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July 17, 2014

Don R. "Bud" Hover, Director
Washington State Department of Agriculture
600 University Street, One Union Square
Seattle, Washington 98101-1176

Chris Voigt
Executive Director
Washington State Potato Commission
108 S Interlake Road
Moses Lake, WA 98837

Re: Potato Commission

Dear Directors Hover and Voigt:

I represent the Clint Didier for Congress congressional election campaign currently underway. I am writing you concerning the actions of the Potato Commission.

Recently, the Yakima Herald stated the following:

The state Executive Ethics Board is investigating allegations that a volunteer for Dan Newhouse's congressional campaign used state resources to deliver campaign signs.

The investigation began Friday, one day following a news release from . . .¹ Republican Clint Didier's campaign outlining claims against Chris Voigt, executive director of the state Potato Commission and chairman of Newhouse's Grant County volunteer office.

In an interview Thursday, Voigt admitted to using his Potato Commission email for political communications and using a vehicle from the Potato Commission to deliver signs. But Voigt said he pays the commission for the vehicle and is allowed personal use of it.

¹ Discursive language redacted.

Voigt said the email communications were only done during his personal time and not on the job. Edited emails provided by the Didier campaign show most of Voigt's communications occurring late at night or during common lunch hours.²

State law prohibits using facilities of an agency, directly or indirectly, stationery, postage, machines, and equipment (such as computers and email servers), vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency for the purpose of assisting a campaign for election of a person to an office. Only *the use of the employees* includes a non-working-hours exception. However, the email sent by Newhouse campaigner Voigt on June 20th, used the Potato Commission authority in open solicitation of a Patty Murray event "hosted by Agriculture," and was sent during the workday (see below).

From: cvoigt@potatoes.com

To: schlect@nwhort.org, powers@nwhort.org, bruce@wahort.org,
ctp@wvtraffic.com, kmayer@waclearinghouse.org,
jon@yvqsa.com, halstrom@fairpoint.net, jim@fwaa.org,
aschreib@centurytel.net, jfcattle@kvalley.com,
ed@wafeeders.org, michelle@wawq.org, shanej@agmgt.com,
w sdf@msn.com, ageorge@wahops.org, jfcattle@kvalley.com,
vicky@501consultants.com, DOlsenEcon@aol.com,
dvogel@wadistricts.org, mgempler@growersleague.org,
BillD@taylorshellfish.com

Sent: 6/20/2014 12:38:38 P.M. Pacific Daylight Time

Subj: June 30th Event

Hey Folks,

As we continue to work on the Senator Murray event hosted by Agriculture, can each of you send me a few names and phone numbers that the Senator can make a personal invitation too? She'll likely be calling folks on Tuesday or Wednesday. This would be very helpful in securing more attendance at the event on June 30th. Thanks! Again, flyer is attached announcing the event. If you haven't already, please pass it along to those that you think would attend.

Chris Voigt

The Washington State Potato Commission is an incorporated entity, DUNS number: 020298092, and a state agency created under RCW 15.66, Washington State Agricultural Commodity Commissions, RCW 15.66.090 thereunder, and created pursuant to the acts of the director of

² Mike Faulk, *Ethics board investigating Newhouse volunteer*, July 12, 2014, Yakima Herald-Republic. <http://www.yakimaherald.com/news/latestlocalnews/2331123-8/potato-ethics-and-newhouse-let-the-mudslinging-begin>

agriculture as set forth in Washington Administrative Code 16-516-003 (1956)³. It is our understanding that Director Hover (or his proxy) sits as a board member of the Potato Commission, and that as the Director of WSDA, Director Hover has specific duties therein, including without limitation:

- A duty to oversee the issuance, amendment, or termination of commission marketing orders;
- A duty to supervise and coordinate nominations, appointments, or elections of commission board members; and
- A duty to review and approve the commission's budget and programs.

Chris Voigt, the Executive Director of the Potato Commission, according to the Yakima Herald-Republic, "admitted using his Potato Commission email for political communications and using a vehicle from the Potato Commission to deliver signs." As a result, it appears that Mr. Voigt has violated prohibitions set forth under both state and federal law.

For instance, Public Law 2010 c 204 § 701; 2006 c 215 § 2; 1979 ex.s. c 265 § 2; 1975-'76 2nd ex.s. c 112 § 6; 1973 c 1 § 13 (Initiative Measure No. 276, approved November 7, 1972), codified under RCW 42.17A.555, provides as follows:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or

³ The Washington State Potato Commission is a state agency, created and funded under state law. See *State Agencies, Boards and Commissions* <http://www.access.wa.gov/agency/>. And See, WAC 16-516-003 – **Director's order making marketing order effective and creating a potato commission.**

(1) Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in him by the provisions of the Washington Agricultural Enabling Act, being chapter [15.66](#) RCW, issued on June 6, 1956, that certain marketing order entitled, "Marketing Order for Washington Potatoes Providing for the Creation of a Washington Potato Commission," for the written referendum assent of the affected producers in accordance with RCW [15.66.090](#) and,

(2) Whereas, the director of agriculture has found that more than fifty-one percent of the affected producers have replied to the written referendum within the time specified by the director and that said marketing order for Washington potatoes has been assented to in writing by more than sixty-five percent of the producers who produced more than fifty-one percent by volume of the said potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of potato producers established by the director pursuant to the provisions of RCW [15.66.060](#), which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) **Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said marketing order for Washington potatoes provided for the creation of a Washington potato commission, said order to be effective at 12:01 a.m. July 23, 1956.**

Also see, WAC 16-516-020 – Potato Commission. (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsections (2) and (3) of this section and five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall appoint one member to the commission to represent the director as a voting member of the commission.

opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. [Bold and underline for emphasis].

Furthermore, Public Law 2011 c 60 § 30; 2010 c 185 § 1; 1995 c 397 § 30; 1994 c 154 § 118; codified as RCW 42.52.180 provides as follows:

- (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. **Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section.** Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

Federal Law under the Hatch Act is also applicable. 5 U.S. CODE § 1501 makes federal law applicable to State, State or Local Agencies, and State or local officers or employees in regard to prohibited activities under the Hatch Act. Consider the prohibition set forth in 5 U.S. CODE § 1502- INFLUENCING ELECTIONS; TAKING PART IN POLITICAL CAMPAIGNS; PROHIBITIONS; EXCEPTIONS

- (a) A State or local officer or employee may not- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

The Washington State Potato Commission, having been established under Washington State law, is a state agency under RCW 15.66 and WAC 16-516 who has the authority to, and who has exercised such authority to impose mandatory annual assessments on potato growers. As a consequence, First Amendment Free Speech protections become immediately applicable.

The First Amendment right to freedom of speech has been applied against the states since 1925. *Gitlow v. New York*, 268 U.S. 652, 666, 45 S. Ct. 625, 69 L.Ed. 1138. The right to be free from compelled speech was first upheld against the states in 1943, in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). Compelled funding of speech was found to violate the First Amendment in 1977, in *Abood v. Detroit Bd. Of Educ.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261. The Potato Commission, like the Apple Commission before it, cannot use its funds to promote the campaign of one candidate above another in violation of applicable state and federal law, and such action is likely to be found to be an unconstitutional imposition on the First Amendment rights of Washingtonians who are in disagreement with the political views of Mr. Voigt.

As a consequence, the Clint Didier for Congress congressional campaign now makes demand that the Potato Commission, its Executive Director Chris Voigt, and the Washington State Department of Agriculture, by and through its Director Don R. "Bud" Hover, Director, cease and desist from any further violation of state law in regard to the campaigns of Clint Didier and Dan Newhouse, and that each party subject to this demand make a proclamation on the public record as soon as possible that the Commission will not further violate state and federal law in regard to the campaign of Dan Newhouse.

Time is of the essence in this matter. Please contact me as soon as possible at the address set forth above, by email if possible at attorney@stephenpidgeon.com.

Sincerely,



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