



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

October 07, 2022

Stephen Golub
Kathy Kerridge
Nathalie Christian
PO Box 1987
Benicia, CA 94510

Re: Your Request for Advice
Our File No. I-22-085

Dear Mr. Golub, Ms. Kerridge and Ms. Christian:

This letter responds to your request for advice regarding campaign provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your inquiry as a request for informal assistance.² Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

You ask about various activities and whether those activities qualify your organization of residents, Benicians for Clean Elections (“BCE”), as a committee under the Act. In addition, you would like to know if those activities would limit BCE members from contributing to or working for specific candidates.

CONCLUSION

Under the facts provided, BCE will not qualify as a committee under Section 82013(a) if it does not receive payments totaling \$2,000 or more in a calendar year for political purposes and will not qualify as a committee under Section 82013(b) if it does not expend \$1,000 or more on independent expenditures (i.e., communications about the “Working Families for a Strong Benicia” political action committee (“WF PAC”) that expressly advocate the support or defeat of candidates

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

or measures). Whether BCE members may engage in outside campaign activity depends on the activities of BCE.

FACTS AS PRESENTED BY REQUESTER

You are members of BCE, a group of Benicia residents seeking advice on whether and under what circumstances you need to form a committee in preparation for the upcoming election. Currently, BCE does not have formal legal status; it is an unincorporated, nonpartisan group of concerned residents. BCE is not affiliated with any candidates or campaigns. BCE's goal is to inform/educate Benicia residents of the past, present and potential activities of a PAC that has received most of its funding from a major petrochemical corporation, Valero. The name of the Valero-supported PAC has varied over time, but usually includes WF PAC. You assert that WF PAC has sought to influence Benicia City Council and mayoral elections in recent years, and that it intends to also do so this year. You believe the WF PAC's activities include (non-coordinated) negative and positive campaigning, phone banking, messaging, online advertising, and mailbox leaflets regarding specific candidates.

BCE does not intend to support or oppose the candidates themselves. Rather, the focus of this initiative is to provide the city's residents with information about the WF PAC, the corporation that mainly funds it, and related matters. Some of the activities include educating the public about Valero's violations of environmental regulations over the years, educating the public about what you assert to be misleading advertisements the WF PAC has funded, and asking why Valero is spending significant funds on Benicia elections through its WF PAC. Although BCE does not plan to engage in express advocacy, in that BCE will not indicate support or opposition to specific candidates or measures, you recognize that BCE's work could in effect benefit or harm specific candidates' prospects, but assert that BCE does not intend to influence the outcome of the election or tell residents who to vote for. Nonetheless, the activities of BCE may include: informing the public that the WF PAC has supported or opposed specific Benicia candidates in the past (or is doing so currently); using in its communications the full name of the WF PAC, which may include the names of previous or current candidates the WF PAC has supported or opposed or is currently supporting or opposing, but the communications do not otherwise indicate support of or opposition to any candidate(s) by BCE; and BCE identifying elected officials whom Valero has supported or is supporting in elections.

An example of core messaging that will be published in local print newspaper as Opinion/Letters to the Editor, included on social media, and on a website follows here:

Our request is simple:

For years, Texas-based Valero has used its incredible wealth to try and control who is elected in Benicia by bankrolling a Political Action Committee (PAC) that has completely overwhelmed and outspent every candidate who has run.

Valero's efforts to influence our local elections continue to this day: their "Working Families" PAC plans to shell out more than **\$230,000** to get Benicia voters to elect Valero's preferred candidates.

It's just not fair.

We respectfully request that Valero dissolve its “Working Families” PAC—or at the very least follow the same rules that every other Benicia business and resident must follow. Until we have that parity, elections in Benicia are neither fair nor clean.

Another example provided by BCE in a follow-up question submitted on September 14, 2022, is a yard sign with similar messaging:

VALERO, PLAY FAIR!
GET THE “WORKING FAMILIES” PAC
\$\$\$
OUT OF OUR
ELECTIONS.
BENICIANS FOR CLEAN ELECTIONS . ORG

The funds that will be used to pay for these communications, in addition to lawn signs and postcards, etc., will come from pledges from several local residents who are group members to help pay for materials directly. The pledges will not exceed \$1,999.99 unless there is a major change in circumstances (e.g., unanticipated tactics or personal attacks by the WF PAC). BCE plans to make the second yard sign message available for purchase through a third-party, on-demand printing service. BCE will (1) design the signs and post the design online, and (2) share the link to purchase the sign with others so anyone who wishes to purchase the sign could do so as a non-affiliated individual. The third-party printer service vendor would receive 100 percent of any funds collected and manage the printing, shipping, and handling, with no help or involvement from BCE past the point of receiving a design. BCE does not intend to formally fundraise or set up a bank account unless advised to do so.

ANALYSIS

“Committee” means any person or combination of persons who directly or indirectly does any of the following: (a) receives contributions totaling \$2,000 or more in a calendar year; (b) makes independent expenditures totaling \$1,000 or more in a calendar year; or (c) makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees. (Section 82013.) To the extent contributions received, or independent expenditures made, exceed the thresholds qualifying the BCE as a committee under Section 82013, BCE must file a statement of organization and periodic campaign reports as required by the Act.

Contributions

A “contribution” is a monetary or nonmonetary payment made to or received by a candidate or committee for which the candidate or committee has not provided full and adequate consideration in return unless it is clear from the surrounding circumstances that the payment is not made for political purposes. (Section 82015; Regulation 18215.) A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulation 18215.) As stated above, if any person receives contributions of \$2,000 or more in a calendar year, that person will qualify as a recipient committee under the Act.

Although you do not provide that payments will be made directly to candidates or committees, you have stated that BCE will receive payments from several local residents who are group members to help pay for communications, but that amount will not exceed \$1,999.99. Whether payments received by BCE will be contributions that may qualify BCE as a committee will depend on what BCE intends to do with the payments, including any indications that BCE has discussed with or suggested to the donor the possibility that the donations will be used to support or oppose a ballot measure or candidate, or any indications suggested or expressed by the donor to do the same. However, this is necessarily a determination that can be made only with the factual information surrounding each donation. Generally, however, you have provided a strong indication that the payments will be used for a political purpose that will likely qualify it as a committee under Section 82013(a) if it receives \$2,000 or more. Payments received for some of the activity you have identified will likely be considered made for a political purpose³ and could qualify BCE as a committee, such as the following:

- BCE informs the public that the WF PAC has supported or opposed specific Benicia candidates in the past (or is doing so currently);
- BCE uses in its communications the full name of a WF PAC, which may include the names of previous or current candidates the WF PAC has supported or opposed or is currently supporting or opposing, but the communications do not otherwise indicate support of or opposition to any candidate(s) by BCE; and
- BCE identifies elected officials whom Valero has supported or is supporting in elections.

Accordingly, to the extent there is any indication that the donors have provided money for the purpose of supporting or opposing any ballot measure or candidate and BCE receives \$2,000 or more, BCE may qualify as a recipient committee and may wish to seek further advice. However, you have mentioned that BCE does not plan to receive more than \$1,999.99 from the pledges at this time. So long as BCE remains below the \$2,000 threshold, it will not qualify as a recipient committee under Section 82013(a). We do note, however, should BCE qualify as a committee, it will also be required to report its expenditures pursuant to Section 82025 of the Act.

Further, payments made for communications that do not expressly advocate the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a measure are not contributions if BCE does not otherwise qualify as a committee. Thus, so long as BCE does not qualify as a committee, the proposed arrangement with the third-party printer service vendor mentioned above will not be a contribution to any candidate or committee. However, should BCE qualify as a committee by meeting the receipt of contribution threshold, you should seek further advice regarding arrangements for paid communications to ensure compliance with the Act.

Lastly, you have mentioned that BCE may also pay for a private attorney's legal advice to assist in pursuing BCE's efforts. Without knowing the specific legal advice sought, we are unable to determine whether those payments will count towards the \$2,000 threshold. However, if payments are received by BCE for the purpose of seeking legal assistance to aid in furthering a political

³ We have previously advised that a non-partisan organization formed for the primary purpose of educating prospective candidates on how to organize campaigns and run for office, and to also inform voters on progressive issues and endorse progressive candidates without making contributions to candidates was considered formed for a political purpose. (*Trask-Lee* Advice Letter, No. I-04-047.)

purpose, such as for those activities listed in bullet points above, those payments would likely count towards the \$2,000 contribution threshold.

Independent Expenditures

Communications to Residents About WF PAC & Valero

“Independent expenditure” means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee (Section 82031.) A communication “expressly advocates” the nomination, election, or defeat of a candidate or the qualification, passage, or defeat of a measure if it contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” or, within 60 days before an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election. (Section 82025.)

You have stated that BCE is seeking to inform or educate residents regarding the harmful effects WF PAC that is funded by Valero and that you may or may not mention candidates by name but will not be supporting or opposing any particular candidates. This includes educating the public on Valero’s violations of environmental regulations over the years, educating the public about misleading advertisements the WF PAC has funded, and asking why Valero is spending significant funds on Benicia elections through its WF PAC. These activities are being planned in anticipation of the upcoming election, but there are no facts indicating that BCE will be coordinating with any candidates or committees mentioned on the communications.

There were two specific examples provided by you as possible communications, the first communication states that Valero “has used its incredible wealth to try and control who is elected in Benicia by bankrolling a Political Action Committee (PAC) that has completely overwhelmed and outspent every candidate who has run;” and the second message request that Valero play fair and “keep the WF PAC out of the elections.” Both communications do not mention any candidates by name or any specific measures and do not include language expressly advocating the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure or when taken as a whole unambiguously urge a particular result.⁴ Based on the facts provided, the communications mentioned above do not meet the definition of an independent expenditure and would not count toward the threshold for BCE qualifying as an independent expenditure committee pursuant to Section 82013(b).

Moreover, to the extent that individuals purchase the yard signs as currently described through the vendor arranged by BCE, the yard signs do not expressly advocate the election or defeat

⁴ However, since you have provided that BCE may name candidates that Valero has supported or opposed in the past or candidates that Valero is currently supporting, we do note that depending on the language used these communications may be considered to contain express advocacy for example if coupled with other language such as “reject” or “vote against,” etc. and may lead to BCE qualifying as an independent expenditure committee if it expends \$1,000 or more on such communications.

of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urge a particular result in an election. Thus, the payments to the vendor would not count as contributions to BCE for purposes of qualifying as a recipient committee. Nonetheless, should the BCE qualify as a committee, you should seek additional advice regarding the reporting of the payments to the vendor in coordination and at the behest of the committee.

Lastly, we caution that we are not expressing any opinion regarding any previous activity or communications, and we cannot reach a conclusion regarding every possible hypothetical communication. If you would like guidance on additional communications, other than the two examples provided, we would recommend you provide copies of planned communications and request further advice.

BCE Activities Limiting Those of Members

You have asked whether members of BCE may engage in activities such as working for candidates or donating to candidates in the upcoming elections independent of BCE both if BCE qualifies as a committee or remains an informal unincorporated group of residents that does not qualify as a committee. Although the facts provided here are too hypothetical for us to provide a thorough analysis on what members of BCE are allowed to engage in, we have previously advised that when a member of an organization which also qualifies as a committee renders volunteer personal services to a candidate, that member's volunteer services do not transform into a contribution to the candidate by the organization so long as the member is not involved in the activities of the organization's political action committee. (*Davis Advice Letter, No. I-90-173.*) Thus, should BCE engage in activity that qualifies itself as a committee, we suggest seeking additional advice on this matter.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Katelyn L. Baeta-Orick
Counsel, Legal Division

KBO:aja