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Peter Frey Lavallee
Executive Director
Public Disclosure Commission
711 Capitol Way S #206
Olympia, WA 98504

Re: Violations of the FCPA by No on Tacoma Measure 1, TPCAR, and NAR.
BIL File No. 6668-001

Dear Director Lavallee:

We are writing on behalf of Tacoma for All to report numerous apparent violations of RCW 42.17A.205, .207, .235, .240, .255, and .270 by the Tacoma-Pierce County Association of REALTORS® (TPCAR), No on Tacoma Measure 1, and the National Association of REALTORS® (NAR).

Earlier this month, an email blast by TPCAR revealed that powerful local, state, and national real estate interests have been engaged in a coordinated, well-funded, and largely unreported effort to defeat Tacoma citizen initiative Measure 1, known as the Tenant Bill of Rights. This six-figure shadow campaign was likely reportable by not only TPCAR, but No on Tacoma Measure 1, and NAR. Yet none of the entities involved have fulfilled their reporting obligations under Washington law. As these violations have deprived Tacoma voters of critical information in the leadup to the November 7 election, we ask that the PDC promptly investigate these allegations and hold the entities involved accountable for any violations of the Fair Campaign Practices Act.

I. Background

On June 23, 2023, Pierce County Elections concluded that a grassroots coalition of community and labor groups had collected the 4,207 signatures necessary to qualify a citizen initiative that would create a Tenant Bill of Rights for the City of Tacoma.¹ On July 11, 2023, the Tacoma City Council passed Resolution 41237 placing Citizen Initiative Measure 1 (Measure 1) on the November 7 ballot.²

Three months later, on Tuesday, October 10, TPCAR sent out an email blast updating its members of its ongoing efforts to defeat Measure 1. *See* Attachment. Under the heading “TPCAR Spearheading

¹ <https://www.piercecountywa.gov/8116/Current-Petitions#>

² <https://cms.cityoftacoma.org/cityclerk/Files/CityCouncil/RecentLegislation/2023/RL20230711.pdf>.

Campaign to Protect Member Interests,” the email described how “[u]pon learning Tacoma Measure 1 qualified for the November ballot,” TPCAR “sprang into action.” TPCAR’s staff and government affairs committee “connected with business organizations” to “create a coalition to oppose Tacoma Measure 1”³ and “leveraged” its memberships in NAR and Washington REALTORS®, “receiving” \$200,000 and \$25,000 for the campaign. The email noted that the campaign would include digital ads, a website launch, and mailers to City of Tacoma residents, all to protect the interests of its members.⁴

These contributions, which TPCAR claimed to have received no later than October 10, were not reported by No on Tacoma Measure 1 until its most recent C-4 report, filed on October 17, which disclosed them as pledges received the previous day.⁵ The C-4 report also revealed that TPCAR had been successful in leveraging an additional \$79,999 in pledged contributions—from Karl Neiders, the Tacoma-Pierce County Chamber of Commerce,⁶ and from TPCAR itself, all dated to October 16.⁷ As No on Tacoma Measure 1 entered into a \$350,000 contract with vendor Access Marketing on September 28 and the additional pledges purportedly received on October 16 were just enough money for the committee to fulfill this contract, it strains all credulity that these pledges were not planned and received far in advance of their reported date.⁸

In addition to these issues with No on Tacoma Measure 1’s reporting of sizeable pledges to the committee, the activities by TPCAR and NAR described in TPCAR’s October 10 email may have triggered registration and reporting requirements that neither association has fulfilled. These apparent violations of the Fair Campaign Practices Act (FCPA) are described in detail below.

II. Failure to timely register as a political committee under RCW 42.17A.205.

Under the FCPA, a political committee must file a statement of organization “within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign.” RCW 42.17A.205. This includes any campaign in opposition to a local ballot proposition. *See* RCW 42.17A.005(4), (19). A political committee is defined broadly to include any association or organization “having the expectation of receiving contributions or making expenditures” in opposition to a ballot proposition. RCW 42.17A.005(39), (41). Further judicial interpretation of the FCPA has clarified that an entity is required to register and report as a political committee if it 1) has the expectation of receiving contributions; or 2) has the expectation of making expenditures and a primary purpose of the entity is to affect governmental decision-making by supporting or opposing candidates or ballot propositions. PDC Interpretation No. 07-02.

By its own account, TPCAR “sprang into action” when it learned that Measure 1 had qualified for the November ballot and began devoting staff resources to mobilize business organizations and solicit contributions in opposition to the Tenant Bill of Rights, which presumably occurred soon after the ballot

³ According to the October 10 email, this coalition includes the Tacoma-Pierce County Chamber, Washington Multi-Family Housing Association, Rental Housing Association of Washington (RHA), and individual housing providers.

⁴ According to its website, TPCAR has 142 business affiliates.

⁵ *See* No on Tacoma Measure 1 C-4 Report No. 110181416.

⁶ The \$34,999 pledged contribution from the Tacoma-Pierce County Chamber of Commerce appears designed to avoid the PDC’s incidental committee registration and reporting requirements, which apply to nonprofit organizations that have contributed \$35,000 or more. *See* 42.17A.207; WAC 390-16-013.

⁷ *See* No on Tacoma Measure 1 C-4 Report No. 110181416.

⁸ *See id.*

initiative qualified on June 23, 2023.⁹ It is not clear based on TPCAR’s October 10 email whether the contributions by NAR and Washington REALTORS® were received by TPCAR directly in advance of being paid out to No on Tacoma Measure 1. If they were, however, TPCAR clearly falls within the “contribution” prong of the political committee definition. TPCAR likely became aware that Measure 1 had qualified for the ballot on or shortly after June 23, 2023, when Pierce County Elections concluded its signature verification process. And it certainly knew by July 11, when the Tacoma City Council voted to place the measure on the ballot. Thus, TPCAR’s expectation of receiving contributions—if it was in fact the recipient of contributions—likely dates to June or July of this year, as did its obligation to register and begin reporting its activities.

If TPCAR directly received contributions from NAR and Washington REALTORS® to oppose Tacoma Measure 1, it was required to register as a political committee pursuant to RCW 42.17A.205 and to report as required under RCW 42.17A.235 and .240. Yet TPCAR has not registered as a political committee or reported its spending in opposition to Measure 1.

Additionally, TPCAR’s work on behalf of No on Tacoma Measure 1, which likely commenced months prior to the committee’s September 26 registration with the PDC,¹⁰ suggests that the committee anticipated receiving contributions and was obligated to register well in advance of that date. Thus, No on Tacoma Measure 1 is likely also in violation of RCW 42.17A.205.

III. Failure to report TPCAR staff time spent opposing Measure 1 as required by RCW 42.17A.235, .240, and/or .255.

The FCPA requires that political committees report expenditures and contributions made pursuant to a prescribed timeline. RCW 42.17A.235, .240. This includes in-kind contributions of goods or services. *See* RCW 42.17A.005(15)(a); WAC 390-16-207. Expenditures of \$1,000 or more made in opposition to a ballot proposition that are not otherwise reported by a political committee must be reported as independent expenditures. RCW 42.17A.255.

C-4 reports of expenditures and contributions were due for political committees participating in the November 2023 election on the following dates:

- July 10, 2023, for contributions and expenditures in the month of June
- August 10, 2023, for contributions and expenditures in the month of July
- September 11, 2023, for contributions and expenditures in the month of August
- October 17, 2023, for contributions and expenditures from September 1 through October 16.

⁹ Tacoma for All’s successful signature gathering effort, and a subsequent legal fight over a competing ballot initiative, was the subject of significant local media attention throughout July and August of 2023. *See, e.g.,* Becca Most, *Tacoma plans to give renters more rights. This group says city isn’t going far enough*, Tacoma News Tribune (July 5, 2023), <https://www.thenewstribune.com/news/local/article276801456.html>; Adel Toay, *Tacoma voters to decide on competing measures strengthening renters’ rights*, King 5 (July 14, 2023), <https://www.king5.com/article/news/local/tacoma/tacoma-voters-measures-strengthening-renters-rights/281-cf8dd433-4e8a-46b1-9007-1d2fd23af28c>.

¹⁰ https://apollo.pdc.wa.gov/public/registrations/registration?registration_id=54620.

Based on its October 10 email, it appears that TPCAR was paying staff members for time spent campaigning in opposition to Measure 1 as early as June 2023 (when they “sprang into action” to “create a coalition to oppose Tacoma Measure 1” and to raise funds). Because TPCAR failed to register and report as a political committee, it did not report these expenditures on July, August, September, or October C-4 reports.

Even if TPCAR was not obligated to register and report as a political committee, its staff time was nonetheless reportable, either as an in-kind contribution to No on Tacoma Measure 1 or as an independent expenditure. No on Tacoma Measure 1 did not register with the PDC until September 26, 2023,¹¹ and reported no in-kind contributions of staff time from TPCAR on its latest C-4.¹² TPCAR has also failed to report any independent expenditures in opposition to Measure 1.

Thus, TPCAR has either violated RCW 42.17A.235 and .240 or .255 by failing to report staff time spent organizing in opposition to Measure 1, and/or No on Tacoma Measure 1 has violated RCW 42.17A.235 and .240 by failing to report in-kind contributions of staff time from TPCAR.

IV. Failure to timely and accurately report at least \$225,000 in contributions in violation of RCW 42.17A.235, .240, and .270.

The FCPA requires political committees to report deposits of contributions on a weekly basis during the five months preceding a general election. RCW 42.17A.235. Additionally, contributions must be deposited within five business days of receipt. RCW 42.17A.220. If a political committee receives a contribution that is earmarked for the benefit of another political committee, the first committee must not only report the contribution itself but must complete and submit a special report of earmarked contribution both to the second committee and to the PDC. RCW 42.17A.270. Contributions that have been pledged but not yet received are required to be disclosed on a committee’s C-4 filing of expenditures and contributions. *See* RCW 42.17A.005(a); PDC Interpretation No. 12-01. Pledges are reportable as of the date a promise to make a future contribution of a specific amount is made. *See* PDC Interpretation No. 12-01.

In its October 10 email, TPCAR announced that it had received \$200,000 from NAR and \$25,000 from Washington REALTORS® to oppose Measure 1. As discussed, it is not clear whether these contributions were in fact received by the unregistered political committee TPCAR or have been/will be deposited directly by the registered political committee No on Tacoma Measure 1, which has reported them as pledges.

If received by TPCAR, these contributions are proof of TPCAR’s obligation to register with the PDC and another example of reportable activity that the TPCAR has failed to disclose on required C-3 and C-4 reports. Moreover, if TPCAR received contributions that were earmarked for the benefit of No on Tacoma Measure 1, it should have reported them pursuant to RCW 42.17A.270. If received directly by No on Tacoma Measure 1, the committee should have reported these contributions on a C-3 report no later than Monday, October 16. However, the committee has yet to disclose any deposits, reporting them instead as pledges on its latest C-4.¹³

¹¹ https://apollo.pdc.wa.gov/public/registrations/registration?registration_id=54620.

¹² *See* No on Tacoma Measure 1 C-4 Report No. 110181416.

¹³ *See id.*

If NAR and Washington REALTORS® had in fact merely pledged to contribute \$200,000 and \$25,000, and TPCAR had not in fact “receiv[ed]” the money as it claimed, these pledges would nonetheless be reportable by TPCAR or No on Tacoma Measure 1 dating back to at least October 10 (the date of TPCAR’s email) and possibly September 28 (the date of No on Tacoma Measure 1’s \$350,000 vendor contract) because they were planned contributions of a specific amount. However, no such pledges were reported by TPCAR (because TPCAR has wholly failed to register and report to the PDC) and No on Tacoma Measure 1 has misreported these pledges as dating from October 16 on its latest C-4 report.¹⁴ It is likely that these same infirmities are also present for the committee’s reporting of other pledges purportedly received on October 16.

Because \$225,000 in publicly announced contributions from NAR and Washington REALTORS® have not been accurately disclosed to the PDC, TPCAR and/or No on Tacoma Measure 1 have violated RCW 42.17A.235, .240 and possibly .270.

V. NAR’s failure to register and report as an incidental committee as required by RCW 42.17A.207 and .240.

Under RCW 42.17A.207, a nonprofit organization not otherwise meeting the definition of a political committee must file a statement of organization with the PDC and report expenditures and contributions in excess of \$500 provided the following conditions are met: 1) the organization spends or expects to spend \$35,000 or more in a calendar year on election campaigns or political committees; and 2) the organization receives \$15,000 or more in payments from a single source. *See also* WAC 390-16-013. An organization required to register as an incidental committee must do so within two weeks of having the expectation of spending at least \$35,000. RCW 42.17A.207.

NAR is a registered 501(c)(6) organization that has spent or has pledged to spend \$200,000 to oppose Measure 1. While it is unknown whether NAR receives \$15,000 or more from a single source, it is likely given that the organization has hundreds of millions of dollars in annual revenues.¹⁵ Additionally, it is unclear when NAR first committed to contribute \$200,000 to oppose Measure 1 because of the above-noted failures by TPCAR and No on Tacoma Measure 1 to comply with their reporting obligations. However, it is very likely that more than three weeks have passed since NAR’s initial decision to make a six-figure contribution to oppose the Tenant Bill of Rights in Tacoma given that TPCAR “sprang into action” to build an opposition campaign once Measure 1 had qualified for the ballot in June. Assuming NAR was obligated to register and report as an incidental campaign, it has failed to file required C-1-IC and C-8 reports. This has deprived the public of full and timely disclosure not only of NAR’s political activities in Washington State but of the identity of its largest sources of payments as required under RCW 42.17A.240.

¹⁴ *See id.*

¹⁵ NAR reported \$327 million in revenues on its most recently available form 990, for fiscal year 2021. *See* <https://projects.propublica.org/nonprofits/organizations/361520690/202223199349302642/full>.

Conclusion

As the shadow campaign described above has likely been underway for months and involves hundreds of thousands of dollars in unreported and misreported political activity from powerful real estate interests, we ask that the PDC promptly investigate this matter in advance of the November 7 election. In investigating this complaint, PDC staff should specifically verify that pledged contributions from NAR and Washington REALTORS® were not in fact received by TPCAR.

Please do not hesitate to contact us if you have any questions, or if we can be of further assistance.

Sincerely,



Abby Lawlor
Dmitri Iglitzin

Counsel for Tacoma for All