the campaigns of Frasier, Lewis, FitzPatrick, and Menser, when in fact each of the undersigned organizations supports their candidacies. Suggesting that the undersigned organizations are part of an effort to split the progressive vote by supporting a “spoiler” write-in candidate is precisely what the Legislature referred to when it explained that false statements stating or implying an organization’s support or endorsement “deprive[s] the organization of the benefit of public confidence and/or will expose the [] organization to contempt, ridicule, or reproach, or injure [] organization in their business or occupation.” Laws of 2009, c. 222. Indeed, Fuse Washington has already received complaints from members, expressing their disappointment that the organization was spending resources to support a write-in candidacy because the Democratic candidate was not progressive enough – precisely the false impression Morgan’s ads are intended to convey.

In short, Mr. Morgan and his political action committees have blatantly violated both the spirit and the letter of Washington’s campaign finance laws by falsely informing voters that the undersigned organizations support write in candidacies of Purcell, Pakootas, Schlicher, and Zita, and relatedly that the undersigned organizations are opposing the candidacies of Lewis, Frasier, FitzPatrick, and Menser.

## **2. Morgan's Ads Harm Purcell, Pakootas, Schlicher, and Zita By Falsely Suggesting that They Are Running Write-In Campaigns.**

Not only does Mr. Morgan's false advertising harm the candidates attacked in his ads, and the organizations whose support Mr. Morgan falsely invokes, it also harms the "candidates" Mr. Morgan urges voters to support via write-in votes. Mr. Morgan's ads carry with them the false insinuation that his PACs have the support of Purcell, Pakootas, Schlicher, and Zita, a suggestion that could not be further from the truth. The ads support of those candidates, coupled with the PACs' progressive sounding names, tend to cause voters to believe that the ads were carried out at the behest of or with support from the individuals endorsed in those ads. Such a suggestion – that these individuals are actively trying to defeat the Democratic candidates in these races – is likely to expose those individuals to hatred, contempt, ridicule, or obloquy, and to deprive them of the benefit of public confidence and social intercourse.

## **3. Morgan's Ads Fail to Identify the Endorsed Candidate's Party Preference.**

Mr. Morgan's hit piece against Frasier fails to identify the party preference of Purcell, the candidate Morgan attempts to mislead voters into supporting. While Purcell is not in fact running for office, and hence has not filed a Declaration of Candidacy for the 2018 election, Morgan should have denoted the party preference expressed the only time she *has* run for office – the Democratic Party. His failure to do so violates WAC 390-18-020(1) and (2).

Mr. Morgan's hit piece against Menser likewise fails to identify the party preference of Zita, who successfully ran for Port Commissioner as a Democrat in 2015 and 2017. Morgan's failure to note this party preference expressed on the only declaration of candidacy Zita has ever filed violates WAC 390-18-020(1) and (2).

## **4. Conscience of the Progressives PAC Failed to List Officers on Its C-1pc Form.**

At least one of the PACs Mr. Morgan has used to launch misleading political attack ads appears to have failed to list Mr. Morgan as an officer of the PAC. WAC 390-05-245 defines a committee officer as a person who "makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee." If Mr. Morgan had anything to do with deciding how Conscience of the Progressives PAC's funds were to be spent, he should have been listed as an officer. This seems overwhelmingly likely to be the case given that he is an officer of the PAC that sponsors Conscience of the Progressives, and is listed as campaign manager for both Conscience of the Progressives PAC and Send a Message PAC.

Moreover, Conscience of the Progressives PAC's treasurer is designated on the C1pc form as performing ministerial functions only. Therefore, if Mr. Morgan is *not* an officer of the PAC, Conscience of the Progressives has violated the FCPA by failing to designate *any* officers on its C1pc form. In either case, it is clear that the Conscience of the Progressives and/or Mr. Morgan has violated the FCPA in such a way as to deprive voters of information about who is making decisions about the PAC's activities.

**5. The C-1pc Forms of the PACs Contain Other Omissions and False Information.**

Several of Mr. Morgan's PACs' C-1pc forms contain additional unlawful misstatements and fail to include required information. For instance, each of the PACs has now submitted an amended C-1pc form (*see* reports 100867441, 100867442, 100867443, and 100867444), yet each of those reports falsely checked the box indicating that the report was a new C-1pc form rather than an amended form.

**6. Morgan Acted With Actual Malice.**

Mr. Morgan's actions were undertaken with "actual malice" as defined in the FCPA, RCW 42.17A.005(1) ("to act with knowledge of falsity or with reckless disregard as to truth or falsity."). There can be no question that Mr. Morgan knew it was false to assert that the undersigned organizations support write-in candidacies of Purcell, Pakootas, Schlicher, and Zita, as the ads suggest. The ads are transparently undertaken in bad faith, i.e. in order to mislead voters into harming and undermining the exact values the attack ads purport to endorse.

Moreover, the willful nature of Mr. Morgan's violations is irrefutable given that there can be no doubt that Mr. Morgan is well familiar with the FCPA's requirements. As someone who has filed literally hundreds of citizen complaints, Mr. Morgan cannot claim ignorance of the law.

It is also worth noting that this is not Mr. Morgan's first violation of the FCPA. PDC staff initiated a complaint against Mr. Morgan in 2014, a case that remains open as half of the penalty imposed on Morgan was suspended and remains pending. *See* PDC enforcement case number 14-072.

We urge the PDC to conduct an immediate review into these allegations. The serious nature of these actions warrants referral to the Attorney General, pursuant to RCW 42.17A.755(4). The severity of the FCPA violations committed by Morgan warrant penalties greater than the maximum the PDC is authorized to impose.

Sincerely,



Dmitri Iglitzin

Danielle Franco-Malone

*Counsel for the Washington State Labor Council, AFL-CIO, Fuse Washington, UFCW 21, Planned Parenthood Votes Northwest and Hawaii, AFT Washington, and AFSCME Council 28*