

November 20, 2019

Ms. Katy Duhigg  
City Clerk  
City of Albuquerque  
PO Box 1293  
Albuquerque, NM 87103

Dear Ms. Duhigg:

I am in receipt of several letters (and a complaint filed by Mr. Eric Shimamoto)<sup>1</sup> from your office regarding the 2019 election and the potential necessity for the Rio Grande Foundation to form a Measure Finance Committee (MFC) through the City of Albuquerque. Admittedly, there was some initial confusion in our response to the local media due to the complexity and ever-changing nature of the laws surrounding MFC's, but we are confident that we did not violate the \$250 threshold for filing an MFC. After reading this letter and considering the evidence I think you'll agree.

First and foremost, we spent \$50.70 on Facebook ads relating to the Democracy Dollars issue. Those expenditures are specifically exempted up to \$100 under City of Albuquerque law. I have nonetheless enclosed the receipt from our Facebook campaign.

In terms of the paid media campaign, as you rightly note in your correspondence, the Rio Grande Foundation contracted with RG Mountaintop Consulting, LLC (Rudy Grande). We chose to spend \$500 for radio advertising relating to the November 2019 election. That \$500 represents the only proposed financial outlay for advertising (aside from the aforementioned Facebook ad) by the Foundation relating to Democracy Dollars.

In the advertising campaign created by Mr. Grande, approximately 1/4<sup>th</sup> of the advertising text addressed the Democracy Dollars issue and thus pertained to City of Albuquerque campaign finance law. However, 3/4<sup>ths</sup> of the campaign did not fall under the City's campaign finance law as it was dedicated to the APS mill levy issue which appeared on the same ballot. I have enclosed a copy of the text of the advertisement which clearly reflects this fact.

However, we understand that RG Mountaintop Consulting may have collected additional money from other individuals on the APS and Democracy Dollars issues. Although the money was never provided to the Rio Grande Foundation, the few ads that did run were identified as being from Rio Grande Foundation.

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<sup>1</sup> Mr. Shimamoto (like all of the other leaders in Ole and the supporters of the Democracy Dollar campaign) has the right to spend unlimited dollars on the campaign and the right to file a complaint. This complaint however should not be confused as coming from an unbiased member of the public. The purpose of the complaint is to discourage even tiny efforts to exercise basic First Amendment rights in opposition to his campaign in favor of Democracy Dollars which has already reported more than \$550,000 in donations and expenditures.

Upon receipt of information about claims of possible violations from your office I directed RG Mountaintop to halt the ads as soon as possible. I have great concern about the very modest numbers in the rules and the constitutionality of those limits and reporting obligations and any actual value these registration and reporting rules has to the public. The significant burdens of litigation in terms of time and expense caused the decision to forego the expenditure of any amounts over \$250. The burdens of registration and reporting in order to spend an additional \$250 fighting the \$500,000+ reportedly spent to support Democracy Dollars suggested self-censoring and abandoning 1<sup>st</sup> Amendment rights was the necessary route.

Even if 100% of the dollars spent under Rudy Grande's aegis can be attributed to the Rio Grande Foundation, we remain below the \$250 thresh hold.

As the Oracle document (enclosed indicates) I-Heart Media was paid \$360.37 (793.15-432.79 as indicated on the documentation). 25% of that was dedicated to Democracy Dollars which comes to **\$90.09** and a refund is due the Foundation of 31.25% of \$432.79 for RGF refund amount of \$135.25

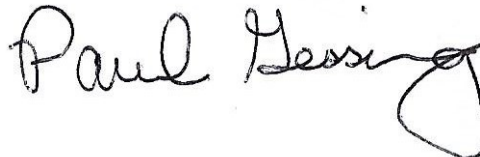
KIVA radio station was paid \$543.69 (25% = **\$135.93**) and Refund due = 31.25% of (\$- \$302.91) for RGF refund amount = (- \$94.66)

Given the decision to halt the ads, the actual expenditures by the Rio Grande Foundation (counting donations we did not receive or solicit) on Democracy Dollars were well below the City's \$250 limit.

One additional point I'd like to address involves the claims related to our website information that more than \$10,000 was raised on the "Democracy Dollars" issue. The website clearly stated that this money would be used to fund legal efforts should "Democracy Dollars" pass. None of these funds were collected or expended in the election for advertising concerning Democracy Dollars. In addition, no funds were collected or expended to advocate for the defeat of Democracy Dollar through the website.

In conclusion, this has been a confusing and frustrating experience. The MFC regulations are clearly written to make engagement on the part of average citizens in local elections more challenging than necessary. We at the Rio Grande Foundation are often more informed on local policy issues than average citizens. It is hard to imagine an average citizen wanting to exercise very modest First Amendment rights and engaging fully in effective issue advocacy under these laws, primarily because of the very modest amounts that trigger the stated obligation to register, report, attend meetings, consult attorneys, etc.

Sincerely,

A handwritten signature in black ink that reads "Paul Gessing". The signature is written in a cursive style with a large, looping final flourish.

Paul J. Gessing  
President  
Rio Grande Foundation