



Portland City Auditor

Campaign Finance &
Lobbying Regulations



October 23, 2024

Portland for All

Portland for All PAC

Delivered Electronically

hello@portlandforall.org

Carmen Rubio

Delivered Electronically

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cr@carmenforportland.com

Notice of Determination

Complaint Nos. 2024-04-CR and 2024-05-PFA

Dear Carmen Rubio, Carmen for Portland, and Portland for All:

I. Introduction and Overview

On September 22, 2024, the Elections Division, within the Auditor's Office, received a complaint alleging that Portland for All (alleged to be a "political action committee"), Carmen Rubio (a candidate for mayor), and Carmen Rubio's campaign committee (Carmen for Portland), violated Portland's campaign finance law — which is enforced by the Auditor's Office. (Ex. 1.) Specifically, the complaint alleged that Portland for All made and disseminated a professionally-produced video for the purpose of promoting Carmen Rubio's candidacy for mayor and that this constituted a campaign finance violation on two grounds: 1) because the video allegedly lacked the disclosures required

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by Portland's campaign finance law, and 2) because the video allegedly constituted an "unreported campaign finance contribution." (Ex. 1 at 4.)¹

After receiving the complaint, the Auditor's Office conducted an investigation, as detailed below. The Auditor's Office has determined that the evidence obtained to date is insufficient to find that a violation of the City's campaign finance law occurred. The Auditor's Office therefore issues a finding of **no violation by Rubio or Portland for All**. Specifically, the Auditor's Office has determined as follows:

1. Portland for All created a video for the purpose of endorsing Rubio for mayor, and the video included clips of Rubio speaking that Portland for All filmed. Portland for All posted this to YouTube and multiple social media channels. However, no funds were spent to produce the endorsement video and therefore, the video was not required to contain a disclosure with information on the entities that paid to provide or present it.
2. The evidence that the Auditor's Office has obtained is insufficient to find that Portland for All made an in-kind contribution to Rubio in the form of the endorsement video or related communications. To be an in-kind contribution, there would need to be coordination between Rubio and Portland for All on either the creation and posting of the video or the social media posts related to the video (or the related email Portland for All sent to its email list). The evidence the Auditor's Office obtained in its investigation is that a volunteer for Portland for All took video footage of Carmen Rubio after an event and that he and another volunteer asked Rubio some impromptu questions with the camera running. At the time the volunteer filmed Rubio, he did not have any discussions with Rubio about any intentions for the footage. After the fact, Portland for All, independent of Rubio, used the footage to create a video endorsing Rubio. Rubio was not involved in compiling the video or any decisions about its content, audience, or dissemination. Under these circumstances, the creation of the video does not establish a "contribution" from Rubio to Portland for All.

While the Auditor's Office finds no violation of City law, the Auditor's Office also believes that, in light of facts unearthed in the investigation, a **referral of Portland for All to the Secretary of State's Office** is appropriate. In conducting its investigation, the Auditor's Office unearthed a pattern of City candidates reporting in-kind contributions from both

¹ The State regulates the reporting of campaign finance contributions. The Auditor's Office enforces the City Charter's limits on amounts and sources of contributions in City candidate elections. The Auditor's Office treats this as a complaint that Portland for All made, and Rubio accepted, a contribution in excess of what is permitted under City Charter. If the complainant meant to allege a reporting violation regulated by the Secretary of State, the Auditor's Office encourages them to make the complaint to the Secretary of State directly.

the Portland for All PAC and the Portland for All 501(c)(4) that have not been reported by Portland for All (in either capacity). In addition, the Auditor's Office's investigation and ORESTAR data suggest that Portland for All may have unwittingly created two separate political committees that may have been required to report contributions and/or expenditures under state law. The Auditor's Office will forward this determination to the Secretary of State to conduct their own independent assessment as to whether State campaign finance laws have been violated by any Portland for All entity.

II. The Auditor's Office conducted a complete investigation of this matter, in which Rubio and Portland for All cooperated.

Under City Charter, the Auditor is required to take written complaints of campaign finance violations from any person. (Charter Section 3-305(c).) Upon receipt of a complaint, the Auditor is required, by law, to do the following: examine the complaint, make any investigation necessary, issue a notification of the complaint to every person who is an object of the complaint, accept written materials supporting or opposing the complaint, and render a decision on the complaint. (Charter Section 3-305(e).)²

The Auditor's Office provided the complaint in this matter to Carmen Rubio and Carmen for Portland (collectively "Rubio") and also to Portland for All on September 25, 2024. Rubio and Portland for All responded on September 30 and October 1, 2024, respectively. (See Exs. 2, 3.) The Auditor's Office also made multiple requests for information to Portland for All and Rubio, which both responded in a timely fashion.

Rubio and Portland for All cooperated with the Auditor's Office's investigation. Carmen Rubio and Carmen Rubio's campaign manager, Terri Waller, sat for interviews. Portland for All made two volunteers available for interviews. In addition, both Rubio and Portland for All provided responses to written requests for information as well as documents requested by the Auditor's Office.

² Typically, Elections Division staff conduct investigations and recommend outcomes to the Auditor, or for this election cycle, the Chief Deputy Auditor, to make the ultimate determination. This determination, however, is issued by Deborah Scroggin, Elections Division Manager, as both Auditor Simone Rede and Chief Deputy Reed Brodersen have recused themselves from the investigation and determination due to potential or perceived conflicts of interest. Auditor Rede is running for reelection and has recused herself from all campaign finance matters. Chief Deputy Brodersen has recused himself as his former partner is involved in the leadership of Portland for All.

III. Factual Background

On August 24, 2024, Portland for All³ posted on YouTube a video endorsing Carmen Rubio for Portland mayor. (Ex. 4.) The video contained footage of Carmen Rubio speaking, spliced together with photos, a quote from Portland for All, background music, and some additional text (including Carmen for Portland and Portland for All's logos). This video will be referred to in this determination as the "Endorsement Video."

Two days later, on August 26, 2024, Portland for All also posted the Endorsement Video to Instagram and Facebook with additional text in the caption endorsing Rubio. (Exs. 5, 6.)

The Instagram post containing the Endorsement Video that was posted by Portland for All's Instagram account tagged two other accounts as "collaborators"—which is a particular function on Instagram described below. The two other "collaborators" identified on the Instagram post were Carmen for Portland's Instagram account and the Instagram account of filmmaker Jonathon DeSoto. (Ex. 7.) There was no disclaimer on the Endorsement Video (or related social media posts) indicating who paid to provide or present it (aside from Portland for All's logo at the end) or Portland for All's dominant contributors.

The Endorsement Video also appeared on Carmen for Portland's Instagram account twice. First, as Carmen for Portland accepted the "collaborator" tag from Portland for All, the August 26, 2024, Portland for All post with the Endorsement Video appeared directly on Carmen for Portland's Instagram account. (Ex. 8.) In addition, Carmen for Portland separately posted the video directly to its Instagram account later in the day on August 26, 2024, with the campaign's own caption content. (Ex. 9.)

The following are the background facts that the Auditor's Office's investigation revealed about the circumstances that led to the creation and posting of the Endorsement Video.

- On or around July 6, 2024, Portland for All invited Rubio to join a panel as part of a series it was hosting called "Policy Talks."
 - The panelists agreed to conduct the event on August 19, 2024. (See Ex. 10 at 3.)
 - The title of the August 19, 2024, Policy Talk event was "County & City Collaboration." (See Ex. 11.)

³ In this Determination, reference to "Portland for All," unless otherwise specified, refers to the 501(c)(4) organization with that name, rather than the entity that has filed on the Oregon Elections System for Tracking and Reporting database ("ORESTAR") as a political committee.

- According to a Portland for All “event brief” for panelists, the event was meant to discuss City and County “distinct and shared responsibilities.” The description of the event that Portland for All drafted included: “We will break down how local governments work independently and together – and what it will take to implement real policy solutions around housing and community care that work for an increasingly diverse region.” (See Ex. 12 at 1; see also Ex. 2 at 1.)
- Rubio attended the Policy Talk event as a panelist on August 19, 2024. (Ex. 2 at 1; Ex. 11.)
 - The Auditor’s Office has seen no evidence that Rubio was given a platform to discuss her candidacy for mayor at the August 19, 2024, Policy Talk event. Instead, her campaign viewed the event as one that Carmen Rubio was attending in her capacity as a City Commissioner, not a mayoral candidate.⁴ (See Rubio Interview at 7:25-7:39; Waller Interview at 3:30-3:45.)
- Prior to the August 19, 2024 “Policy Talk” event, Portland for All informed Carmen Rubio’s City staff, as well as the other two panelists: “Video and photos from the event will be used by Portland for All in our ongoing community engagement efforts. We invite all panelists to join us between 3:30 and 4:30 to capture footage that we will be using for GOTV [i.e., Get Out The Vote].” (Ex. 12 at 1.) Carmen Rubio herself was not on the emails about the event (only her City staff).
 - In addition, on August 12, 2024, Moira Bowman, a board member of Portland for All, asked Carmen Rubio—indirectly through her City staff—as well as the other two panelists:

⁴ The Auditor’s Office did receive an email from Moira Bowman, Board Secretary of Portland for All, to two members of Carmen Rubio’s City staff, stating that “Our hope is to name Comm. Rubio as Portland City Council and Mayoral candidate. But since we are coordinating with her office, I want to make sure that doesn’t violate some type of rules.” (Ex. 10 at 5.) The Auditor’s Office has not seen a reply to this email, but does note that Carmen Rubio was identified on promotional materials as “Portland City Commissioner & Mayoral candidate.” (Ex. 13.) The Auditor’s Office does not view this description of Carmen Rubio as sufficient to transform advertising materials about the Policy Talks Event on “City & County Collaboration” into a contribution to Rubio in her capacity as a candidate. The analysis may have been different if there was evidence that Carmen Rubio had been provided an opportunity to discuss her mayoral platform at the event or Portland for All had used it as an opportunity to endorse or promote Carmen Rubio as a mayoral candidate.

An additional ask, Portland for All is working with Roseto Films to provide high quality video content to drive GOTV [get out the vote]. We invite all panelists to join us as early as possible starting from 3:30 the day of the event so that we might get some film clips amplifying your call to action for the upcoming election. If you can make it early, please let me know. Otherwise please arrive by 5pm so that we can do a sound check and get in some mingling. (Ex. 10 at 8.)

- The evidence obtained in the investigation is that Rubio did not respond to these requests to be videoed.
- Instead, Portland for All reported to the Auditor's Office that "there was no [other] communication with Carmen Rubio or any City staff about the desire to capture footage. And there was no communication at all about the desire to capture video footage with any Rubio campaign representative." (Ex. 14 at 3.)
 - Carmen Rubio told investigators that, prior to the August 19, 2024, Policy Talk event, she had no knowledge that Portland for All was interested in filming her at the event. (Rubio Interview at 10:01-10:07.)
 - Likewise, Terri Waller, Rubio's campaign manager, told investigators that, prior to the August 19, 2024, Policy Talk event she had "absolutely no[]" knowledge of Portland for All's interest in filming Rubio individually at the event. (Waller Interview at 7:45-8:04.)
- Portland for All videoed the August 19, 2024, Policy Talk event. (Ex. 3 at 3.)
- After the conclusion of the event, Jonathon DeSoto, a volunteer for Portland for All, who is a professional filmmaker, approached Carmen Rubio to ask if he could interview her and record it. (See Ex. 2 at 1; Rubio Interview at 7:44-8:00, 11:07-11:33; DeSoto Interview at 5:26-5:41)
- Rubio agreed to be filmed. (Ex. 2 at 1; Rubio Interview at 11:23-11:25.)
 - A portion of what DeSoto filmed at that time is what is used in the Endorsement Video. (See below.)
- At the time the footage was created, neither Rubio nor DeSoto contemplated that the footage may be used as an endorsement video by Portland for All.
 - Rubio told investigators that she did not know what the purpose of the recording was. She clarified that "I'm always asked at events just to share a few thoughts or speak a little bit." (Rubio Interview at 11:36-12:08.)

- Rubio informed investigators that Portland for All never communicated to her what they might be using the footage for. (Rubio Interview at 14:32-15:07.)
- Rubio also did not ask Portland for All about the intentions for the footage or how it would be used. (Rubio Interview at 14:54-15:07; Waller Interview at 11:48-11:57.)
- Likewise, DeSoto confirmed that he and the other Portland for All volunteer present for the recording did not communicate with Carmen Rubio or anyone in her campaign about how the video recording would be used. (DeSoto Interview at 9:34-9:41, 21:27-21:41.)
- DeSoto also told investigators that the idea of recording Carmen Rubio was (at least for him) “kind of impromptu” and arose after he recorded the main Policy Talk event. (DeSoto Interview at 5:10-5:41) He also stated to investigators that, at the time of the recording, he was not sure what the footage would be used for and did not understand that Portland for All may use the footage to make an endorsement video of Carmen Rubio. (DeSoto Interview at 5:04-6:40, 10:03-10:30.) DeSoto also told investigators that at the time of filming Carmen Rubio “I don’t think ... we had any in-depth plans or anything” for the footage. (DeSoto Interview at 13:03-13:40.)
- Moreover, Carmen Rubio and Terri Waller told investigators that neither Carmen Rubio nor the campaign ever suggested Portland for All create an endorsement video. (Rubio Interview at 15:52-16:04; Waller Interview at 12:27-12:41.)
- On the other hand, Diane Goodwin, who volunteered for Portland for All, and who was present with Carmen Rubio and DeSoto at the time the video was recorded, said that the idea that the footage may be used for an endorsement video “was in my back of mind for sure.” However, Goodwin does not recall if she discussed it with DeSoto at the time. (Goodwin Interview at 28:45-29:46.)
 - Goodwin also clarified there had not been any agreement internally at Portland for All at the time that the organization would be making an endorsement video. (Goodwin Interview at 28:45-29:46.)
 - And Goodwin also told investigators that there was no communication to Carmen Rubio or her campaign on August 19, 2024, that the recording might be used as part of an endorsement video. (Goodwin Interview at 30:34-30:52.)

- There is also no evidence that there was any coordination between Rubio and Portland for All about what the content of the footage should consist of. Instead, the evidence is that DeSoto and Goodwin asked some questions and it “wasn’t really super planned out.” (DeSoto Interview at 15:59-16:40.)
 - Carmen Rubio told investigators she does not recall anyone from Portland for All offering suggestions as to “message content or any theme they were going for.” (Rubio Interview at 12:01-13:05.)
 - Rubio was not provided the questions in advance. (Rubio Interview at 14:34-14:43; see also DeSoto Interview at 19:11-19:51; Goodwin Interview at 42:57-43:10.)
 - DeSoto told investigators “we just asked her questions off the cuff.” (DeSoto Interview at 21:55-22:07.)
- On August 20, 2024, the day after the Policy Talk event, Goodwin asked DeSoto: “Would you have time this week to take your interview with Carmen [and] create a 30 to 60-second clip for us as part of our endorsement announcement?” (Ex. 15 at 1.)
- DeSoto agreed. It appears DeSoto worked on creating and finalizing the video over the period of August 20, 2024, through August 23, 2024. (Ex. 3 at 1; Ex. 15.)
- Internal communications from Portland for All’s “Slack” channel showed that Portland for All exercised caution in not coordinating with Carmen Rubio or her campaign about the Endorsement Video while it was under creation.
 - For example, when the organization discussed putting “Carmen’s logo” on the video, DeSoto said: “I’m personally fine with it. As long as it doesn’t break any rules.” (Ex. 15 at 3.) Later, DeSoto asked: “Just to make sure, we can’t find out who Carmen’s photographer is and ask them for images?” Goodwin responded: “Correct, but you can take anything from the public domain.” (Ex. 15 at 6.)
- In addition, the evidence gathered in the investigation is that Rubio did not provide any feedback on the Endorsement Video (other than Waller expressing thanks after it was created), before or after it was posted by Portland for All online. (Rubio Interview at 18:03-18:17; Waller Interview at 15:13-16:17; DeSoto Interview at 25:57-26:41; Goodwin Interview at 47:14-47:24.) Waller told investigators the only thing the campaign ever saw was the final video that Portland for All posted online and that “[w]e had no involvement at all in its preparation.” (Waller Interview at 9:39-9:58.)

- In fact, the evidence gathered in the investigation also shows that Rubio did not learn about the Endorsement Video until August 24, 2024. (See, e.g., Ex. 14 at 2.) The Endorsement Video was complete at the time that Rubio first learned about it. (See Ex. 16 at 11.)
 - On August 24, 2024, Portland for All posted the Endorsement Video to YouTube. (See Ex. 4.)
 - Carmen for Portland provided written responses to the Auditor’s Office’s questions that state: “Carmen for Portland wasn’t made aware of the video and that Portland for All was using it in the context of an endorsement until August 24, when [Terri Waller] received a text message from the Rev. Sara Fischer.” (Ex. 17 at 2.) Waller reiterated this at her interview. (Waller Interview at 14:15-14:32, 16:19-17:05.)
- The August 24, 2024, text message from Fischer, who is a volunteer for Portland for All, to Waller, stated:” Hi, Terri! FYI, Portland for All’s endorsement of Carmen is up on the voter guide section of our website, and on Monday will go out to our email list and on social media. The video came out great!” (Ex. 16 at 11.)
 - Waller responded: “Thanks soooooo much!!! You have been a true friend and ally. Enjoy fully your vacation!!” (Ex. 16 at 11.)
 - At the same time as these two texts were exchanged or very shortly thereafter, Fischer shared the link to the Endorsement Video on YouTube. In other words, the Endorsement Video was already “live” and publicly available at the time Fischer texted Waller (or very shortly thereafter).
 - When interviewed by investigators, Waller said, “I honestly don’t think I knew about [Portland for All having filmed Carmen Rubio] until the video was prepared and presented to us as something that we knew that they were going to be using to announce the endorsement. I honestly cannot remember a single conversation about it until then.” (Waller Interview at 8:34-8:47.)
 - On August 24, 2024, Waller also asked Fischer, via text message, for the “video file so that we can share it out as well on Monday.” (Ex. 16 at 11.)
 - On August 25, 2024, Fischer texted Waller that “I just shared a folder with you with the original assets of the video. Please tag @rosetofilms on Instagram.” (Ex. 16 at 11.)
 - The evidence suggests that Rubio’s team had difficulty accessing the files but appears to have successfully obtained them on August 26, 2024. (Ex. 16 at 1.)

- There is no evidence that Rubio had any involvement in decisions of where, when, and how the Endorsement Video would be posted or publicized by Portland for All. However, as discussed above, Rubio did know that the Endorsement Video would be posted by Portland for All to its social media accounts in advance of Portland for All doing so (and after Portland for All posted the video to YouTube). (See above; see also DeSoto Interview at 29:37-29:45 (saying there was no involvement from Carmen for Portland in the decisions of when and where to post the Endorsement Video).)
- Portland for All posted the Endorsement Video to its Instagram account on August 26, 2024. When Portland for All posted the Endorsement Video, it tagged as “collaborators” both Carmen for Portland and DeSoto’s Instagram account. (Ex. 7.)
 - Collaboration is a relatively new feature on Instagram. As DeSoto explains it, an Instagram user can send a collaboration request to any other Instagram account and it shares it to both accounts’ feeds. (DeSoto Interview at 34:24-35:01.)
 - In addition, the Auditor’s Office investigation revealed that, at least presently, the way the Instagram function works, when the account that is initiating the “collaborative” post puts the post on Instagram and tags “collaborators,” the post immediately posts to the initiating account’s feed, whether or not the “collaborators” accept the collaboration tag. The accounts that are tagged as collaborators will get a notification at that point, and must affirmatively accept the request for collaboration before the post appears on the tagged collaborator’s Instagram feed. In other words, the technology means that when Portland for All posted the Endorsement Video and tagged Carmen for Portland, the post went onto Portland for All’s Instagram feed even before Carmen for Portland’s account accepted the “collaboration” tag. Carmen for Portland would have received a notification, after Portland for All made the post, that Portland for All wanted to “collaborate” on the post. In that sense, the accounts that are identified are not necessarily “collaborating” on anything, but it is a way for one post to show up across multiple users’ accounts.
 - That the technology works in this fashion is reinforced by the contemporaneous Slack chat among Portland for All volunteers. On August 26, 2024, DeSoto told Goodwin: “On insta, you can collaborate with multiple accounts. I don’t know if there’s any rules against it. But it seems like it could be a really good thing to Collaborate with Carmen’s campaign as well?” Goodwin responded: “I did tag and collaborate. I don’t

think it was accepted.” (Ex. 15 at 13.) However, it appears that the Carmen for Portland Instagram page did ultimately accept the “collaboration” request as the post from Portland for All appears on Carmen for Portland’s Instagram feed.

- Finally, there is no evidence that any person or entity spent money on the Endorsement Video. (See Ex. 3 at 1-2; Ex. 2. at 1; Rubio interview at 18:37-19:00; DeSoto interview at 4:13-4:54, 44:41-45:31; Goodwin interview at 1:53-2:07.) Specifically:
 - The filming was done by an unpaid volunteer (DeSoto).
 - The video was created by an unpaid volunteer (DeSoto).
 - The posting to social media was done by an unpaid volunteer (Goodwin).
 - DeSoto was not paid or reimbursed at all by Portland for All.
 - Rubio did not compensate Portland for All or any other person for the video.

IV. DETERMINATION

The Auditor’s Office has determined that the evidence is insufficient to find that a violation of the Portland City Charter’s campaign finance regulations occurred by either Portland for All or by Rubio.

The questions before the Auditor’s Office are whether: 1) Portland for All violated the City’s campaign finance law because Endorsement Video and related communications failed to include required disclaimers about the entity that paid to provide or present it, and 2) whether the Endorsement Video or related communications was an “in kind” contribution from Portland for All to Rubio’s campaign that is not permissible for Portland for All to have made or Rubio to have received under the City’s campaign finance law.

The Auditor’s Office concludes that the answer to both questions is “no” and issues this finding of no violation. However, the conduct that Portland for All engaged in falls short of best practices and the Auditor’s Office uses this opportunity as education on the boundaries an endorsing entity should consider maintaining with a candidate and their candidate committee.

A. City Charter contains both disclaimer requirements and contribution limits.

1. City Charter requires disclaimers on certain communications to voters.

City Charter requires that each “Communication” to voters related to a City candidate election “Prominently Disclose” the true original sources of contributions or independent expenditures used to “fund” the Communication.⁵ A social media post and endorsement video could qualify as a “Communication.”⁶ Among the things that a “Communication” must include are “the names of any Political Committees and other Entities that have paid to provide or present it.”⁷

In addition, the Auditor’s Office Administrative Rule 13.04 exempts from the City’s disclaimer requirements “[c]ommunications that cost less than \$250 to create.”⁸

2. City Charter limits the amounts and sources of candidate contributions.

City Charter also provides that a candidate may receive only the following contributions:

- \$500 — adjusted by inflation to be \$579 for the current election cycle — from any individual or political committee other than a “Small Donor Committee”;
- Any amount from a qualified “Small Donor Committee”; and
- For candidates participating in the Small Donor Elections program (like Carmen Rubio), any amount permitted by the Small Donor Elections program.⁹

There are several forms a “contribution” can take. For purposes of this determination, it suffices to say a “contribution” includes both the payment of money to or on behalf of a candidate and also the furnishing, without equivalent compensation or consideration, of services or any other thing of value to or on behalf of a candidate.¹⁰

⁵ Portland City Charter Section 3-303(a).

⁶ See Charter Section 3-308(d) (defining “Communication”).

⁷ Charter Section 3-303(a)(1).

⁸ Auditor’s Office’s Administrative Rule 13.04(A)(2)(b).

⁹ Charter Sections 3-301, 3-304.

¹⁰ Charter Section 3-308, Intro & (a); Auditor’s Office Administrative Rule 13, Appx. B(A).

B. Portland for All was not required to post information about who paid to present the Endorsement Video or related communications and has therefore not violated the disclaimer provisions in City law.

Portland for All did not violate the City's campaign finance law by failing to prominently disclose on the Endorsement Video or related communications disseminating the video the entity that paid to provide or present the communications and the true original sources of the contributions or expenditures used to fund the communications. This is because no money was expended to create or post the Endorsement Video or related communications, and therefore the requirement to provide information about the original sources of the funds used to create the video or related communications was not triggered.

The Auditor's Office concludes that the Endorsement Video and related social media posts could be communications to voters that are covered by the City's campaign finance law. The Endorsement Video and related posts meet the definition of communications as they are "digital" or "electronic" communications.¹¹ And the Endorsement Video and related posts were plainly related to a City of Portland candidate election.

However, there is no evidence that any money was used to fund the Endorsement Video or Portland for All's related social media posts. Instead, the evidence is that the Endorsement Video was created and posted exclusively by volunteers who received no fee for their time, or even reimbursement of any kind. In addition, the evidence is also that Rubio made no payment to Portland for All for the video. (See above, Section III.)

City Charter only requires reporting on the sources that are "used to fund" communications to voters. Moreover, the Auditor's Office's Administrative Rule 13.04 exempts from the disclaimer requirements communications that cost less than \$250 to create. As the "communications" at issue cost no money to create, there is no obligation for Portland for All to have disclosed the source of any funds used to provide or present the communications. There is therefore no violation of the City's campaign finance law by Portland for All for failing to include information on the source of the funds used to create the Endorsement Video or related social media posts.

¹¹ See Charter Section 3-308(d).

C. The Endorsement Video is not a “contribution” from Portland for All to Rubio, and thus neither Portland for All nor Rubio violated the City’s campaign finance law.

The Auditor’s Office also assessed whether Portland for All made an unlawful contribution to Rubio and Rubio accepted an unlawful contribution from Portland for All. The threshold inquiry for this analysis is whether the Endorsement Video is an (in-kind) contribution from Portland for All to Rubio. The Auditor’s Office concludes that the Endorsement Video does not qualify as a “contribution” from Portland for All to Rubio; therefore, the City’s campaign finance limits on contributions are not triggered.

The definition of “contribution” used in City law is multi-faceted. For purposes of this determination, the Auditor’s Office considers a contribution to be a thing of value that is given at no or reduced cost to a candidate.

A contribution does not need to be in the form of a monetary donation for it to qualify as a contribution under the City’s campaign finance law. A video highlighting and lauding a candidate and encouraging voters to vote for the candidate could certainly qualify as an in-kind contribution to a candidate (even if made by volunteers as in this case). But not all such communications encouraging voters to vote for a candidate are contributions. To the contrary, there is a legal distinction between contributions (which are funds or things of value provided to a candidate) and independent expenditures (which, generally speaking, are funds spent on communications in support of or in opposition to a candidate where the communication is made without coordination with the candidate or an agent of the candidate).¹²

Here, no funds were expended to develop the communication (see above). Therefore, the Endorsement Video is not an independent expenditure. Nonetheless, the concepts developed and employed to determine whether a communication in support of a candidate is an independent expenditure or an in-kind contribution are relevant here to determining whether the Endorsement Video and related social media posts are or are not in-kind contributions.

The City’s definition of “Independent Expenditure” has the meaning set forth at ORS 260.005(10) as of January 1, 2018.¹³ As set forth in Appendix B(E)(2) of the Auditor’s Office Administrative Rule 13, in relevant part, an independent expenditure is an “expenditure by a person for a communication in support of or in opposition to a clearly

¹² Compare Auditor’s Office Administrative Rule 13, Appx. B’s definition of “contribution” with the definition of “independent expenditure.”

¹³ See Charter Section 3-308(intro); see also Auditor’s Office Administrative Rule 13, Appx. B(E) (definition of independent expenditure).

identified candidate ... that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate [.]” In turn, “[m]ade with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate” means: “any arrangement, coordination or direction by the candidate ... prior to the publication, distribution, display or broadcast of the communication.”¹⁴ (Emphasis added.)

While merely persuasive authority, regulations issued by the Federal Elections Commission are helpful in assessing the line between independent speech and a coordinated communication (that is therefore an in-kind contribution). Specifically, 11 CFR § 109.21 defines the types of communications that will be deemed to be “coordinated” between the issuer and the candidate. The types of conduct that the Federal Elections Commission has deemed constitute coordination include where: communications are created, produced, or distributed at the request or suggestion of a candidate; the candidate assents to the suggestion of a person paying for the communication; a candidate is materially involved in decisions such as content of communication, the intended audience of communication, or the means or mode of the communication; or the communication is created or distributed after one or more substantial discussions between the candidate and persons paying for the communication.¹⁵

The Auditor’s Office concludes that there has been no coordination between Portland for All and Rubio sufficient to make the Endorsement Video or the related social media posts and email distribution a coordinated communication, and thus neither the Endorsement Video nor the related communications are an in-kind contribution from Portland for All to Rubio. Instead, they are Portland for All’s constitutionally protected speech, which Rubio then amplified by her own communications.

There is no evidence at all of coordination between Rubio and Portland for All related to the creation of the Endorsement Video. None of the participants in the filming discussed the purpose of filming Rubio, no questions were shared in advance, and the content was not discussed or planned out. In fact, Portland for All lacked any concrete plans for the footage when it was taken. Moreover, the evidence collected in the investigation shows there was no coordination between Portland for All and Rubio during the creation of the Endorsement Video; to the contrary, Portland for All appears to have made concerted efforts to avoid it. Finally, the Endorsement Video was posted on YouTube prior to or, at the very latest, virtually simultaneous with Rubio learning (through Waller)

¹⁴ Auditor’s Office Administrative Rule 13, Appx. B(E)(2)(d).

¹⁵ 11 CFR §109.21(d).

about the video. This is not coordination and the Endorsement Video itself cannot be considered a contribution from Portland for All to Rubio.

A more difficult question is whether Portland for All's social media posts (on Instagram and Facebook) that linked to the Endorsement Video and also contained text endorsing Rubio, as well as email of Portland for All's endorsement message sent to its email list, constitute an in-kind contribution. The Auditor's Office reviewed a text between Portland for All volunteer Sarah Fischer and Carmen for Portland's campaign manager, Terri Waller, where Fischer informs Waller of Portland for All's intention to make these communications, that were plainly intended to benefit Rubio, before they were issued. (See above, Section III.) This walks close to the line of coordination. However, while this type of pre-communication backchanneling is not best practice, the Auditor's Office ultimately concludes that in this specific instance, it does not rise to the level of coordination.

Ultimately, the Auditor's Office concludes there was not coordination on these communications because Waller was not asked for, and did not provide, any feedback, nor did she assent to the posting. Instead, Fischer told Waller what Portland for All had done, and what they planned to do. Had Fischer instead asked Waller for her opinion on where and when to post the Endorsement Video, asked if the campaign was comfortable with the video being circulated, or any other such question, this likely would have tipped the scales to a coordinated communication, and hence a contribution. There is no evidence, however, that this occurred.

Finally, the Auditor's Office does not find the Instagram "collaboration" tag to be indicative of a coordinated communication for campaign finance law purposes. The "collaboration" function, as explained above, is a notification that appears at the time the initiating account (here, Portland for All) posts on Instagram. It is essentially a way to tag an account. In this case, Rubio accepted the collaboration request, but the evidence is that Rubio accepted the request only *after* the communication by Portland for All was posted, and there is no evidence that Rubio and Portland for All coordinated on the "collaboration" tag prior to Portland for All posting on Instagram.

V. Conclusion and Referral to Secretary of State

For the reasons discussed above, the Auditor's Office finds no violation of the City's campaign finance law. However, the Auditor's Office refers issues pertaining to Portland for All to the Secretary of State.

During the course of the Auditor's Office's investigation, it became apparent that Portland for All has tried to draw a distinction between its 501(c)(4) and its recently formed political committee with the same name. The former entity has not created an account on ORESTAR, while the latter has. Candidates have reported in-kind

contributions from both entities, but Portland for All's position is that only the 501(c)(4) has made such in-kind contributions.

The Auditor's Office believes further investigation into whether Portland for All has unintentionally created two political committees, and one has not engaged in proper reporting, may be warranted. In addition, the Auditor's Office also refers the question of whether the Portland for All PAC may have recorded in ORESTAR expenditures that were actually made by the Portland for All 501(c)(4).

The Auditor's Office will forward this determination and the exhibits to the Secretary of State to address as it deems appropriate.

VI. Additional Authority and Appeals

This Notice of Determination is issued pursuant to the Auditor's authority under City Charter Section 3-305 (Implementation and Enforcement). That section sets forth the process for implementation and enforcement of the provisions of City Charter Article 3 (Campaign Finance in Candidate Elections), including the recipients' appeal rights. (See also Auditor's Office Administrative Rule 13.03(C) (requiring in part that decisions on complaints be in writing, identify whether a violation occurred, and state the basis for the decision).)

As described by City Charter Section 3-305(i) and Auditor's Office Administrative Rule ("ARA") [13.03\(D\)\(5\)-\(6\)](#), the complainant and the subjects of the complaint may seek judicial review of the decision in Multnomah County Circuit Court. In addition, the Auditor's Office may, on its own discretion or on request of an interested party, withdraw a decision for reconsideration within the earlier of 30 days from issuance of the decision or until the decision is appealed.

As set out in ARA 13.03(D)(6), decisions of the Auditor's Office can be appealed to the Circuit Court within the following timelines:

- For decisions that are not withdrawn for reconsideration, within 60 days from the issuance of a decision; and
- For decisions that are withdrawn for reconsideration, within 60 days from the issuance of the reissued decision.

Sincerely,



Deborah Scroggin, Elections Division Manager

CC: Complainant