

October 30, 2020

Via Email to cody.sibley@portlandoregon.gov

Cody Sibley
Elections Coordinator
1221 SW 4th Avenue, Room 310
Portland, OR 97204

Re: Complaint No. 2020-47-TW

Dear Mr. Sibley:

This firm represents Friends of Ted Wheeler (the “Campaign”). The Campaign submits this response to Complaint No. 2020-47-TW. The Campaign received a loan from Ted Wheeler, a candidate for Mayor of Portland, of \$150,000. (See enclosed loan agreement). As the Auditor has already recognized, the provisions of the Portland City Code and Charter that purport to prohibit loan balances from candidates of more than \$5,000, Portland City Code 2.10.010(B)(3) and Charter § 3-301(b)(3), are unconstitutional under the First Amendment to the United States Constitution. As such, Mayor Wheeler’s loan to his campaign was proper and legal. Complaint No. 2020-47-TW should be dismissed.

In *Buckley v. Valeo*, 424 U.S. 1, 54 (1976), the United States Supreme Court held that “the First Amendment simply cannot tolerate [restrictions] upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy.” Therefore, a “restriction on a candidate’s personal expenditures is unconstitutional.” *Id.* This precedent has been repeatedly re-affirmed by the Court for more than 40 years. See *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 738 (2008) (“the right to spend personal funds for campaign speech” is “fundamental”).

The reasoning in *Buckley* applies to loans from a candidate. “As a matter of campaign finance law, therefore, limitations on candidate loans are limitations on campaign

Cody Sibley
October 30, 2020
Page 2

expenditures, and limitations on campaign expenditures are prohibited by *Buckley*.” *Anderson v. Spear*, 356 F.3d 651, 673 (6th Cir. 2004) (holding that a Kentucky law limiting loans from candidates to campaigns to \$50,000 is unconstitutional). Thus, Portland City Code 2.10.010(B)(3) and Charter § 3-301(b)(3) are unconstitutional and unenforceable. Complaint No. 2020-47-TW should be dismissed.

Very truly yours,



Harry B. Wilson

Encl.

cc Bridget Donegan, General Counsel, Office of the Auditor

1065437

LOAN AGREEMENT

This loan agreement is made between Edward T. Wheeler ("Lender") and Friends of Ted Wheeler ("Borrower"), effective on September 18, 2020.

Lender Address:

Edward T. Wheeler
[REDACTED]
Portland, OR 97201


Borrower Address:

Friends of Ted Wheeler
3321 SE 20th Avenue
Portland, OR 97202

Lender agrees to lend \$150,000 to Borrower and Borrower agrees to re-pay \$150,000 to Lender when funds are available, as an interest rate of 0%.

IT IS SO AGREED:


Edward T. Wheeler


Jef Green, Treasurer
Friends of Ted Wheeler

PROMISSORY NOTE: