

CITY OF AUSTIN ETHICS REVIEW COMMISSION

MARK LITTLEFIELD,
Complainant

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Complaint No. 20201007

v.

PECK YOUNG, VOICES OF AUSTIN
Respondent

ORDER ON FINAL HEARING

I. PROCEDURAL HISTORY

On October 7, 2020, Mark Littlefield (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) two sworn complaints against Peck Young, Voices of Austin (“Respondent”). The City Clerk’s Office promptly sent a copy of the complaints and a notice of filing to the City Attorney, the Chair of the Ethics Review Commission (“the Commission”), Complainant, and Respondent.

The first complaint / allegation (“Complaint 1”) alleged that: (1) on or about September 26, 2020, Voices of Austin, a 501(c)(4) organization paid for an automated phone call to Austin voters and failed to comply with Austin City Code Section 2-2-33, which required a disclosure statement of the names of the five largest contributors. The second complaint / allegation (“Complaint 2”) alleged that on October 1, 2020 or on October 2, 2020, Voices of Austin, a 501(c)(4) organization “sent an email with a PDF of their ‘latest mailer’ to Austin voters”, and that Voices of Austin failed to comply with City Code Section 2-2-33 by not including a disclosure statement with the names of the five largest contributors.

On November 2, 2020, a notice of Preliminary Hearing was issued, setting the hearing for November 18, 2020. Attorney Roger Borgelt appeared on behalf of Peck Young and Voices of Austin. Mr. Borgelt stated that he did not receive a copy of both complaints against Peck Young

and requested a postponement of the hearing. The Commission then voted in favor of a postponement of the preliminary hearing on a vote of 9-1 of the members present.

On December 18, 2020, a notice of Preliminary Hearing was issued, setting the preliminary hearing for January 13, 2021.¹ At the January 13, 2021, meeting of the Commission, the preliminary hearing was not completed due to a technology failure of the WebEx virtual meeting platform. Complainant, Mark Littlefield, appeared at the hearing, and Roger Borgelt, Attorney for Peck Young and Voices of Austin, appeared on behalf of Respondent. The parties completed their preliminary hearing presentations on January 13, 2021. However, the remainder of the hearing was interrupted by the WebEx failure, and the Commission was unable to vote to continue the meeting beyond 10:00 p.m. due to the timing of the WebEx failure.²

The preliminary hearing was continued on February 10, 2020.³ Mr. Littlefield appeared, and Mr. Borgelt appeared as attorney for Peck Young and Voices of Austin. The parties were each given an opportunity to make an additional short presentation to the Commission. The Commission questioned the parties and after further discussion, the Commission determined that: (1) in regard to Complaint 1 related to the alleged robo call, the complaint is dismissed because there were not reasonable grounds to believe a violation had occurred; and (2) in regard to Complaint 2, the Commission voted to proceed to a final hearing based on a finding that reasonable grounds exist to believe a violation within the Commission's jurisdiction had occurred. (The Commission's vote on dismissing Complaint 1 was supported by a unanimous vote of the nine

¹ Due to scheduling conflicts of respondent's counsel, the preliminary hearing was not scheduled in December of 2020.

² Pursuant to City Code Section 2-1-44(C), "A board meeting may not extend beyond 10:00 p.m., unless the board votes to continue." The Commission had insufficient time to reconvene the January 13th meeting between the time that the WebEx failure was resolved and 10:00 p.m.

³ The parties were notified by email communication on January 13, 2021 (10:04 p.m.), and by letter delivered by email on February 1, 2021, that the preliminary hearing would be continued on February 10, 2021.

members present; two members were absent. The Commission's vote to proceed to a final hearing on Complaint 2 was supported by a vote of seven members in favor, two members opposed, and two absent.)

On February 24, 2021, a Notice of Final Hearing was issued, which set the final hearing on Complaint 2 for the Commission's March 10, 2021 meeting. The notice advised Complainant and Respondent of the procedures for the final hearing and that City Code requires the Complainant and Respondent to appear at the final hearing. The agenda for the March 10, 2021 meeting of the Commission and Final Hearing in this matter was timely posted on March 5, 2020. Complainant Littlefield appeared at the final hearing. Respondent, Peck Young, submitted a letter advising the Commission that neither he nor legal counsel for Voices of Austin would appear at the final hearing and informing the Commission of respondent's position disputing its jurisdiction over Voices of Austin, a 501(c)(4) organization.

The parties were each afforded an opportunity to present evidence and argument to the Commission.

II. CONCLUSIONS OF LAW

1. Under City Code Section 2-7-26, the Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (Campaign Finance).

2. The Complaint was filed with the City Clerk, was sworn to by Complainant, and identifies the section of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.

3. Under Code Section 2-7-49, the Commission may consider the violation's severity, frequency, or intentional nature, and may draft and publish as a sanction a letter of censure to a respondent found to have violated a provision of Chapter 2-2 (Campaign Finance). Under Code Section 2-7-48(C)(5), a censure is the appropriate sanction when the Commission finds a violation

has been committed intentionally or through disregard of Chapter 2-7, which incorporates violations of Chapter 2-2. *See* City Code Section 2-7-49.

4. City Code Section 2-2-33 (Disclosure Statement Required) states in part:

“(A) Except as provided by subsections (C) and (D), in addition to any other disclosure statement required by law, a person making the expenditure for a political advertisement, electioneering communication, or express advocacy, paid for in whole or in part by a direct campaign expenditure, using funds other than funds in a segregated bank account must conspicuously disclose on the communication the names of the five largest contributors who have each made contributions in an aggregate amount of \$500 or more to the person making the direct campaign expenditure during the current election reporting cycle.

(B) Except as provided by subsections (C) and (D), in addition to any other disclosure statement required by law, a person making the expenditure for a political advertisement, electioneering communication, or express advocacy, paid for in whole or in part by a direct campaign expenditure, using exclusively funds in a segregated bank account must conspicuously disclose on the communication the names of the five largest contributors to the account who have each made contributions in an aggregate amount of \$500 or more to the person making the direct campaign expenditure during the current election reporting cycle.”

“(E) The disclosure required by this section shall be clear and conspicuous:

(1) on printed material, the disclosure shall be printed in sufficient type and size to be clearly readable, in two highly contrasting colors such as dark text on a light background, but in no case smaller than eight point font; and

(2) on other forms of communication, including internet advertisement, television, and radio, the disclosure shall provide the reader, viewer, or listener with actual notice of the disclosure.

(F) A disclosure is not clear and conspicuous if it is difficult to read, view, or hear, or if the placement is easily overlooked.”

5. "Electioneering" is defined in Subsection "B" of City Code Section 2-2-31 (Definitions) as: "ELECTIONEERING COMMUNICATION means a communication that:

- (1) costs, or is part of a series of communications that in the aggregate cost, \$500 or more;
- (2) refers to:
 - (a) a clearly identified candidate by:
 - (i) containing the candidate's name, nickname, or image; or
 - (ii) making an unambiguous reference to the candidate or to the candidate's status as a candidate, challenger, or incumbent; or
 - (b) a clearly identified ballot measure, by containing:
 - (i) the measure's number;
 - (ii) a description of the measure; or
 - (iii) an unambiguous reference to the measure;
- (3) is disseminated by publication, broadcast, Internet, a mass mailing, a telephone bank, or a billboard;
- (4) is made later than the 61st day before the date of an election in which the candidate or the ballot measure appears on the ballot; and
- (5) is capable of reaching at least:
 - (a) 5,000 people eligible to vote in the election; or
 - (b) two percent of the number of registered voters eligible to vote in the election."

6. "Express Advocacy" is defined in Subsection "D" of City Code Section 2-2-31 (Definitions) as "a communication, activity, goods, services, or any other thing of value that refers to a clearly identified candidate or ballot measure that:

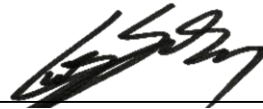
- (1) expressly advocates the election or defeat of the candidate, or passage or defeat of the ballot measure, including using such language as 'Vote for,' 'Re-elect,' 'Cast your ballot against,' 'Cast your ballot for,' 'Defeat,' 'Vote Down,' or 'No More Funds for X,' or
- (2) is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate or ballot measure."

III. DETERMINATION OF THE ETHICS REVIEW COMMISSION

At the conclusion of the final hearing, a motion was made and seconded to find that Voices of Austin had violated City Code Chapter 2-2 (Campaign Finance), Section 2-2-33 (Disclosure Statement Required). The motion passed by a vote of 9-0 by the nine members present at the hearing. (Two members were absent from the hearing.) The Commission then voted, pursuant to City Code Sections 2-7-48(C)(5) and 2-7-49 to issue a letter of censure to Voices of Austin as the appropriate sanction for violation of Code Section 2-2-33. The motion to issue the letter of censure was made and seconded, and passed on a vote of 6-1-2, six members voting in favor of the motion, one member opposing, two members abstaining, and two members absent.

THEREFORE, the Commission orders that Voices of Austin be issued a Letter of Censure for violation of City Code Section 2-2-33 (Disclosure Statement Required) of Chapter 2-2 (Campaign Finance).

ORDERED as of the 10th day of March, 2021.



Luis Soberon
Chair and Presiding Officer
Ethics Review Commission