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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

NEXT UP ACTION FUND, KENYA
JUAREZ & SAMANTHA GLADU,

Petitioners/Plaintiffs,

v.

MARY HULL CABALLERO, Portland City
Auditor & CITY OF PORTLAND

Respondents/Defendants

Case No. _____

PETITION FOR REVIEW
Campaign Regulation Complaint
No. 2020-46-NU
(ORS 183.484)

PETITION FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF (ORS 28.010)

COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY
RELIEF (42 U.S.C. § 1983)

(Not subject to mandatory arbitration)

Fee Authority: ORS 21.135(1), (2)(e)

Petitioners/Plaintiffs allege:

OVERVIEW OF CASE

1.

This case challenges the determination made by the Portland City Auditor on behalf of the City of Portland finding that Next Up Action Fund violated the City’s campaign funding disclosure laws. Portland City Code § 2.10.030. Specifically, Next Up Action Fund is a non-profit § 501(c)(4) social advocacy organization that endorsed city candidates in the recent election and announced those endorsements on its webpage and social media. Although the organization spent a *de minimis* amount of

1 staff time posting the endorsement, the City Auditor concluded that it qualified as a
2 “political committee” under state law (ORS 260.005(18)) as soon as staff expended any
3 time on posting the endorsement. Therefore, it needed to disclose its “dominant
4 contributors” on all communications. A copy of the November 5, 2020 determination
5 letter is attached as Ex. A.

6 2.

7 As alleged below, the City Auditor’s determination is inconsistent with its own
8 code and state law. In addition, the City’s determination violates free speech and
9 association rights protected under both the U.S. and Oregon Constitutions. While
10 funding disclosure laws that modestly burden speech and association rights have been
11 upheld when they serve a clear public interest – for example when significant sums are
12 spent on political advertisements that might obscure the source of funds – they are not
13 when applied to burden communications on which there is nominal (if any)
14 expenditure of money.

15 3.

16 Petitioners/Plaintiffs file this action to set aside the City Auditor’s erroneous
17 decision. In addition, it seeks declaratory and injunctive relief and damages from the
18 City of Portland.

19 **PARTIES**

20 4.

21 Petitioner/Plaintiff, Next Up Action Fund, is a social welfare nonprofit entity,
22 organized under § 501(c)(4) of the Internal Revenue Code. Its legal name is “New
23 Progressive Network.” Next Up Action Fund is affiliated with “Next Up,” a charitable
24 nonprofit entity organized under § 501(c)(3) of the Internal Revenue Code. The Next
25 Up Action Fund’s mission is to “engage the next generation of Oregon’s leaders to build
26 political power and fight for a more just and equitable Oregon.”

27 www.nextuporegon.org/about-us.

1 5.

2 Petitioner/Plaintiff Kenya Juarez is the Chair of the Next Up Action Fund Board
3 of Directors. She supported the decision of Next Up Action Fund to make
4 endorsements in City of Portland candidate races, using a youth-led and democratic
5 process. These endorsements furthered the organization’s mission of giving voice to
6 young people on issues that matter to them, such as racial justice and renter rights.
7 These endorsements further supported the organization’s efforts to engage youth
8 around the power of their vote. Juarez lives in Multnomah County.

9 6.

10 Petitioner/Plaintiff, Samantha Gladu, is the Executive Director of Next Up Action
11 Fund and Next Up. Gladu facilitated the youth-led process to make endorsements in
12 City of Portland candidate races. Gladu lives in Multnomah County.

13 7.

14 Respondent/Defendant, Mary Hull Cabellero is the Portland City Auditor. She is
15 an elected official and, pursuant to the City Charter and Portland City Code, has final
16 policy-making authority for the City of Portland elections laws.

17 8.

18 Respondent/Defendant, City of Portland, is a municipal corporation governed by
19 the Portland City Charter. By citizen initiative in 2018 (Measure 26-200), the Portland
20 City Charter was amended to include campaign funding disclosure requirements.
21 Charter Section 3-303.

22 **JURISDICTION, STANDING AND VENUE**

23 9.

24 This court may have jurisdiction pursuant under ORS 183.484. The charter
25 amendment adopted by citizen initiative, Measure 26-200 (2018), provides that review
26 of a City Auditor decision would be by judicial review “as an order in other than a
27 contested case,” with the City’s administrative rules expressly referencing ORS 183.484

1 (governing appeals of orders in other than a contested case). Portland ARA 13.04.
2 However, because that statute only applies to actions by a state agencies and officers, it
3 is unclear whether the City of Portland can vest the court with jurisdiction. *See, e.g.* ORS
4 183.310(1) (defining “agency” under the Administrative Procedure Act). Accordingly,
5 Petitioners/Plaintiffs are also filing this action as a Writ of Review pursuant to ORS
6 34.030.

7 10.

8 Petitioners/Plaintiffs are persons “adversely affected” by the actions of the City
9 Auditor. Next Up Action Fund is subject to the City Auditor’s determination and faces
10 fines for refusing to comply. Petitioners/Plaintiffs Juarez and Gladu are leaders in the
11 organization who seek to lawfully engage in activities designed to promote youth civic
12 engagement and voting. Because they have a legally recognized interest in the outcome
13 of this dispute, greater than the “abstract interest” of an Oregon resident, they have
14 standing to bring this action under ORS 28.010 and ORS 28.130.

15 11.

16 Venue is proper in Multnomah County because it is the county where the City of
17 Portland is located and where the Portland City Auditor maintains an office and makes
18 decisions.

19

20 12.

21 The determination challenged in this action was issued on November 5, 2020.
22 This action is timely filed pursuant to Portland City Code § 2.10.050(I) (30 days of the
23 challenged action as an “order in other than a contested case”) and pursuant to ORS
24 34.030 (60-day timeline).

25 **STATEMENT OF FACTS**

26 13.

27 To further its overarching mission of engaging youth in the political process,

1 Next Up Action Fund developed a community-based endorsement process for the
2 November 2020 election. Next Up Action Fund endorsed a number of state and local
3 candidates, including Teresa Raiford in the primary as a declared candidate and then
4 in the general election through the write-in campaign. Staff spent a *de minimis* amount
5 of time posting its endorsement of Teresa Raiford (or any other candidate) on its
6 website and social media.

7 14.

8 Next Up Action Fund’s donors did not control or direct the endorsement process
9 and did not give money for the purpose of influencing the election.

10 15.

11 A copy of Next Up Action Fund’s August 31, 2020 endorsement announcement –
12 which also explains why it took the unusual step of supporting a write-in effort – is
13 attached as Ex. B and incorporated by this reference. This statement was primarily
14 drafted by members of the Next Up Action Fund’s Board of Directors, in collaboration
15 with the endorsement committee and staff.

16 16.

17 Other than nominal time spent posting its endorsements, Next Up Action Fund
18 spent no funds and took no other action to support the write-in effort for Teresa
19 Raiford with the general public.

20 17.

21 On October 22, 2020, a complaint was submitted to the City of Portland alleging
22 that Next Up Action Fund was “using organization resources to advocate in this
23 election.” In support, the complaint attached a post and text message originating from
24 “write-in Teresa Raiford” referencing Next Up’s endorsement. Ex. C.

25 18.

26 In a letter dated October 28, 2020, Next Up Action Fund responded, explaining
27 that it did not spend organizational resources on this effort. Ex. D.

1 19.

2 On October 29, 2020, the City Auditor's office requested that Next Up Action
3 Fund provide copies of all bank statements from October 21, 2019 through October 22,
4 2020 by the following day, October 30, 2020. Ex. E.

5 20.

6 By letter dated October 30, 2020 (with a corrected version sent November 2,
7 2020), Next Up Action Fund objected to doing so. Ex. F (Corrected).

8 21.

9 On November 5, 2020, the City Auditor's office asked for confirmation (within
10 three hours of receiving the email) of whether Next Up Action Fund received over
11 \$1,000 from a single contributor within the last year, without regard to whether the
12 contribution was for the purpose of influencing an election.

13 22.

14 Next Up Action Fund objected to the request, but in an effort to be responsive,
15 told the City Auditor's office that it could assume it had funders who contributed over
16 \$1,000 to the § 501(c)(4) organization during the specified time frame. A copy of the
17 email chain is attached as Ex. G.

18 23.

19 On November 5, 2020, the City Auditor issued its determination letter finding
20 that Next Up Action Fund had violated city campaign disclosure rules. Ex. A. The City
21 Auditor concluded that Next Up Action Fund was a "political committee" as of March
22 11, 2020 when it spent staff time posting endorsements, and that it therefore was
23 required to disclose its top five "dominant contributors" on its endorsement
24 communications. As follow up, the City Auditor required Next Up Action Fund to
25 disclose its "top five dominant contributors" by November 20, 2020 or face significant
26 fines.

27 ///

1 24.

2 On November 5, 2020, the City Auditor issued a press release announcing it
3 determination that Next Up Action Fund had violated the city’s campaign finance and
4 disclosure laws. Ex. H.

5 25.

6 On November 17, 2020, Next Up Action Fund requested reconsideration of the
7 City Auditor’s determination, as well as an extension of time to comply with the
8 disclosure requirements. That letter sets out in detail why the City Auditor’s
9 determination is erroneous. Ex. I.

10 26.

11 By email dated November 18, 2020, the City Auditor denied both requests.
12 However, with further clarification, the City Auditor on November 19, 2020 extended
13 the deadline for disclosing donors until after the appeal deadline ran. Ex. J.

14 27.

15 During this election cycle, various nonprofit organizations have announced their
16 endorsements of City of Portland candidates on their websites and social media,
17 without including donor information.

18 28.

19 Petitioners/Plaintiffs have been harmed as a result of the City Auditor’s
20 determination. The reputation of Next Up Action Fund and named
21 Petitioners/Plaintiffs has been damaged as a result of the City Auditor’s determination
22 and public announcement. More fundamentally, the City Auditor’s decision has chilled
23 Petitioners/Plaintiffs in the exercise of protected speech.

24 ///

25 ///

26 ///

27 ///

1 **FIRST CLAIM FOR RELIEF**

2 **JUDICIAL REVIEW OF AN ORDER IN OTHER THAN A CONTESTED CASE**

3 29.

4 Petitioners/Plaintiffs reallege and incorporate paragraphs 1 through 29 as if
5 alleged herein.

6 30.

7 If the court determines that its review is pursuant to ORS 183.484, it should
8 reverse the City Auditor’s November 5, 2020 determination on the following grounds:

9 (a) The City Auditor acted outside the range of discretion delegated to her under
10 Portland City Code, Chapter 2.10. ORS 183.484(5)(b)(A);

11 (b) The City Auditor’s determination is inconsistent with the PCC Chapter 2.10
12 generally and PCC §2.10.030 specifically. ORS 183.484(5)(b)(B);

13 (c) The City Auditor’s decision is inconsistent with state campaign finance laws,
14 including but not limited to ORS 260.005(18), and 2020 Secretary of State Campaign
15 Finance Manual, adopted as rule by OAR 165-012-0005. ORS 183.484(5)(b)(C); and

16 (d) The City Auditor’s determination violates the free speech and association
17 protections set out in Article 1, section 8 of the Oregon Constitution and the First
18 Amendment to the U.S. Constitution. ORS 184.484(5)(c).

19 **SECOND CLAIM FOR RELIEF**

20 **PETITION FOR DECLARATORY JUDGMENT AND**

21 **INJUNCTIVE RELIEF**

22 31.

23 Plaintiffs reallege and incorporate paragraphs 1 through 28 as if alleged herein.

24 32.

25 The City Auditor erred when she concluded that Next Up Action Fund was a
26 “political committee” under ORS 260.005(18) that was required to disclose its
27 “dominant contributors” on communications announcing its endorsement decisions.

1 With the exception of charitable nonprofits organized under §501(c)(3) of the Internal
2 Revenue Code, nonprofit organizations may – and often do -- endorse and provide
3 support to candidates (either through contributions or independent expenditures) so
4 long as that is not the primary purpose of the organization. This political activity does
5 not convert the organization into a “political committee” under state law, unless the
6 organization raises money for the purpose of influencing the election. ORS 260.005(18).

7 33.

8 The City Auditor’s interpretation of the City’s disclosure laws to require Next Up
9 Action Fund to disclose its donors on any communication announcing its endorsement,
10 without regard to the type of communication or amount of money spent on it, renders
11 the City’s disclosure rules unconstitutionally overbroad as applied under both the
12 Oregon and U.S. constitutions. Such an interpretation would impose significant
13 burdens on the free speech and association rights of Next Up Action Fund, its leaders
14 and its supporters when there is no risk of “misleading the electorate.”

15 34.

16 The City of Portland’s disclosure requirements are unconstitutionally vague
17 under both the Oregon and U.S. constitution because they are unclear as to which
18 communications it applies and to whom it applies.

19 35.

20 Pursuant to ORS 28.010, Plaintiffs are entitled to the following relief:

21 (1) A declaration that Next Up Action Fund is not a “political committee” and
22 has no obligation to disclose its donors on communications announcing its endorsement
23 of city candidates.

24 (2) A declaration that the City Auditor’s interpretation of the Portland City
25 Code to require an entity to disclose its donors on all communications announcing its
26 endorsement of a city candidate – without evidence that it is a paid communication
27 costing more than \$1,000 violates Article 1, section 8 of the Oregon Constitution.

1 (3) A declaration that the City Auditor’s interpretation of the Portland City
2 Code to require an entity to disclose its donors on all communications announcing its
3 endorsement of a city candidate – without evidence that it is a paid communication
4 costing more than \$1,000 -- violates the First Amendment of the U.S. Constitution.

5 (4) An order setting aside the determination the City Auditor’s November 5,
6 2020 determination letter;

7 (5) An order enjoining the City Auditor from applying the City Code in a
8 manner that treats all communications expressing support or opposition to a candidate
9 for city office as a communication that must disclose an organization’s donors,
10 regardless of the amount of money spent on that communication;

11 (6) An order enjoining the City Auditor from requiring donor disclosures on
12 communications, unless it is paid communication cost more than \$1,000; and

13 (7) An order directing the City Auditor to issue a press release announcing
14 that Next Up Action Fund was not a political committee and that it had not violated the
15 City’s campaign funding disclosure laws.

16 **THIRD CLAIM FOR RELIEF**

17 **42 U.S.C. § 1983 and § 1988**

18 36.

19 Petitioners/Plaintiffs reallege and incorporate paragraphs 1 through 28 as if
20 alleged herein.

21 37.

22 Respondent’s interpretation and application of the Portland City Code to Next
23 Up Action Fund’s endorsement communications imposes significant burdens on core
24 political speech in a manner that does not survive exacting scrutiny under the First
25 Amendment to the Constitution of the United States. While disclosure of secondary
26 funding sources for political advertisements may withstand scrutiny because of the
27 public’s interest in knowing the source of funding and not being misled by “creative but

1 misleading” organizational names, those justifications fall away when applied to
2 communications simply announcing an organization’s endorsement of a candidate.

3 38.

4 By finding that Petitioner Next Up Action Fund has violated the City’s campaign
5 funding disclosure laws and announcing that determination to the public in a press
6 release, Next Up Action Fund, Juarez and Gladu have suffered damage to their
7 reputation and been chilled in the exercise of protected speech rights.

8 39.

9 Pursuant to 42 U.S.C. § 1983, Petitioners/Plaintiffs are entitled to a declaratory
10 and injunctive relief and award of damages in the amount of \$1,000 due to the City
11 Auditor’s violation of their free speech and association rights protected under the First
12 Amendment to the U.S. Constitution.

13 40.

14 Petitioners/Plaintiffs are entitled to an award of reasonable attorney fees and
15 costs incurred to protect their constitutional civil rights pursuant to 42 U.S.C. § 1988.

16 **PRAYER**

17 41.

18 WHEREFORE, Plaintiffs pray that judgment be entered against
19 Respondents/Defendants City Auditor and City of Portland as follows:

20 (a) An order setting aside the City Auditor’s determination pursuant to ORS
21 183.484(5);

22 (b) A declaration that Next Up Action Fund did not violate City of Portland
23 campaign funding disclosure rules because it is not a “political committee”
24 and has no obligation to disclose its donors on communications announcing
25 its endorsement of city candidates.

26 (c) A declaration that the Portland City Code does not require persons or entities
27 to disclose the names of donors on communications expressing support or

- 1 opposition for a City of Portland candidate, unless more than \$1,000 was
2 spent on the communication.
- 3 (d) A declaration that the City Auditor’s interpretation of the Portland City Code
4 to require an entity to disclose its donors on all communications announcing
5 its endorsement of a city candidate – without evidence that it is a paid
6 communication costing more than \$1,000 -- violates Article 1, section 8 of the
7 Oregon Constitution.
- 8 (e) A declaration that the City Auditor’s interpretation of the Portland City Code
9 to require an entity to disclose its donors on all communications announcing
10 its endorsement of a city candidate – without evidence that it is a paid
11 communication costing more than \$1,000 -- violates the First Amendment of
12 the U.S. Constitution.
- 13 (f) An order setting aside the City Auditor’s November 5, 2020 determination
14 letter;
- 15 (g) An order enjoining the City Auditor from requiring donor disclosures on
16 communications, unless it is a paid communication costing more than \$1,000;
- 17 (h) An order enjoining the City Auditor from applying the City Code in a
18 manner that treats all communications expressing support or opposition to a
19 candidate for city office as a communication that must include a disclosure
20 statement, regardless of the amount of money spent on that communication;
- 21 (i) An order directing the City Auditor to issue a press release announcing that
22 Next Up Action Fund was not a political committee and that it had not
23 violated the City’s campaign funding disclosure laws.
- 24 (j) A judgment finding that the City Auditor violated 42. U.S.C. §1983 and
25 awarding damages to Petitioners/Plaintiffs in the amount of \$1000;
- 26 (k) A judgment awarding Petitioners/Plaintiffs their reasonable attorney fees and
27 costs incurred to vindicate their constitutional rights pursuant to 42 U.S.C.

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§1988;

(l) Any other relief the court deems just and equitable.

DATED this 7th day of December, 2020.

BENNETT HARTMAN, LLP
s/Margaret Olney _____
Margaret S. Olney, OSB 881359
margaret@bennetthartman.com
Of Attorneys for Petitioners/Plaintiffs

As required by ORS 34.030, I hereby certify that I have examined the record and the City Auditor’s determination in this matter. Based on that examination, I have reasonable grounds, as set forth in this Petition, to seek a Writ of Review as set forth in this Petition, and to seek reversal of the November 5, 2020 decision.

DATED this 7th day of December, 2020.

By: *s/Margaret Olney* _____
Margaret S. Olney, OSB 881359
margaret@bennetthartman.com
Of Attorneys for Petitioners/Plaintiffs



November 5, 2020

Next Up Action Fund
dba Next Up Oregon
333 SE 2nd Ave
Portland, OR 97214

DELIVERED ELECTRONICALLY

samantha@nextuporegon.org

NOTICE OF DETERMINATION

Campaign Regulation Complaint No.: 2020-46-NU

- Letter of Warning and Education -

Dear Next Up Action Fund,

On October 22, 2020, the City of Portland Auditor's Office received the complaint named above, alleging campaign disclosure violations of [Portland City Charter Section 3-303](#) and corresponding [Portland City Code \(PCC\) Section 2.10.030](#). The complaint also alleged a failure to register in the Oregon Elections System for Tracking and Reporting (ORESTAR) in violation of [City Charter Section 3-302](#) and corresponding [PCC 2.10.20](#).

After an investigation, I have identified one violation of City campaign finance regulations. I am issuing Next Up Action Fund this Letter of Warning and Education. The violation results from a failure to disclose required funding information on its communication to voters.

I am issuing this Letter of Warning and Education, pending remedy of disclosure information as specified on page 3, within **ten (10) business days** or by **November 20, 2020**. Failure to provide the disclosure information by the deadline may result in a civil penalty of up to \$3,000 for the violation.

City of Portland
1221 SW 4th Avenue, Room 130, Portland, OR 97204
(503) 823-3546
www.portlandoregon.gov/auditor/elections



Exhibit A
Page 1 of 5

1. No Violation of City ORESTAR Registration Requirements

Next Up Action Fund Did Not Fail to Complete Required ORESTAR Registration

Complaint 2020-46-NU alleged Next Up Action Fund¹ dba Next Up Oregon failed to register itself in ORESTAR despite allegedly receiving contributions and making expenditures in support of candidate Teressa Raiford. City Charter Section 3-302(b) requires an entity to register as a political committee in ORESTAR within three business days of exceeding \$750 in aggregate independent expenditures² to support or oppose a candidate.

Next Up Action Fund stated it did not have contributions or expenditures to report during the time period leading up to issuance of this complaint. However, Next Up Action Fund admitted that on October 25, 2020, after this complaint was issued, it made an in-kind contribution of \$1,233.10 to the Chloe for Portland campaign for staff time and technology.³ However, this in-kind contribution does not qualify as an independent expenditure for purposes of registering as a political committee in ORESTAR.⁴ **Therefore, I find no violation.**

2. Violation of City Funding Disclosure Regulations

Next Up Action Fund Failed to Disclose Required Funding Information on Social Media and Website; Next Up Did Not Fail to Disclose Required Funding Information on Text

This complaint also alleged a lack of required funding disclosures on a text message and other communications alleged to have been sent by Next Up Action Fund.

The text message at issue stated it was from "Emily with the Write in Teressa Raiford Campaign," and included no indication it was from Next Up Action Fund. In its response to this complaint, Next Up Action Fund also denied it sent the text message at issue. The evidence provided supports Next Up Action Fund was not responsible for the text or the text's funding disclosures.

As for the additional communications, [City Charter Section 3-303](#) (Disclosure Provisions) requires funding disclosures for each communication to voters that is related to a City of Portland candidate election. The Auditor's Office finds the following: Next Up Action Fund endorsed City candidates Teressa Raiford and Chloe Eudaly on its website and on social media, as well as opposed mayoral candidate Ted Wheeler on social media by calling for his resignation. Those announcements

¹ Registry Number 1564676-99 in the Oregon Secretary of State Business Registration database reflects Next Up Action Fund is legally registered as New Progressive Network dba Next Up Action Fund.

² For the definition of "independent expenditure," see ORS 260.005(10).

³ Chloe for Portland also reported Next Up Action Fund's \$1,133.10 in-kind contribution for staff time and technology in ORESTAR (See Transaction ID: 3663952).

⁴ See Elections Division, Oregon Secretary of State, [2020 Campaign Finance Manual](#) 13 (Mar. 2020) (adopted by Oregon Administrative Rule 165-012-0005), which specifies that an Independent Expenditure excludes "an expenditure reported as an in-kind contribution by a committee[.]" See also ORS 260.005(18)(b)(A), which excludes expenditures required to be reported by a candidate or political committee. Independent Expenditures also must be expended for a communication in support or opposition to a clearly identified candidate or measure, which is not the case here. See ORS 260.005(10) for definition of "independent expenditure."

qualified as communications to voters. Furthermore, Next Up Action Fund qualifies as an entity⁵ and did disclose itself on those communications.

The Disclosure Provisions also require political committees to additionally disclose dominant contributors on communications to voters. The Auditor's Office finds the following: On March 11, 2020, Next Up Action Fund expended staff time posting an endorsement of City candidates on its website. From the available information, the Auditor's Office finds at that point in time Next Up Action Fund became a political committee.⁶ The next communications to voters included website and Instagram posts, and occurred from March 19, 2020 through August 31, 2020. Therefore, political committee Next Up Action Fund was obligated to disclose any of its top five dominant contributors⁷ that made contributions⁸ from March 11 through August 17, 2020.

When asked for additional information, Next Up Action Fund stated the Auditor's Office could assume Next Up Action Fund had funders that paid more than \$1,000 during the March 11 through August 17, 2020 timeframe. **Therefore, the Auditor's Office finds one violation for failure of Next Up Action Fund to disclose dominant contributor information on its communication to voters.**

3. FOLLOW UP REQUIRED: Original Sources of Campaign Communication Funding

In order to meet the requirements for prominent disclosure and avoid penalties up to \$3,000 per violation, Next Up Action Fund must provide the following information to the Elections Office by 5:00 PM on November 20, 2020:

1. The names of Next Up Action Fund's top five dominant contributors, current to within 10 business days of each of the following communications:
 - March 19, 2020 (Instagram post in support of candidates Candace Avalos and Teresa Raiford)
 - April 16, 2020 (Instagram post in support of candidate Teresa Raiford)
 - April 30, 2020 (Instagram post in support of candidate Candace Avalos)
 - August 31, 2020 (website post in support of candidates Chloe Eudaly and Teresa Raiford)
 - August 31, 2020 (Instagram post in opposition of candidate Ted Wheeler)

⁵ "Entity" is defined as "any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual." [City Charter Section 3-308\(i\)](#).

⁶ "Political committee" includes a "combination of two or more individuals, or a person other than an individual that has...[m]ade an expenditure for the purpose of supporting or opposing a candidate[.]" ORS 260.005(18)(b).

⁷ "Dominant Contributor" is defined as "any Individual or Entity which contributes more than one thousand dollars (\$1,000) during an Election Cycle to a Candidate Committee or Political Committee." [City Charter Section 3-308\(f\)](#).

⁸ "Contribution" includes "[t]he payment, loan, gift...services...or any other thing of value...to or on behalf of [a]...political committee or measure[.]" ORS 260.005(3)(a).

2. For each of the dominant contributors above, the types of businesses from which the dominant contributor has obtained a majority of its income over the previous five years (according to the North American Industry Classification System categories).

City Campaign Regulation Background & Education

City Campaign Regulations

Portland Charter Chapter 3, Article 3 and PCC Chapter 2.10 (collectively, the “City Campaign Regulations” or “regulations”) were passed by voters in November 2018 and are administered and enforced by the City Auditor’s Office. The regulations require certain campaign contributors and their respective sources of income be prominently listed on campaign communications to voters. Provisions regarding campaign disclosures were upheld and have been in effect and enforceable as of September 1, 2019.⁹

City Campaign Regulations require disclosures on communications as follows (in relevant part):

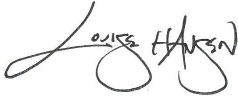
- A.** Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:
 - 1.** The names of any Political Committees and other Entities that have paid to provide or present it; and
 - 2.** For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
 - a.** The name of the Individual or Entity providing the Contribution.
 - b.** The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
 - ...
 - B.** If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.
 - C.** The disclosure shall be current to within ten (10) days of the printing of printed material or within five (5) days of the transmitting of a video or audio communication. PCC 2.10.030.
- A. 1.–2, B., C.

⁹ See *In re. Validation Proceeding to Determine the Legality of City of Portland Charter Chapter 3, Article 3 and Portland City Code Chapter 2.10 Regulating Campaign Finance and Disclosure* (Multnomah County Circuit Court Case No. 19CV06544).

Appeals

Pursuant to PCC 2.10.050 I., an appeal may be filed with the Multnomah County Circuit Court within 30 days of the issuance of a decision.

Sincerely,

A handwritten signature in black ink that reads "Louise Hansen". The signature is written in a cursive style with a large, stylized "L" and "H".

Louise Hansen
City Elections Officer

NEXT UP ACTION FUND'S FALL 2020 ENDORSEMENTS

AUGUST 31, 2020

NEXT UP ACTION FUND

Next Up Action Fund has elected to endorse the following, and our endorsements from the primary carry over into the general election (listed below).

- [Shemia Fagan](#), Secretary of State
- [Carina Miller](#), SD 30
- [Miriam Cummins](#), HD 15
- [Jackie Leung](#), HD 19
- [Maxine Dexter](#), HD 33
- [Nafisa Fai](#), Washington County Commission
- [Nadia Hasan](#), Beaverton City Council

- [Chloe Eudaly, Portland City Council](#)
- [Eddy Morales](#), Mayor of Gresham
- YES on 107, 108, 109, 110, Preschool for All, Real Police Accountability, Metro Transportation Bond, PPS Bond, Portland Parks Bond

Endorsements from May Primary 2020 (Carried over). See Details on candidates below the bullet points.

- [Winsvey Campos](#) for Oregon House District 28
- [Khanh Pham](#) for Oregon House District 46
- [Ricki Ruiz](#) for Oregon House District 50
- [Dacia Grayber](#) for Oregon House District 35
- [Lacey Beaty](#) for Beaverton Mayor
- [Mike Schmidt](#) for Multnomah District Attorney
- [Teresa Raiford](#), Mayor of Portland

Our endorsement committee was 9 people, including board members, students, and volunteers currently involved with the organization. Decisions were made based on questionnaire responses, interview responses, and the overarching goal to amplify and support young people in Oregon to be leaders in their community. We are particularly interested in races that include candidates and campaigns aligned with our values and are under 35 years old, BIPOC (Black, Indigenous, and People of Color), LGBTQIA+, disabled people, womxn, people who have low income, and people from under-served communities. We also only considered endorsements in the following geographic regions: Multnomah County, Clackamas County, Washington County, Marion County, and statewide races.

WHY ENDORSE THE WRITE-IN CAMPAIGN FOR TERESSA RAIFORD?

Next Up Action Fund builds political power with diverse young people to build a more just and equitable Oregon. [Our organization's leadership](#) reflects a diverse group of people which includes many of the young Black and brown people protesting for justice.

Teresa Raiford has inspired many Black, Indigenous, and youth of color (BIPOC) to be the leaders of the write-in campaign; they are heavily involved in organizing, they are driving the

messaging, art, and strategy. The time for action is now, and we will continue to stand with the many people in our base who are on the frontlines and supporting the write-in campaign.

We also chose to endorse Raiford in the May 2020 Primary Election. In her authentic grassroots activism and organizing at Don't Shoot PDX, Teresa is a proven champion to give power back to the people. With a vision of rebuilding Portland through de-colonizing and anti-white supremacy culture, she has showcased that she is the fighter we need as Portland Mayor to tackle the issues of police brutality, the climate crisis, houselessness, renter's rights, and equity pay for living wages. She understands how our marginalized communities are going to be disproportionately affected by these crises and will take the action to include them in the processes instead of leaving them behind which has been done for many generations.

As a long-time C4 organization that runs campaigns, field organizing, and recruits candidates, we understand that a write-in campaign for a general election during a Presidential election year is a major challenge. Our extended community includes people with a variety of positions on write-in campaigns ranging from those who have organized for national write-in campaigns, to people who think that a write-in campaign is a sure way to make the least favored candidate win.

Looking exclusively at the viability and the choices presented to us, instead of the systems that present those choices while hiding radical possibilities, is behavior that bolsters white supremacy, keeps BIPOC out of elected office, and continues the cycle of putting off justice and settling for "good enough." To be clear, people of color are not a monolith and there are Black and brown folks in our organizational leadership who were not eager to make the move to endorse this write-in campaign. This weighed significantly in our organizational decision-making process. We contemplated, in an organizational context, what our goals are in endorsing Write In Teresa Raiford in the 2020 Mayoral race:

the system needs to change.

Electoral politics represent only one form of civic engagement. We can make it easier for Teresa Raiford and other leaders from marginalized communities to run for, and win, elected office by making radical changes to voting and elections in Oregon. As author and organizer, adrienne maree brown says, "All organizing is science fiction. We are bending the future, together into something we have never experienced." With this endorsement, we say that another world and other systems are possible. For example, by [getting rid of our inequitable "commission" form of city government](#) and electing our City Council with [more inclusive "ranked-choice voting."](#) In fact, Portlanders have an awesome opportunity to change how our

city government works and how elections operate by applying to be on the city's Charter Review Commission, a group that meets only once every decade to recommend big-picture changes to Portland's charter (which is like the city's Constitution). Applications are due September 14th and we hosted an event on 8/19/20 which explained what the commission does and how to engage with it. [You can watch a recording here](#). Even if you do not serve on the commission, there will be many opportunities to engage, so stay tuned.

[← Covid-19 Youth Survey](#)

[HOW DO WE VOTE IF WE HAD TO LEAVE OUR HOME? →](#)

NAVIGATION

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Equity Statement
Events
Staff & Board
Leadership Programs
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SOCIAL

NEWSLETTER SIGN UP

Take future action with a single click.
Log in or Sign up for *FastAction*



First Name

Last Name

Postal Code

City

State/Province

OR

Email

email@email.com

Mobile Phone

Remember me so that I can use *FastAction* next time.

Are you interested in volunteering with Next Up? (Optional)

Yes!

SUBMIT

Copyright © 2020 Next Up. All Rights Reserved.

From: [Campaign Transparency](#)
To: [City Elections](#)
Subject: Complaint: Next Up! Action Fund - Write in Teresa Raiford
Date: Thursday, October 22, 2020 2:10:24 AM
Attachments: [NextUp Resources.png](#)
[TextMessage.png](#)

To Whom It May Concern-

Please consider this a formal complaint against Next Up! Action Fund for engaging in election activity in support of the Write In Teresa Raiford campaign without any of the required campaign finance reporting or disclosures.

As previously sent, Next Up! Action Fund has publicly stated that they will be using their organizational resources to advocate in this election. People have been receiving text messages and other forms of voter outreach that have hard costs to create, but there is no reporting or transparency to any of this activity. Next Up! should be reporting their in-kind (or other) contributions to the write in campaign if they are expending resources on this election.

Thank you

12:46



WRITEINTERESSARAIFORD

Posts

Follow

#portlandprotest #portlandoregon
#makeracistsafraidagain #dismantlewhitesupremacy

View all 3 comments

2 days ago



writeinteressaraiford

Portland, Oregon



It also doesn't look like Iannarone will have a clear shot at Wheeler. On Tuesday, Gladu's group, Next Up, announced that it had [endorsed the write-in campaign](#) to elect Teresa Raiford as mayor. Raiford, who started Don't Shoot Portland to more civilian oversight of police, finished third in the primary. Next Up says it mobilized volunteers to send out tens of thousands of texts and phone calls aiding candidates in the primary and plans to do it again in advance of the election.



Liked by **bizzy_bits** and **993 others**

writeinteressaraiford ENDORSEMENT ANNOUNCEMENT

Via @OPB - @nextuporegon has announced their support of the Write-in Teresa Raiford campaign! Thank you so so much!

Over a decade of activism in our community has





+1 (312) 667-3585 >

Text Message
Today 5:58 PM

Hello [REDACTED] This is Emily with the Write in Teressa Raiford Campaign. The election is just a few weeks away, and it's time to elect the mayor we deserve! Can we count on you to write-in Teressa Raiford for Portland Mayor on your ballot? Reply STOP to unsubscribe

STOP

You have successfully been unsubscribed. You will not receive any more messages from this number. Reply START to resubscribe.



Text Message



Samantha Gladu
333 SE 2nd Ave.
Portland, OR 97214
303.667.7264
samantha@nextuporegon.com



October 28, 2020

Office of the City Auditor - Elections Division
Deborah Scroggin, Cody Sibley, Louise Hansen
1221 SW 4th Avenue, Room 310
Portland, OR 97204

Dear Mr. Sibley:

Next Up Action Fund is a 501c4 social welfare organization previously known as the Bus Project. The purpose of Next Up Action Fund is to engage the next generation of Oregon's leaders to build political power and fight for a more just and equitable Oregon. Accordingly, we organize, mobilize voters, and sometimes endorse candidates. This year, we enacted a community based endorsement process which uplifted the voices and decision making power of young people in our organization, in line with these statements:

- Next Up Action Fund has a goal of supporting young Oregonians to be leaders in their community. Therefore, we are prioritizing candidates who are aligned with [our values](#), and who are under 35 years old. We are also prioritizing candidates who identify as: BIPOC (Black, Indigenous, and People of Color), LGBTQIA+, people living with disabilities, womxn, people that are low income, and people from underserved communities regardless of age. We are also only considering endorsements in the following geographic regions: Multnomah County, Clackamas County, Washington County, Marion County, and statewide races. We may proactively decide to engage with candidates who meet these criteria.
- Candidates who were endorsed by Next Up Action Fund in the primary election, are considered endorsed in the general election.

Our endorsement committee, composed of staff, volunteers, and board members elected to endorse Teressa Raiford in both the primary election and the general election. In both instances, we have not contributed resources to the Raiford campaign. Our support has included social media and earned media, and communications to our supporters. Communication with our supporters are not considered campaign contributions. Moreover, the amount of time spent announcing and posting our endorsements was de minimus. Therefore, there were no campaign contributions or

expenditures to report.

Given these facts, we were extremely surprised to receive notice of this anonymous and meritless complaint. While the complainant used a fake email address, the screenshot from @writeinteressaraiford's Instagram has a clear image of James Ofsink's Instagram profile image. Ofsink is the treasurer for Sarah Iannorone's campaign. On September 2nd, 2020, Ofsink sent Next Up a direct message on Twitter stating "I think mayoral endorsement for a candidate whose not even running is a big mistake. But I respect differences of opinion. Can you help me understand how next up is even legally going to spend or report activity supporting this write in campaign?" The screenshot is included below.

This complaint is baseless. As evidence of a violation, Ofsink provided screenshots of earned media - not a reportable activity - and a text message from the campaign that does not identify our organization. We are in the midst of getting out the vote for the most important election of our lives, and are having to spend valuable time and resources to address this complaint. Our organization and our budget are small, and this meritless complaint is eating into our mission and incurring legal fees.

These types of complaints -- baseless and purely political -- threaten our democracy by contributing to the sense that engaging in this work is too risky, which is why so few organizations work in this realm. This complaint is a deliberate threat to our organization and the young people we work alongside, as it alleges wrongdoing when there was none and harms our reputation. It is an insult to young people fighting to be heard. We are gravely disappointed that the complainant would engage this tactic, as it is contradictory to the complainant and the Iannorone campaign's *professed* values. We are deeply concerned about this complaint as it is an instance of weaponizing the elections system to silence political opponents.

In response to elections complaint 2020 46-NU, Next Up Action Fund is providing the following information:

1. **Please describe the types of activities, if any, Next Up Portland has engaged in to promote candidate Teressa Raiford for the 2020 Primary and General Election.**

We have endorsed Teressa Raiford both election cycles through a community led decision making process, have shared the endorsement on our website, social media, communication to our supporters, and in earned media. See: [OPB, Portland Mayor Finds Himself Politically Squeezed By Months of Protests](#)

2. **Please provide an accounting of any expenditures made by Next Up Oregon in relation to the answer(s) provided to Question 1.**

The costs were de minimis -- we did not do paid ads or paid media, or any field organizing on behalf of the candidate.

3. **Please provide an accounting of all expenditures made by Next Up Oregon**

in support or opposition of any City election candidates for the 2020 Primary and General Election.

At the time of this complaint, Next Up Action Fund had spent no significant time on city candidate races. We endorsed candidates and updated our website to reflect those endorsements. We then made a post to social media. I estimate that this activity took no more than one hours of staff time altogether.

We also included our endorsement in a newsletter to our supporters. In addition, we called on Mayor Wheeler to resign, via social media and a press conference. These activities are not deemed a "contribution" and, in any event, also did not involve a significant amount of staff time. Our organization's focus through both election cycles is to engage young people, as Oregon's next generation doing democracy right. An estimation of our expenditures for communications related to our endorsements and the amount dedicated to City candidates is de minimis.

On 10/25/2020 we made an in kind contribution to Chloe for Portland in the amount of \$1,133.10 for staff time and technology, which was reported to her campaign treasurer on 10/28/2020.

4. **Please confirm whether the text message sent by "Emily" (see PDF titled "2020-46-NU Complaint") was sent by Next Up Oregon.**

It was not.

5. **If Next Up Oregon did send the text message, please confirm whether the text message (or a substantially similar text) was sent to more than 500 recipients.**

Not Applicable

Complaint 2020 46-NU is grasping at straws, and we believe it to be motivated by the complainant's disappointment that we did not endorse his preferred candidate for Mayor. This is a poor use of City and Next Up resources, and we request that it be dismissed.

Please do not hesitate to reach out if you have additional questions.

Best Regards,

Samantha Gladu
Executive Director



James Ofsink

James Ofsink @JamesOfsink

Portlander. Civic nerd. PDX Resistance, Portland Forward. Tax Supervising Cmsr representing the people of MultCo. Advocate for equity. Cyclist. Dreamer. he/him

1,255 Following 1,405 Followers

Joined May 2016

I think mayoral endorsement for a candidate whose not even running is a big mistake. But I respect differences of opinion. Can you help me understand how next up is even legally going to spend or report activity supporting this write in campaign?



09/02/20, 8:39 AM



Start a message



Oregon Secretary Of State

secure.sos.state.or.us/orestar/sooDetail.do?cneCommitteeId=17697&OWASP_CSRFTOKEN=ALTJ-07B9-52G8-OM4X-VY3H-WZ9V-5TH0-UQYW

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Welcome to ORESTAR
October 23, 2020 (Version: v4.2.10)

Oregon Secretary of State

Home Business Voting & Elections State Archives Audits

Statement of Organization for Candidate Committee

Committee Information

Name: Friends of Sarah for Portland ID: 17697 Help
 Filing Effective From: 06/14/2020 to present
 Address: 333 SE 2nd Portland, OR 97206
 Filing Type: Amendment
 Campaign Phone: (503)310-7762

Treasurer Information

Name: James Ofsnik
 Mailing Address: 4417 SE Windsor Court Portland, OR 97206
 Work Phone: (503)208-4082
 Home Phone: (503)310-7762
 Fax:
 Email Address: james@ofsnik.today

Candidate Information

Name: Sarah Iannarone
 Election Office: 2020 General Election Mayor, City of Portland
 Party Affiliation: Nonpartisan
 Candidate Address: 333 SE 2nd Ave Portland, OR 97214
 Work Phone:
 Home Phone: (503)310-7762
 Fax:
 Mailing Address: PO Box 96212 Portland, OR 97296
 Email Address: sarah@sarah2020.com
 Occupation: Urban Policy and Best Practices Consultant (not working due to COVID-19)
 Employer: Self Employed

Additional Committee Information

Prior Statement of Organization
 Persons Associated with Committee
 Campaign Finance Activity
 Printer Friendly Version
 Election Activity Log
 History
 Account Summary

Privacy Policy Accessibility Policy Oregon Veterans Oregon.gov

Elections Division • 255 Capitol St NE, Ste 501 • Salem OR 97310
 Phone: 503-966-1518 or 1-866-673-VOTE • Fax: 503-373-7414 • orestar-support.sos@oregon.gov

Type here to search

7:09 PM
10/23/2020

From: [Margaret Olney](#)
To: [Margaret Olney](#)
Subject: FW: PLEASE REAAD: Notice of Campaign Finance Complaint No. 2020-46-NU
Date: Tuesday, December 1, 2020 3:25:17 PM

----- Forwarded message -----

From: **Sibley, Cody** <Cody.Sibley@portlandoregon.gov>
Date: Fri, Oct 23, 2020, 9:08 AM
Subject: Re: PLEASE REAAD: Notice of Campaign Finance Complaint No. 2020-46-NU
To: samantha@nextuporegon.org <samantha@nextuporegon.org>
Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>, Hansen, Louise <Louise.Hansen@portlandoregon.gov>

Hello Next Up Oregon,

No later than **5:00 PM on October 29, 2020**, please respond to this inquiry:

1. Please describe the types of activities, if any, Next Up Portland has engaged in to promote candidate Teresa Raiford for the 2020 Primary and General Election.
2. Please provide an accounting of any expenditures made by Next Up Oregon in relation to the answer(s) provided to Question 1.
3. Please provide an accounting of all expenditures made by Next Up Oregon in support or opposition of any City election candidates for the 2020 Primary and General Election.
4. Please confirm whether the text message sent by "Emily" (see PDF titled "2020-46-NU Complaint") was sent by Next Up Oregon.
5. If Next Up Oregon did send the text message, please confirm whether the text message (or a substantially similar text) was sent to more than 500 recipients.

Sincerely,

Cody Sibley

He/Him/His

Elections Coordinator

cody.sibley@portlandoregon.gov

[Office of the City Auditor](#) | [City of Portland](#)

[Sign up for City Election Notifications](#)

From: City Elections <elections@portlandoregon.gov>
Date: Thursday, October 22, 2020 at 10:19 AM
To: "samantha@nextuporegon.org" <samantha@nextuporegon.org>
Cc: "Scroggin, Deborah" <Deborah.Scroggin@portlandoregon.gov>, "Hansen, Louise" <Louise.Hansen@portlandoregon.gov>
Subject: PLEASE REAAD: Notice of Campaign Finance Complaint No. 2020-46-NU

Hello Samantha Gladu and Next Up Oregon,

Please see the attached notice and related timeline regarding allegations of violations against the City of Portland's campaign disclosure regulations. If you have any questions, please be in touch directly.

Sincerely,

Cody Sibley

cody.sibley@portlandoregon.gov

He/Him/His

Elections Coordinator

Office of the City Auditor | City of Portland



Bennett Hartman

ATTORNEYS AT LAW, LLP

Margaret Olney
direct: 503.546.9634
margaret@bennethartman.com

Robert A. Bennett (1931-2018)
Thomas K. Doyle ^{WA} *
Nelson R. Hall
Gregory A. Hartman
Henry J. Kaplan ^{NY}
Linda J. Larkin †
Aruna A. Masih ^{WA}
Michael J. Morris
Richard B. Myers ^{WA}
Margaret S. Olney ^{WA}

* special counsel
† of counsel

October 30, 2020

Louise.hansen@portlandoregon.gov (via email only)

Louise Hansen, Elections Officer
Office of the City Auditor
City of Portland

Re: City of Portland Campaign Finance Complaint No. 2020-46-NU
CORRECTED (11-2-20)

Dear Ms. Hansen:

This office represents Next Up Action Fund,¹ a 501(c)(4) organization dedicated to engaging youth in the political process. I write to follow up on our telephone conversation this morning regarding your request that Next Up provide a years' worth of bank records by the end-of-day today, as well as your follow up email sent today.

As was probably clear from our call today, your request came as a complete surprise to me and my client; Next Up has neither raised money for the purpose of supporting write-in candidate Teresa Raiford, nor has it spent more than a *de minimus* amount of money on announcing the organization's endorsement of the write-in candidate. That is, the organization put the endorsement on its website and social media feed and communicated with its members. But it did not pay for any advertising, spend money on a new website or engage in any other outreach to the public. Thus, it believed that the complaint (which we believe was filed by someone from the Sarah Iannone campaign), would be dismissed.

I called today to better understand your request. Based on that conversation, I understand that you believe any posting on a website or social media of an organization's endorsement of a candidate constitutes a "communication" under PCC § 3-308(d). Accordingly, the City is entitled to review records regarding all donations to Next Up Action Fund to determine who might be a "dominant" donor or spender (i.e., any entity that gave over \$1000 to Next Up

¹ Technically, the 501(c)(4) organization is Next Up Action Fund (legal name New Progressive Network), and Next Up is the affiliated 501(c)(3). Because the organization is generally known as "Next Up," that was the name used in the complaint. Neither organization has engaged in any reportable activity in support of Teresa Raiford.

Action Fund in the last year). We disagree. Below, I will first outline why we believe the complaint can be dismissed without further investigation. I will then discuss why we do not believe your interpretation of the code makes sense. Finally, I will briefly address our constitutional concerns.

1. Statements of endorsement, without more, are not covered communications.

As a threshold matter, we believe that Next Up Action Fund's activity here does not constitute a reportable contribution or expenditure. Except for charitable 501(c)(3) organizations, non-profits like Next Up Action Fund (as well as unions, business associations, and other social welfare organizations), are free to take positions on issues and to endorse and support candidates. Indeed, this occurs frequently, with endorsements being communicated to members (which are not deemed contributions under PCC § 3-308(j)), included on candidate pages, and often posted on a website. Unless the entity raises money for the purpose of influencing an election or makes expenditures that would need to be reported as either in-kind contributions or independent expenditures, there are no reporting requirements. For internet-based activities, the Secretary of State has generally held that electronic transmissions have no intrinsic value unless the organization pays to produce a website and/or send out the emails, which is not the case here. 2020 State Campaign Finance Manual, p. 48. As Samantha previously reported, the endorsement was simply added to the existing website and social media, with no added expense and nominal staff time to do so. We believe these facts warrant dismissal of the complaint without any further investigation.

2. "Dominant Contributor" and "Dominant Independent Expenditure" are irrelevant where an entity has paid less than \$1000 on the communication.

I also would like to address your statements about the reach of the disclosure law to *any and all* communications expressing support or opposition to a candidate. Although a literal reading of the definition of "communication" might support that view, the remainder of the statutory scheme does not. The disclosure² provisions are set out in PCC § 3-303 of the City Charter, which is titled "Timely Disclosure of *Large* Contributions and Expenditures." (Emphasis added). A review of that section makes clear that the goal is to ensure that the public knows who has sent paid communications. Thus, PCC § 3-308((a)(1) requires the names of political committees and other entities "that have *paid* to provide" the communication.³ The code continues by seeking disclosure on the communication itself of the five largest "dominant

² Generally, requirements that public communications identify donors are referred to "disclaimers" while the term "disclosure" typically refers to campaign finance reporting. However, because the initiative uses the term "disclosure," we will use it here.

³ To the extent the posting of an endorsement is a covered contribution, it is clear that Next Up "paid for" or "provided" the endorsement by virtue of posting the endorsement on its website.

contributors” or “dominant independent spenders” to the political committee or entity. PCC § 3-308(a)(2) and (3). If “any five of the largest Dominant Contributors or Dominant Independent Spenders” is a nonprofit, then the disclosure includes the top three funders. PCC § 3-308.

The terms “dominant contributor” and “dominant independent spender,” in turn, are defined in PCC § 3-308 to only include individuals or entities who spend more than one thousand dollars (\$1,000) during an election cycle for the campaign communication.⁴ In other words, unless an individual or entity – including a nonprofit -- spent more than \$1,000 on a contribution or expenditure, there is nothing further to disclose. And, by corollary, no basis for seeking the non-profit’s donation lists. That is the case here. Next Up Action Fund, at most, spent a *de minimus* amount putting its endorsement on a website and social media. There was nothing hidden about that activity; it was clear that Next Up Action Fund was endorsing Teresa Raiford. There was no *paid* communication at all, let alone communications costing more than \$1000. Thus, seeking Next Up’s financial records or donors is an unnecessary and, as discussed more below, potentially unconstitutional intrusion on the rights of Association and speech for Next Up and its supporters.⁵

3. Requesting and Publishing Donors Could Impermissibly Infringe of the Rights of Association and Free Speech of Next Up and its Members.

In addition to our belief that the City Charter does not support your treatment of Next-Up Action Fund’s public statement of support for Teresa Raiford as a covered communication, I believe your proposed interpretation and request for records is constitutionally suspect. As you may be aware, there has been significant concern and litigation over the years about laws allowing a government entity to obtain information about members and supporters, particularly for 501(c)(4) social welfare organizations that have a limited ability to engaged in candidate-related electoral activity. In addition to general concerns about protecting donor privacy and lists – which may be the lifeblood for nonprofits – many organizations have legitimate concerns about harassment of donors. *See, e.g. NAACP v. Alabama*, 357 US 449 (1958); *Citizens Union of City of New York v. Attorney General of New York*, 408 F Supp 3d 478 (2019). This is not to say that all disclaimer laws are unconstitutional. Disclaimer laws have been upheld where there is a clear public interest relating to campaign finance transparency and modest impact of the on association or speech rights. *See, e.g. e.g. Yamada v. Snipes*, 786 F3d 1182 (9th

⁴ “Dominant contributor” is defined as “any individual or entity which contributes more than one thousand dollars (\$1,000) during an Election Cycle to a Candidate Committee or Political Committee.” PCC § 3-308(f). “Dominant Independent Spender” is defined as “any individual or entity which expends more than one thousand dollars (\$1,000) during an Election Cycle to support or oppose a particular candidate.” PCC § 3-308(g). Emphasis added.

⁵ I am unclear from the Auditor’s website whether investigation materials would be deemed public records. If so, then are concerns are even greater.

Cir. 2015). But to avoid being found unconstitutional, it is essential that the laws actually serve the intended interest and not be interpreted in an overbroad manner.⁶ See, e.g. *Yes on Prob B v. City and County of San Francisco*, 449 F Supp 3d 1049 (2020). I do not believe your proposed interpretation and application of the Charter to Next Up Action Fund's endorsement, or your broad request for donor information would withstand scrutiny. Again, if the proposed interpretation stands, along with your demand for information, any nonprofit organization would be required to disclose its donors to the City and then include those on their website, even where the nonprofit has not made any expenditure or contribution in support of a candidate, other than to make and publish an endorsement. Under these facts, the burden on the organization outweighs the public interest in disclosure.

4. Conclusion

We recognize that the City Auditor's office did not draft the actual charter amendment and that implementation during this highly charged election season is challenging. Next Up does not have anything to hide but feels strongly that the City is overreaching in making this request. Accordingly, we are not providing the requested documents now. However, if you or the City's legal counsel has additional information or support for your request, I would be happy to discuss this matter further.

Sincerely,

BENNETT HARTMAN, LLP



Margaret S. Olney

cc: Samantha Gladu

⁶ The 2019 Oregon Legislature enacted a donor disclosure law intended to improve and public accountability for "dark money" communications. Enrolled House Bill 2983 (2019 Legislative Session). HB 2983 Enrolled, 202 enrolled. That bill took care to only require disclosure when significant sums were spent on a candidate-related communication. And, it excluded from the donor disclosure requirements donations received from affiliated charitable organizations as well as donations that may not be spent on candidate-related political communications. Section 3(5).

From: [Margaret Olney](#)
To: ["Hansen, Louise"](#)
Cc: ["Scroggin, Deborah"](#); ["Sibley, Cody"](#); ["Samantha Gladu"](#)
Subject: RE: Phone call follow up re: Next Up
Date: Monday, November 2, 2020 10:25:00 AM
Attachments: [Next Up Response \(corrected\).pdf](#)

Hello,

Please find attached a corrected version of the letter sent late Friday afternoon. The corrections include:

1. Clarifying that the 501(c)(4) is called "Next Up Action Fund."
2. Correcting the spelling of Teressa Raiford's name in places where it had been misspelled.
3. Changing \$5,000 to \$1,000.
4. Miscellaneous typos.

I would appreciate your using this in your official record (although I know, of course, that you cannot destroy the earlier version).

Thank you for your consideration. Again, I would be happy to discuss this matter further with you or your legal counsel.

Margaret Olney (she/her)
direct: 503.546.9634
margaret@bennetthartman.com

CONFIDENTIALITY NOTICE: This e-mail may contain confidential and privileged information. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning us at the above main number. Do not review, disclose, copy or distribute the message. Thank you.

From: Margaret Olney
Sent: Friday, October 30, 2020 5:02 PM
To: Hansen, Louise <Louise.Hansen@portlandoregon.gov>
Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Sibley, Cody <Cody.Sibley@portlandoregon.gov>; Samantha Gladu <samantha@nextuporegon.org>
Subject: RE: Phone call follow up re: Next Up

Please find attached a letter outlining our concerns with the request for information along with the proposed interpretation of the Charter Amendment. As I state in the letter itself, we recognize that implementation of these Campaign Finance laws is challenging. I respect everyone's efforts to honor the intent of voters and would welcome further conversations if you disagree with my analysis. Next Up has no desire to be obstructionist, but we

honestly believe this request is extremely problematic – for Next Up, and for others in the future.

Margaret Olney (she/her)
direct: 503.546.9634
margaret@bennetthartman.com

CONFIDENTIALITY NOTICE: This e-mail may contain confidential and privileged information. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning us at the above main number. Do not review, disclose, copy or distribute the message. Thank you.

From: Hansen, Louise <Louise.Hansen@portlandoregon.gov>
Sent: Friday, October 30, 2020 1:33 PM
To: Margaret Olney <margaret@bennetthartman.com>
Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Sibley, Cody <Cody.Sibley@portlandoregon.gov>
Subject: Phone call follow up re: Next Up

Dear Ms. Olney:

Thank you for contacting our office regarding the document request sent yesterday.

In follow up to our conversation, I am circling back on your inquiry as to our authority. [City Charter Section 3-305\(g\)](#) states, "The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Article."

In addition, to the extent that our request for an accounting of aggregate contributions of over \$1,000 to Next Up (during the time period specified in our document request) can be better answered with documentation from the third-party vendor you mentioned, then we request that information.

Thank you,
Louise Hansen

Louise Hansen (She/Her/Hers)

Office of the City Auditor | City of Portland

Elections Officer

Working Remotely

C: [503-865-6503](tel:503-865-6503)

E: Louise.Hansen@portlandoregon.gov

W: www.portlandoregon.gov/auditor

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From: [Margaret Olney](#)
To: [Hansen, Louise](#)
Cc: [Scroggin, Deborah](#); [Sibley, Cody](#); [Samantha Gladu](#)
Subject: RE: Immediate Response Requested RE: Next Up
Date: Thursday, November 5, 2020 1:33:00 PM

Ms. Hansen,

For purposes of completing your process, you may assume that Next Up Action Fund has funders who paid more than \$1000 during the time in question. Again, that begs the question of whether any disclosure was required in this case and, if so, how to apply the definition of “independent spenders.”

I am also frustrated that you or someone from the City Attorney’s office is unwilling to engage with me on this question and are demanding a response (within extraordinarily short deadlines) without addressing the underlying issues. On the statewide level, we are often able to talk over concerns and narrow issues, even when we disagree on the outcome. Here, I have raised what I believe are legitimate and serious concerns with the City’s approach, and would welcome further conversation on either the facts or the law.

This kind of conversation is particularly important in a system where an entity’s only recourse is to file an expensive and time consuming legal challenge in court. Next Up and Next Up Action Fund is a vibrant grassroots organization. Its resources are much better spent on its mission of engaging youth voters than this kind of litigation. And, I venture to say, the City and Auditor’s resources are also better spent on something other than litigation.

Margaret Olney (she/her)
direct: 503.546.9634
margaret@bennetthartman.com

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From: Hansen, Louise <Louise.Hansen@portlandoregon.gov>
Sent: Thursday, November 5, 2020 1:07 PM
To: Margaret Olney <margaret@bennetthartman.com>
Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Sibley, Cody <Cody.Sibley@portlandoregon.gov>; Samantha Gladu <samantha@nextuporegon.org>
Subject: Re: Immediate Response Requested RE: Next Up

Dear Ms. Olney:

Your concerns have been noted. However, the information needed is whether or not Next Up Action Fund received over \$1,000 from any single contributor, disregarding whether or not the purpose was to support/oppose a candidate or not, during the timeframe specified.

Thank you,
Louise Hansen

Louise Hansen (She/Her/Hers)

Office of the City Auditor | City of Portland

Elections Officer

Working Remotely

C: [503-865-6503](tel:503-865-6503)

E: Louise.Hansen@portlandoregon.gov

W: www.portlandoregon.gov/auditor

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From: Margaret Olney <margaret@bennetthartman.com>

Sent: Thursday, November 5, 2020 12:48 PM

To: Hansen, Louise <Louise.Hansen@portlandoregon.gov>

Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Sibley, Cody <Cody.Sibley@portlandoregon.gov>; Samantha Gladu <samantha@nextuporegon.org>

Subject: RE: Immediate Response Requested RE: Next Up

Ms. Hansen,

As set forth in our earlier letter, I don't believe the City has any basis for asking whether Next Up Action Fund received \$1,000 from any single contributor in the last year where the organization did not otherwise engage in any reportable expenditure. Moreover, the definition of "Dominant Independent Spender" still requires that the contribution be made "to support or oppose a particular candidate." PCC Section 3-308(g). Next Up Action Fund has not received contributions over \$1000 from individuals or entities in the time period specified for the purpose of supporting or opposing a candidate.

Regarding the complaint more generally, I would appreciate knowing whether the City disagrees with the analysis set out in my earlier letter and why. That is, if the City is saying that simply posting an endorsement on a website and social media (regardless of the cost of doing so) requires disclosure of any individual or entity contributing more than \$1000 during the election cycle (even when those donations are not for the purpose of supporting or opposing a candidates donors), then we have a significant problem.

Margaret Olney (she/her)
direct: 503.546.9634
margaret@bennetthartman.com

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From: Hansen, Louise <Louise.Hansen@portlandoregon.gov>
Sent: Thursday, November 5, 2020 12:31 PM
To: Margaret Olney <margaret@bennetthartman.com>
Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Sibley, Cody <Cody.Sibley@portlandoregon.gov>
Subject: Re: Immediate Response Requested RE: Next Up

Dear Ms. Olney:

My previous email included incorrect dates, and I apologize. What we need is the following by **3:00 PM today:**

- Confirmation of whether or not Next Up Action Fund received over \$1,000 from any single contributor within the date range of March 11, 2020 through August 17, 2020.

Thank you again for your immediate attention to this matter,
Louise Hansen

Louise Hansen (She/Her/Hers)

Office of the City Auditor | City of Portland

Elections Officer

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From: Hansen, Louise

Sent: Thursday, November 5, 2020 11:52 AM

To: margaret@bennethartman.com <margaret@bennethartman.com>

Cc: Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Sibley, Cody <Cody.Sibley@portlandoregon.gov>

Subject: Immediate Response Requested RE: Next Up

Dear Ms. Olney:

By no later than **3:00 PM Today**, please confirm whether or not Next Up Action Fund received over \$1,000 from a single contributor within the date range of October 21, 2019 through October 22, 2020.

Thank you for your immediate attention to this matter,
Louise Hansen

Louise Hansen (She/Her/Hers)

Office of the City Auditor | City of Portland

Elections Officer

Working Remotely

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E: Louise.Hansen@portlandoregon.gov

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From: [Hansen, Louise](#)
To: [City Elections](#)
Subject: Violations of City of Portland Campaign Regulations: Next Up Action Fund
Date: Thursday, November 5, 2020 5:02:34 PM
Attachments: [image.png](#)



FOR IMMEDIATE RELEASE

November 5, 2020

Contacts:

Louise Hansen, City Elections Officer
Louise.Hansen@portlandoregon.gov

Mary Hull Caballero, City Auditor
AuditorHullCaballero@portlandoregon.gov

Violations of City of Portland Campaign Regulations: Next Up Action Fund

The Auditor's Office issued a warning to Next Up Action Fund for failing to provide required communication funding disclosures on website and social media communications to voters from March through August 2020.

City regulations specifically require the Auditor's Office to issue a decision after a material submission waiting period, and to notify the news media when a violation has been found.

When completed, complaints and determination letters, which include sources of funding not previously disclosed, are posted on the [City Elections Office website](#).

The relevant City provisions covering these complaints are [City Charter Chapter 3, Article 3](#) and [Portland City Code Title 2, Chapter 2.10](#).

The City Elections office is open and available at elections@portlandoregon.gov or (503)865-6262.

###



Bennett Hartman

ATTORNEYS AT LAW, LLP

Margaret Olney
direct: 503.546.9634
margaret@bennethartman.com

Robert A. Bennett (1931-2018)
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Linda J. Larkin †
Aruna A. Masih ^{WA}
Michael J. Morris
Richard B. Myers ^{WA}
Margaret S. Olney ^{WA}

* special counsel
† of counsel

November 17, 2020

Via email only Bridget.donegan@portlandOregon.gov

Bridget Donegan, General Counsel
Office of the City Auditor
City of Portland
1221 SW 4th Avenue, Room 130
Portland, OR 97204

Re: City of Portland Campaign Finance Complaint No. 2020-46-NU
REQUEST FOR RECONSIDERATION

Dear Ms. Donegan:

I write to request that your office reconsider its finding that Next Up Action Fund is a “political committee” within the meaning of ORS 260.005(18)(b) and that it was required under PCC 2.10.030 to disclose its top five “dominant contributors.” As we have discussed, we strongly believe the City’s interpretation of both state campaign finance laws and the Portland City Code is wrong and, if allowed to stand, could have a harmful and potentially unconstitutional impact on advocacy organizations.

We are requesting reconsideration in the hope of avoiding unnecessary and expensive litigation. We recognize that the City Auditor’s office has been forced to implement a complicated law in the middle of a hotly contested election cycle (not to mention the pandemic) under exceptionally short timelines, with no time to draft interpretative rules, clear procedures for review, or meaningful guidance to citizens.¹ While your current rules do not expressly allow for reconsideration, we believe your office has the inherent authority to fix an error.

Relatedly, we request that the deadline for providing any donor information be extended until this request for reconsideration has been addressed and the timeline for appeal has run. Currently, your office has demanded that we provide the information by Friday,

¹ An example includes the fact that the code and the City’s administrative rules appear to incorporate by reference review of any findings as an “order in other than a contested case” under the state Administration Procedure Act. ORS 183.484. However, that statute does not apply to City actions which likely means that review would be by a Writ of Review, which has a 60-day timeline.

November 20 or risk significant fines, well before the timeline for legal challenge has passed. This timing is problematic and premature, creating pressure on parties like my client to either disclose information (even when they object to need to do so as a matter of principal) to limit the risk of fine, or file an appeal early.

Regarding the merits, I will not repeat our argument provided in response to the complaint notice or my earlier emails to you. Suffice it to say that an interpretation of the new code to require organizations to disclose their donors on all endorsement announcements would come as a surprise to the myriad of organizations that endorse candidates to further their mission (with or without other campaign support) and would be constitutionally suspect.² I will, however, briefly address the two errors we see in the determination letter.

1. Next Up Action Fund is not a “Political Committee.”

In her letter, the Auditor concludes that Next Up Action Fund is a “political committee” within the meaning of ORS 260.005(18) as of March 11, 2020 because it “expended staff time” posting an endorsement on its website. Letter, p. 3. This is wrong. An organization like Next Up Action Fund can support or oppose a candidate or measure without becoming a “political committee,” so long as it does not raise money for the purpose of influencing an election. This is because the definition of political committee excludes “expenditures” that are otherwise reported, either as a contribution reported by the receiving committee (i.e., a cash or in-kind contribution) or an independent expenditure. See, ORS 260.005(18)(b)(A) and (B) respectively. Stated differently, so long as an entity’s does not have electoral activity as its primary purpose – or raise money to support a specific candidate or campaign, it is not a “political committee.”

Here, Next Up Action Fund’s endorsement in the city races was incidental to its primary mission – to support youth engagement in the election. Indeed, that endorsement activity was not even a reportable independent expenditure because Next Up Action Fund only spent a nominal amount of staff time on the posting and took no other action to support the campaign. See, ORS 260.005(10)(c)(B)(i) and ORS 260.044 (threshold for reporting an independent expenditure is \$250 in a calendar year). But even assuming, *arguendo*, that Next Up Action Fund’s endorsement is a reportable independent expenditure, that does not make Next Up Action Fund a “political committee.” This determination must be corrected.

² For example, the Portland Business Alliance made a number of endorsements for City candidates, which are posted on their website. No disclosures of the organization’s top five contributors is posted with those endorsements – nor need they be. <https://portlandalliance.com/advocacy/policy/2020-09-15/our-endorsements--november-2020-election.html>.

2. Disclosure of "Dominant Contributors" is not Required on Endorsement Announcements

The second and related error made by the Auditor is her determination that, as a "political committee," Next Up Action Fund was required to disclose its five "dominant contributors." There are two problems. First, by definition, a "dominant contributor" is an individual or entity "which contributes more than \$1,000 during an Election Cycle to a Candidate Committee or Political Committee." PCC 2.10.080(F) (Emphasis added). Because Next Up Action Fund is not a political committee, it has no "dominant contributors." Second, to the extent Next Up Action Fund engaged in an "independent expenditure," neither it nor any of its donors meet the definition of "dominant independent spender." Again, by definition, a "Dominant Independent Spender" means "an individual or entity which expends more than \$1000 during an Election Cycle to support or oppose a particular Candidate." PCC 2.10.080(G). Next Up Action Fund did not spend \$1000, and no donors gave money "to support or oppose a particular candidate."

Finally, it is important to note that this interpretation of the code is consistent with the overarching purpose of the City's new campaign disclosure rules – to ensure that voters understand who is paying for "political ads" and not hide behind "nice-sounding" names of organizations. See, www.honest-elections.com, and postings and voter pamphlet statements about Measure 260-200 (2018). The web and social media postings cost Next Up virtually nothing – there was no hidden agenda or big spender; the organization was simply announcing its endorsement. It makes no sense that an organization would have to disclose either its "dominant independent spenders" or "dominant contributors" – both of which are defined to require a \$1000 contribution or expenditure for the political purpose -- where the entity (Next Up Action Fund) did not spend close to \$1000 on the communication to begin with. Doing so would discourage organizations like Next Up Action Fund from making endorsements, even when doing so is entirely legal and furthers the organization's mission.

Thank you for your consideration. Please confirm that the City will not be enforcing the November 20, 2020 deadline for providing the donor information until our challenge to that directive has been resolved. In addition, please do not hesitate to call if you would like to discuss any of these issues further.

Sincerely,

BENNETT HARTMAN, LLP



Margaret S. Olney

From: [Hansen, Louise](#)
To: [Margaret Olney](#)
Cc: [Donegan, Bridget](#); [Scroggin, Deborah](#); [Samantha Gladu](#)
Subject: Re: Response to Request for Reconsideration
Date: Thursday, November 19, 2020 4:31:27 PM

Dear Ms. Olney:

Thank you for your email and for providing additional information regarding your need for an extension. Your request for an extension has been granted. The deadline has now been extended to 5:00 pm on December 7, 2020.

Thank you,
Louise Hansen

Louise Hansen (She/Her/Hers)
Office of the City Auditor | City of Portland
Elections Officer

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C: [503-865-6503](tel:503-865-6503)
E: Louise.Hansen@portlandoregon.gov
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From: Margaret Olney <margaret@bennetthartman.com>
Sent: Thursday, November 19, 2020 4:13 PM
To: Hansen, Louise <Louise.Hansen@portlandoregon.gov>
Cc: Donegan, Bridget <Bridget.Donegan@portlandoregon.gov>; Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>; Samantha Gladu <samantha@nextuporegon.org>
Subject: RE: Response to Request for Reconsideration

Ms. Hansen,

I just got off the phone with Bridget Donegan and she suggested that I reach out directly to you. We are obviously disappointed by your decision and would welcome an opportunity to better understand why you believe our interpretation of the code is incorrect. I understand that may not be possible without litigation, but we continue to be open to additional conversations about these issues.

Of more immediate concern, however, is tomorrow's deadline for providing you with the

names of funders. We intend to challenge the City's determination and directive and do not want to either risk being fined for noncompliance or complying and then being told that our challenge is moot. Accordingly, we request that the deadline for providing that information be extended until after the appeal deadline runs.

Thank you for your consideration.

Margaret Olney (she/her)
direct: 503.546.9634
margaret@bennetthartman.com

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From: Hansen, Louise <Louise.Hansen@portlandoregon.gov>
Sent: Wednesday, November 18, 2020 5:13 PM
To: Margaret Olney <margaret@bennetthartman.com>
Cc: Donegan, Bridget <Bridget.Donegan@portlandoregon.gov>; Scroggin, Deborah <Deborah.Scroggin@portlandoregon.gov>
Subject: Response to Request for Reconsideration

Dear Ms. Olney:

The Auditor's Office is in receipt of the Request for Reconsideration and appreciated the additional legal argument and information included in the request.

After careful consideration, the Auditor's Office declines this request for reconsideration. The Auditor's Office also declines the request for an extension to disclose dominant contributor funding information.

Regards,
Louise Hansen

Louise Hansen (She/Her/Hers)
Office of the City Auditor | City of Portland
Elections Officer

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W: www.portlandoregon.gov/auditor

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