



Chalmers, Adams, Backer & Kaufman, LLC

701 Fifth Avenue, Suite 4200
Seattle, Washington 98104

Andrew R. Stokesbary, Member
dstokesbary@chalmersadams.com
(206) 813-9322

June 19, 2024

DELIVERED ELECTRONICALLY

Washington Public Disclosure Commission
Attention: Alice Fiman
711 Capitol Way South, Room 206
Olympia, Washington 98501

Re: PDC Case Number 154756

Dear Ms. Fiman,

I write on behalf of We Stand With Dave Reichert (the “Campaign” or the “Reichert Campaign”), the authorized committee for Dave Reichert’s campaign for Governor, in response to the obviously unfounded and frivolous¹ complaint filed with the Public Disclosure Commission (the “PDC” or the “Commission”) on or around June 5, 2024 by Eric Crawl (the “Complaint”).

Tellingly, the Complaint does not allege any particular violation of the Fair Campaign Practice Act (“FCPA”) or PDC rules; rather, it vaguely alleges that “In Kind Contributions [were] concealed by structuring meant to evade PDC reporting requirements, creating a subterfuge of concealment about Campaign and Commercial and Individual financial relationships.” Frivolous assertions and thesaurus over-reliance notwithstanding, there has been no concealment, structuring or subterfuge—or any violation of RCW 42.17A.235, .240, or any other provision of the FCPA—because there have been no in-kind contributions from Ms. Kruse for the Campaign to report.

Background

Mr. Crawl correctly points out that Brandi Kruse is a popular media personality who hosts a large and successful podcast (supported, like most media endeavors, by a combination of advertising and subscription revenue) and who has amassed nearly 100,000 followers on Twitter alone. Because of her popularity with audiences, her skillful rhetoric, her charismatic style and her common-sense values, she is occasionally invited to deliver paid speeches.

As Ms. Kruse referenced in a December 2023 tweet, she “spoke” at a Reichert Campaign event “for free.” This event was the Campaign’s Bellevue kick-off breakfast held on October 12, 2023,² where Ms. Kruse served as the breakfast’s “emcee.” In this role, she welcomed guests and introduced those who appeared on stage—the pastor who delivered the invocation and sang the

¹ See WAC 390-37-060(1)(a) (“If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC’s jurisdiction, the executive director will inform the complainant and, as appropriate, the respondent why no further action is warranted.”).

² A copy of the invitation graphic for this event is attached to this response as [Exhibit A](#).

national anthem, the VFW activist who led the Pledge of Allegiance, the longtime personal friends of Mr. Reichert who introduced him, and the retired sheriff's deputy who asked attendees to contribute to the Campaign.

Ms. Kruse has subsequently appeared at two Campaign events in 2024—a fundraiser hosted by the Conservative Coalition of Lewis County on March 25, 2024, and a fundraiser hosted by retired Seattle police officers on April 9, 2024. At these events, she simply introduced Mr. Reichert to event attendees as he took to the podium.

Ms. Kruse appeared at each of these Reichert Campaign events for free; she was not compensated by the Campaign or any other person. While Ms. Kruse does occasionally give paid speeches, she only charges for “keynote” speeches and major events that require significant advanced planning. She does not typically charge to emcee events or to introduce candidates or other featured speakers, which are the only “speaking” roles she has had Reichert Campaign events.

Analysis

A. Ms. Kruse's Speaking Appearances Are Typical Campaign Volunteer Services and She Was Not Compensated for Appearing.

By the plain text of the FCPA and PDC rules, the volunteer services provided by Ms. Kruse do not constitute a contribution. Under the FCPA, a “contribution” does *not* include “[t]he rendering of personal services of the sort commonly performed by volunteer campaign workers.” RCW 42.17A.005(15)(b)(vi). As further detailed by WAC 390-17-405(1), “an individual may perform services or labor for a candidate . . . without it constituting a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers.”

Ms. Kruse's speaking appearances at Reichert Campaign events were not a contribution to the Campaign because (1) such speaking roles are “commonly performed by volunteer campaign workers” and (2) she was not compensated by any person for her appearances.

Individuals *routinely* speak on a volunteer basis at campaign events held by candidates for elective office. In fact, a search of expenditures in the PDC database reveals that among *all* candidates for *all* state and local offices since 2007 (nearly 40,000 filers in total), less than 20 have ever reported paying a speaker's fee or honorarium. It also appears that the vast majority (if not all) of these paid speakers delivered some form of a “keynote” or “featured” address, rather than merely serving as an emcee or person introducing the candidate. Thus, appearing on-stage at a campaign event is clearly the sort or kind of service “commonly performed by volunteer campaign workers,” particularly when the appearance is limited to an emcee or host role, rather than a keynote speech.

Furthermore, as noted above, Ms. Kruse was not paid for any of her speaking appearances, whether by the Reichert Campaign itself or by any other person.

Thus, her activities plainly fall within the scope of volunteer activities that do not constitute a contribution under the FCPA or PDC rules, so there is no contribution for the Campaign to report.

B. Ms. Kruse Does Not Ordinarily Receive Compensation for Minor Speaking Roles.

WAC 390-17-405, which defines when volunteer services are (or are not) contributions, includes a non-exhaustive list of services “commonly performed by volunteer campaign workers.” Several of the activities on this list, including “public relations and advertising” and “fund-raising” services, are only “the kind [of services] commonly performed by volunteer campaign workers” if the individual volunteering his or her services “does not ordinarily charge a fee or receive compensation for providing the service.” WAC 390-17-405(1)(k).

The PDC does not appear to further define, whether by rule or guidance, what constitutes “public relations,” “advertising” and “fund-raising” services, but both common-sense and their ordinary dictionary definitions strongly suggest that appearing briefly on stage at campaign events is an entirely different service than what is normally provided when candidates retain public relations and advertising firms (which usually offer advice on messaging and prepare political advertisements and electioneering communications) and fundraising consultants (who typically offer advice on how to solicit campaign contributions and provide lists of, and arrange for calls or meetings with, prospective donors) for their campaigns.

Nonetheless, Ms. Kruse “does not ordinarily charge a fee or receive compensation for providing the service” that she provided the Reichert Campaign. As noted above, Ms. Kruse only charges for “keynote” speeches or major events that require significant advanced planning; she does not typically charge any fees to emcee events or to introduce candidates.³

Thus, even if Ms. Kruse’s appearances at Reichert Campaign events do constitute “public relations and advertising” or “fund-raising” services—or any other activity captured by WAC 390-17-405(1)(k)—such appearances still fall within the scope of typical volunteer services, and outside the definition of a contribution, because (in addition to the reasons described in Part A above) she does not “ordinarily charge a fee or receive compensation for providing the service[s]” that she performed for the Reichert Campaign.

C. Subjecting Ms. Kruse’s Appearances to FCPA’s Contribution Limits Would Violate First Amendment Rights to Freedom of Speech and Freedom of Association.

“[A] fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Indeed, “[a]n individual’s investment of his or her time, energy, creativity, and passion to support a political campaign is at the heart of the association protected by the First Amendment.” *Jacobus v. Alaska*, 338 F.3d 1095, 1122 (9th Cir. 2003). Yet the essential basis for Mr. Crowl’s meritless Complaint seems to be that because Ms. Kruse has been paid to deliver speeches previously, her appearances at Reichert Campaign events should be reported as in-kind contributions. But if this *were* how the

³ The expenditures by three county Republican Party organizations to Ms. Kruse and her media company for her “speaker” services, referenced by Mr. Crowl in his Complaint, were all payments for “keynote” speeches, which as noted above, Ms. Kruse does occasionally receive payment for.

FCPA applied, it would impose a de facto limit⁴ on an individual's ability to volunteer their own time and personal services to a candidate. Such an application would unconstitutionally violate the "right to engage in political expression and association [as] enshrined in the First Amendment of the Bill of Rights." *Sweezy*, 354 U.S. at 250.

While the seminal campaign finance case *Buckley v. Valeo*, 424 U.S. 1 (1976), ultimately upheld the concept of contribution limits in general, the Court's decision largely hinged on the fact that the Federal Election Campaign Act ("FECA") "excludes from the definition of contribution 'the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee.'" 424 U.S. at 36 (quoting 18 U.S.C. § 591(e)(5)(A) (1970) (current version at 52 U.S.C. § 30101(8)(B)(i))).⁵ In particular, the Court noted that FECA's financial contribution limits "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates" and "focus[] precisely on the problem of large campaign contributions . . . while leaving persons free to engage in independent political expression [and] to associate actively through volunteering their services." *Id.* at 22, 28 (emphasis added).

In other words, *Buckley* found FECA's "contribution ceilings to be constitutional in part because Congress did not attempt to limit citizens' volunteering their labor to political campaigns." *Barker v. Wis. Ethics Bd.*, 841 F. Supp. 255, 262 (W.D. Wis. 1993); see also *Jacobus*, 338 F.3d at 1122 ("[I]n *Buckley* the Court justified the regulation of donors' monetary contributions by pointing to the fact that the ability to 'actively associate through volunteering their services' was an avenue of political association left open to potential donors." (quoting *Buckley*, 424 U.S. at 28)).

Because of the burdens placed on First Amendment speech and associational rights when the capacity of individuals to provide volunteer services to campaigns is restricted (as compared to limits on monetary contributions), virtually every state has excluded the value of volunteer services from the definition of a "contribution" under applicable campaign finance laws.⁶ Indeed, very few

⁴ Contributions, including in-kind contributions, by individuals to candidates are limited to \$1,200 or \$2,400 per election, depending on which office the candidate is seeking. See RCW 42.17A.405(2); WAC 390-05-400.

⁵ Notably, FECA does not limit the volunteer services excluded from the scope of "contributions" on the basis of whether the volunteer services are of the kind or sort ordinarily performed by volunteers, nor whether the volunteer ordinarily receives compensation for the services being provided. See 52 U.S.C. § 30101(8)(B)(i).

⁶ See, e.g., ARIZ. REV. STAT. § 16-911(B)(1) ("The value of an individual's volunteer services . . . that are provided without compensation or reimbursement" is "not [a] contribution"); CAL. GOV'T CODE § 82015(c)(3) ("Contribution" does not include . . . [v]olunteer personal services"); CONN. GEN. STAT. § 9-601a(b)(4) ("Contribution" does not mean . . . [u]ncompensated services provided by individuals volunteering their time on behalf of a party committee, political committee, slate committee or candidate committee"); KY. REV. STAT. § 121.015(7)(a) ("Contribution" . . . shall not be construed to include . . . [s]ervices provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate"); MICH. COMP. LAWS § 169.204(3)(a) ("Contribution does not include . . . [v]olunteer personal services provided without compensation"); MONT. CODE ANN. § 13-1-101(b)(i) (Contribution "does not mean . . . services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee,"); OHIO REV. CODE § 3517.01(C)(5)(a) ("Contribution" does not include . . . [s]ervices provided without compensation by individuals volunteering a portion or all of their time on behalf of a person"); S.D. CODIFIED LAWS § 12-27-1(6) ("Contribution" . . . does not include services provided by a person as a volunteer for or on behalf of any candidate or political committee"); VT. STAT. ANN. tit. 17, § 2901(4)(B) ("Contribution" shall not include . . . services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political party"). Critically, in each of these states, the only

states have even *attempted* to limit uncompensated volunteer services—and the few states that tried have seen their limits promptly struck down on constitutional grounds.

A Wisconsin federal district court invalidated a Wisconsin statute that restricted the ability for lobbyists to volunteer their unpaid personal services to candidates for elected office because “it [wa]s not closely drawn to avoid unnecessary abridgment of associational freedoms.” *Barker*, 841 F. Supp. at 257.

Closer to home, “[i]n 1996, the Alaska legislature enacted sweeping reforms to its campaign finance system.” *Jacobus*, 338 F.3d at 1098. Among other things, the law banned corporate and labor union contributions and placed a “\$5,000 limit on individual contributions and . . . on the value of professional services that individuals might volunteer to political parties.” *Id.* The Ninth Circuit upheld the ban on corporate and union contributions and the \$5,000 limit on *monetary* contributions. *Id.* at 1099. But because “[t]he speech and association interests of both donor and donee are more substantially implicated by restrictions on contributions of volunteer services than by monetary contribution limits,” the Court found Alaska’s limitation on providing volunteer services to be unconstitutional. *Id.* at 1122 (citing *Barker*, 841 F. Supp. at 262).

More recently, an Illinois Court declined to adopt a petitioner’s “expansive interpretation of what constitutes a political ‘contribution,’” noting that such a reading “would cap the amount of time a person could legally volunteer to assist a candidate’s campaign,” thereby “limit[ing] ‘the lifeblood of today’s political campaigning’ [and] rais[ing] serious first amendment concerns.” *Sorock v. Ill. State Bd. of Elections*, 975 N.E.2d 313, 319 (Ill. App. Ct. 2012) (quoting *Hynes v. Mayor & Council of Borough of Oradell*, 425 U.S. 610, 626-27 (1976) (Brennan, J., concurring in part)).

Thus, even *if* speaking at a campaign event were *not* the sort of personal services commonly performed by volunteer campaign workers (as explained in Part A, they are), or even *if* Ms. Kruse *did* ordinarily receive compensation for the type of speaking appearances she provided to the Reichert Campaign (as explained in Part B, she does not), deeming her unpaid appearances as a contribution to the Reichert Campaign (and subject to the FCPA’s contribution limits) would unconstitutionally violate the First Amendment rights of speech and association of both Ms. Kruse and the Reichert Campaign.

Conclusion

While Ms. Kruse did indeed appear and “speak” at several Reichert Campaign events, speaking at campaign events is almost always performed by volunteers, particularly when the speaking role is limited to serving as an emcee or introducing the candidate. Neither the Reichert Campaign nor

requirement for volunteer activities to be avoid being counted as a “contribution” is that the volunteer not receive any compensation; none of them condition the exclusion of volunteer services on whether the type of service provided for free is “of the sort commonly performed by volunteer campaign workers,” *cf.* RCW 42.17A.005(15)(b)(vi), or whether the volunteer “ordinarily charge[s] a fee or receive[s] compensation for providing the service.” *Compare, e.g.,* CONN. GEN. STAT. § 9-601a(b)(4) (“[A]n individual is a volunteer if such individual is not receiving compensation for such services *regardless of whether such individual received compensation in the past or may receive compensation for similar services that may be performed in the future*” (emphasis added)) *with* WAC 390-17-405(1)(k).

anyone else paid Ms. Kruse for her appearances at Reichert Campaign events. These two (uncontested) facts alone provide sufficient grounds for the Commission to dismiss the Complaint.

Moreover, even if it were relevant to determining whether Ms. Kruse's appearances constituted a contribution to the Reichert Campaign, Ms. Kruse does not ordinarily charge a fee or receive compensation for the kinds of speaking appearances she did make at Reichert Campaign events. (As indicated in note 3 above, the few examples cited in the Complaint of Ms. Kruse receiving compensation for speeches all involved featured keynote speeches, not the type of brief, casual appearances that Ms. Kruse made at Reichert Campaign events.)

Lastly, deeming the uncompensated personal services volunteered by Ms. Kruse (or any other person) as a campaign contribution subject to the contribution limits of the FCPA would violate the freedoms of speech and association guaranteed by the First Amendment. Such an application would not survive constitutional scrutiny. *See, e.g., Jacobus v. Alaska*, 338 F.3d 1095.

For any or all of the foregoing reasons, the Commission should, pursuant to its authority under RCW 42.17A.755(1) and WAC 390-37-060(1)(a), promptly dismiss the Complaint as "obviously unfounded or frivolous."

Sincerely,

CHALMERS, ADAMS, BACKER & KAUFMAN, LLC

/s/ Andrew R. Stokesbary

Andrew R. Stokesbary, Member

Exhibit A

We Stand with

DAVE REICHERT

F O R G O V E R N O R (R)

Breakfast

THURSDAY, OCT. 12

Hilton Bellevue

300 112th Ave SE, Bellevue, WA 98004

7:00 am Registration opens

7:30 - 8:30 am

Program and hot breakfast

\$50/Person

\$500/Table of 10



RSVP online now

SAVE THE DATE