

Roche, Megan

From: Joe Barco [REDACTED]
Sent: Thursday, December 8, 2022 8:22 AM
To: Roche, Megan; Taber, Toni
Subject: Re: Letter from Respondent - BFCPP Agenda for 12/8/2022

[External Email]

Hello,

please see my attached Letter and add to the agenda. Thank you.

Joseph Barco

Mr. Chair and Committee Members:

Thank you for investigating the complaint I filed on November 1, 2022 regarding Ms Smith's campaign's use of social media sites without disclosures. I've read the Hanson Bridgett report and acknowledge their conclusion that Ms Smith's campaign did not violate the campaign disclosure rule cited. I also agree with the report in that this committee should recommend an updating of the municipal code Title 12 to agree with revised online platform requirements. The campaign disclosure rules would be much clearer, and reduce the risk of false accusations if the rules were sufficiently described in the San Jose Municipal Code.

Despite what Ms Smith states in her response, this was not 'exceptionally simple'. Here are some 'exceptionally simple' steps that could have been taken by the campaign:

- It would have been exceptionally simple for Ms Smith to add a hyperlink on her medium.com profile back to her campaign website, which contained the required disclosures, and remove any grey legal areas requiring updated definitions of 'online platforms' or 'online advertisements.' Acknowledging the Hanson Bridgett report, this was not legally required.
- It would have been exceptionally simple for Ms Smith to add a one sentence disclaimer to her posts, claiming authorship and noting that she was a candidate for City Council District 3. Mayor-elect Matt Mahan also used medium.com during his campaign, and ended each post with such a disclaimer.
- It would have been exceptionally simple for Ms Smith and/or her campaign to maintain only one blog on her campaign website. Instead the campaign maintained two separate blogs. One as part of her campaign website, and one on medium.com that posted, according to the report, 33 times in the course of the campaign. The medium.com profile exclusively created blog posts related to the campaign and did not exist for any other purpose, with its first post on February 23, 2022 and most recent post on October 31.

The medium.com blog posts were linked, shared, and tweeted to other social media platforms by her supporters and those on her campaign payroll. They were relinked and shared by anonymous blogs and anonymous social media accounts, and by anonymous accounts commenting on news articles. Each shared post linked back to the medium.com site, with up to 33 posts, each written by the candidate and/or her campaign without any disclosures.

Ms Smith's campaign operated in a legal grey space that allowed her to escape an ethics violation based on current code. The campaign's actions resulted in sufficient evidence for the committee to formally investigate the campaign's activities, review recently enacted advertisement requirements and ever evolving definitions of what constitutes an 'online platform' to ultimately determine that the campaign's actions, or lack thereof, did not run afoul of legal *minimum* requirements. Emphasis here is on the word minimum, and earning a "C" in meeting the legal and ethical requirements in running a campaign for the city of San Jose should be the floor, not the ceiling.

It would have been exceptionally simple for the campaign to have undertaken relatively small, basic, and yes, voluntary actions and avoided a complaint.

As social media platforms will continue to change and evolve, I respectfully ask the committee to "recommend the City consider amending Municipal Code Title 12 to comport with the recently revised online platform disclosure requirements." as suggested by the Hanson Bridgett report.

--Joseph Barco

On Wed, Dec 7, 2022 at 9:56 AM Roche, Megan <megan.roche@sanjoseca.gov> wrote:

Good morning,

Please be advised that a [Letter from the Respondent](#) has been posted to item III.B on the [Board of Fair Campaign and Political Practices agenda for December 8, 2022](#).

Thank you,

Megan Roche
Office of the City Clerk
City of San José
(408) 535-1260

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