

**City of Albuquerque
Board of Ethics and Campaign Practices**

ERIC SHIMAMOTO,

Complainant,

vs.

No. BOE-02-2019

RIO GRANDE FOUNDATION, INC.,

Respondent.

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Joint Stipulation of Facts

The parties to this matter stipulate to the following facts:

1. Eric Shimamoto (the Complainant) is a board member of Olé, Organizers in the Land of Enchantment, an organization that advocated for the passage of Democracy Dollars, a proposition on the City of Albuquerque's November 5, 2019 ballot.
2. Democracy Dollars was a proposed change to the present public financing of Albuquerque Mayor and City Council candidates to provide \$25 vouchers for every eligible city resident to give to qualified, publicly financed candidates.
3. Respondent Rio Grande Foundation, Inc. ("RGF"), is a 501(c)(3) corporation and think tank advocating for individual freedom, limited government, and economic opportunity in New Mexico.
4. On October 23, 2019, Rudy Grande, Jr. (Agency Owner) for RG Mountaintop Consulting, Inc., executed a contract to purchase airtime from radio station KBQI, for the purpose of airing political advertisements regarding issues to be determined by voters in the then upcoming/ongoing local election.
5. That contract recited that "the payment for the . . . broadcast time has been furnished by Rio Grande Foundation," and listed Paul Gessing as the executive officer of that entity.

6. RGF's advertisements dealt with both a school district mill levy increase and the "Democracy Dollars" proposal, which was appearing on the ballot as Proposition 2.

7. The full text of the advertisements read:

LAST FEBRUARY, KIDS WERE LEFT OUT OF THE EQUATION WHEN A-P-S ATTEMPTED TO MAKE YOU PAY FOR THEIR MISMANAGEMENT OF BUILDING BUDGETS THROUGH THE MILL LEVI TAX. VOTERS SAW THROUGH THAT AND SAID, "NO!" A-P-S LEADERS RESPONDED, DO OVER - FORCING A DO OVER VOTE NOW. AND RECENTLY, THE A-P-S SUPERINTENDANT GOT AN ELEVEN PERCENT SALARY INCREASE. WHAT? YEAH, JUST BEFORE ANNOUNCING HER RETIREMENT NEXT YEAR. POOR BUILDING BUDGETING - ADMINISTRATION RAISES. WHAT ABOUT THE KIDS IN THE A-P-S DECLINING ENROLMENT? VOTERS WERE RIGHT IN FEBRUARY SAYING, "NO MORE PROPERTY TAXES!" AGAIN, STAND THE GROUND YOUR HOUSE IS BUILT ON. THAT'S JUST SMART. PAID BY RIO GRANDE FOUNDATION. "DEMOCRACY DOLLARS?" ACTUALLY - "DEMOCRACY DESTRUCTION" - LOADED WITH WASTE, FRAUD AND HURTING OUR KID'S FUTURE! WHAT? THESE TWENTY-FIVE DOLLAR, "VOUCHERS" GIVEN TO EVERY RESIDENT WILL EXPLODE INTO COSTS THAT WILL BE PAID OUT OF YOUR POCKET. NOBODY WANTS ANOTHER WAY TO BREED POLITICAL CORRUPTION. HUH . . . THAT'S JUST SMART.

8. Pursuant to the contract with the radio station, RGF's advertisements were to air from October 25, 2019 through November 5, 2019, which was the date of the local election in Albuquerque.

9. The contract price for the advertisements (including the commission to Mountaintop Consulting, Inc.) was \$793.15 after a 15% agency discount.

10. On October 29, 2019, Katy Duhigg, Albuquerque City Clerk notified RGF of its receipt of a copy of an order confirmation for a \$793.12 radio advertisement.

11. The Albuquerque City Clerk's October 29, 2019 letter provided copies of the Election Code and Rules and Regulations. The City Clerk stated that RGF and R.G. Mountaintop Consulting Inc. "appear" to have made an expenditure in excess of \$250 in aid or opposition to voter approval or disapproval of all or one measures on the ballot, which would trigger the need to register as a Measure Finance Committee ("MFC") and file reports.

12. The City Clerk requested RGF form an MFC, register, report and attend a mandatory meeting based on the expenditure of more than \$250 “in aid or opposition to voter approval or disapproval of all or one measure on the ballot.”
13. Rudy Grande, Jr., for RG Mountaintop Consulting, Inc., received a total of \$500 from RGF and placed the radio advertisements, with additional funding from non-RGF sources.
14. Although RGF desired to spend as much as \$500 on advertisements advocating for the defeat of the Albuquerque Public Schools Mill Levy and the Democracy Dollars proposition, upon receipt of the October 29, 2019 letter from the Albuquerque City Clerk, RGF decided it would take immediate steps to terminate the advertisements rather than subject itself to sanctions, fines, administrative or legal proceedings or the time and expense of registration, reporting and mandatory meetings.
15. On October 31, 2019, RGF directed Rudy Grande, Jr. to instruct the radio station, by email, that the ad buy “MUST BE CANCELLED IMMEDIATELY” and the ads were terminated immediately.
16. As a result, the radio ads only ran nine times per day for five days on October 25, 26, 28, 29 and 30, as well as five times on October 27, and once on October 31, 2019.
17. The radio station also refunded \$336.52 of the original \$793.15, leaving a contract price for the advertisements already aired of \$456.63.
18. RGF also maintains a website at <https://riograndefoundation.org/>, a website at <https://errorsofenchantment.com/>, a Facebook page at <https://www.facebook.com/rgfnm/>, and a twitter account at <http://twitter.com/RioGrandeFndn/>, all of which were used to educate voters and advocate against Proposition 2 and other questions to be decided by voters during the months leading up to the local election.

19. On October 24, 2019, for instance, RGF published a blog post titled “The big, dark money pushing ‘Democracy Dollars’” discussing the most recent financial disclosure statement of the MFC that was advocating for Proposition 2. That post closed with the assertion that Proposition 2 “is a well-funded, coordinated attempt by the big-money supporters of these left-wing groups to take over our local elections. *Early voting is going on now. Be sure to get out and vote.*” (emphasis in original).
20. On that same date, using Twitter and Facebook, RGF published both a tweet and a Facebook post containing the text: “Irony alert, ‘Democracy Dollars’ supporters spending big, out-of-state, ‘dark’ money to promote ‘good gov’t’” and including a link to the above-referenced blog post and an image of a page from the MFC’s most recent disclosure statement.
21. Similarly, on that same date, RGF published a tweet and Facebook post containing the text “[i]t’s not just ‘right-wingers’ who think ‘Democracy Dollars’ are a bad idea. Pete Dinelli opposes them too” and included a link to Pete Dinelli’s blog opposing Proposition 2.
22. These websites and social media accounts address many other issues concerning freedom, individual liberty, and economic opportunity.
23. RGF expended \$50.70 on Facebook ads related to Proposition 2.
24. For at least twenty-one days leading up to the local election, RGF maintained a website dedicated solely to advocating against Proposition 2 at <http://nowaynm.org>.
25. RGF collected donations via that webpage for a “litigation fund” to challenge the Democracy Dollars proposition if it passed. \$10,050 was collected for the litigation fund but no funds were ever collected to pay for any advertising concerning Democracy Dollars. The money expended was from RGF’s general fund to address issues of freedom, limited government and economic opportunities

26. RGF also produces semi-weekly 45-minute podcasts, available at <https://tippingpointnm.com/>, one episode of which, published on September 12, 2019, was devoted entirely to an interview with local attorney Pat Rogers who advocated against Propositions 1 and 2 (Democracy Dollars). At least five other episodes published on October 1, 8, 15, 22, and 29, also advocated against Proposition 2. The Foundation's podcasts also addressed other questions to be decided by the voters on November 5, 2019.
27. RGF has not filed a statement of formation or registered as a measure finance committee with the City Clerk pursuant to Section 6(a) and (c) of the Election Code.
28. RGF has not filed any campaign disclosure statements pursuant to Election Code § 4(c)2.
29. RGF has not submitted any radio or internet communications to the City Clerk pursuant to the Rules and Regulations of the Board of Ethics at § 7(B) and (D)
30. RGF did not attend the mandatory pre-election meeting conducted by this Board on November 1, 2019, or any other pre-election meeting as required for MFCs pursuant to the Rules and Regulations of the Board of Ethics at § 6(M).
31. The Board of Ethics and Campaign Practices held a preliminary hearing in this matter on December 3, 2019 and accepted the complaint.
32. RGF filed an answer in this matter on December 18, 2019, asserting that it planned to spend \$500 on the APS Mill Levy and Democracy Dollar advertisements but after receipt of the City Clerk's letter and the Complaint at issue, RGF took immediate steps to halt the advertisements.
33. RGF asserts that the radio advertisements dealt with two different subjects – the Albuquerque Public Schools Mill Levy and Democracy Dollars. The APS Mill Levy is not subject to MFC regulations and RGF asserts that only the percentage of the advertisements concerning Democracy Dollars is relevant and subject to regulation under the Election Code. RGF asserts

that the text of the advertisements (see ¶7 above) establishes the majority of the advertisements concern the mill levy and not Democracy Dollars. If RGF had simply made two transactions for two separate ads, RGF asserts that there would have been no grounds for complaint and that writing one check for both issues as opposed to two checks provides no basis for requiring MFC registration and sanctions for failing to do so.

34. RGF asserts that the total expenditures for the advertisement was \$456.63 and less than 50% of the advertisement concerned Democracy Dollars.
35. RGF asserts it was not required to register as the RGF expenditure was less than \$250, assuming that the calculation of the \$250 threshold does not include advertisements or portions of advertisements that are not regulated.
36. Two MFCs supported by Olé have registered to support the Democracy Dollars proposal. Combined, they have reported over \$130,000 in cash and over \$500,000 in in-kind contributions. In 2018, one of the MFCs supported by Olé filed only four of the required eight campaign finance reports in that election cycle.
37. In April of 2017, RGF was reprimanded by the Ethics and Campaign Review Board of Santa Fe (“ECRB”) in connection with its advocacy against a ballot proposition appearing on that city’s local election ballot, and the failure to disclose donors or report expenditures.
38. RGF subsequently filed a lawsuit in the United States District Court for the District of New Mexico seeking to enjoin the ECRB from enforcing the portions of the Santa Fe Campaign Code related to ballot questions, and the requirement of disclosing donors. *See Rio Grande Foundation v. City of Santa Fe, et al.*, No. 1:17-cv-00768 (D.N.M. filed Jul. 26, 2017)

39. RGF has also filed litigation before that same court seeking to enjoin the New Mexico Secretary of State from enforcing regulations creating state-level disclosure requirements regarding donors to organizations engaged in issue advocacy.
40. That case is currently pending. *See Rio Grande Foundation v. Oliver*, No. 1:19-cv-01174 (D.N.M. filed Dec. 13, 2019).



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