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November 18, 2014

Keith Archer, Ph.D.  
Chief Electoral Officer  
PO Box 9275 Stn Prov Govt  
Victoria BC V8W 9J6

By Email

Dear Sir:

Pursuant to Section 75 of the *Local Elections Campaign Financing Act*, I respectfully ask that you conduct a formal investigation into the unlawful actions on general voting day by Mrs. Diane Brennan, candidate in the 2014 Nanaimo municipal election.

Of the eight candidates declared elected, Mrs. Brennan received the lowest number of votes. She was elected by a margin of 100 votes more than the candidate with the next highest number of votes. She received 4.73% of the total vote compared to the next candidate with 4.65% -- a difference of only **0.08** percentage points.

It is my steadfast belief, based on the evidence in the report attached to this letter, that without her deliberate unlawful actions in the election, Mrs. Brennan would have failed to secure sufficient votes to be elected on November 15, 2014.

I estimate that Mrs. Brennan's **unlawful advertising** on Twitter and Facebook had a total measurable potential reach of **4,304 people**. This number is overwhelmingly material to the election result considering the slim margin by which she secured election.

The unlawful advertising was deliberate, campaign oriented, calculated to reach electors at the most opportune times at voting places<sup>1</sup>, and conducted with demonstrable contempt for the rules.

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<sup>1</sup> Since most social media communications are accessed on mobile devices, the unlawful campaign advertising would have reached many electors while they were either heading to or in voting places.

The evidence shows that Mrs. Brennan demonstrated a pattern of contemptuous disregard for the Province's election rules by repeatedly ignoring them. I show that Mrs. Brennan not only ignored several public cautions from electors on Nov. 15, but she **continued her unlawful actions even after Elections BC contacted her directly.**

While I have been made aware that Elections BC is satisfied that Mrs. Brennan's removal of her Twitter posts (not the Facebook posts) remedied those particular irregularities, I respectfully submit to you that any determination to that effect on the afternoon of Nov. 15 was premature without considering the potential materiality of the unlawful advertising on the final voting results. Additionally, I provide evidence to show that **removal of the Twitter posts was an insufficient remedy** given that the damage had already been done by the time the removals took place.

In any event, I respectfully submit that individual instances of unlawful advertising should not be viewed in isolation. The Twitter campaign advertising should be viewed in conjunction with the Facebook advertising (and any other unlawful activities) in determining materiality to warrant an investigation.

Based on the evidence submitted herewith, I contend that Mrs. Diane Brennan was elected by cheating in a calculated, deliberate manner that demonstrated insubordination and contempt for elections laws and the authority of Elections BC. These actions subverted the democratic process by unfairly tipping the scales in her favor.

While I am submitting evidence only of unlawful campaigning on general voting day, I don't wish to limit the scope of any investigation that you may deem necessary in light of Mrs. Brennan's non-compliance with the rules and evident contempt for Elections BC directives.

Given the very public nature of Mrs. Brennan's actions, I believe that it is imperative for you to thoroughly investigate this matter so that the Nanaimo electorate can have confidence in the fairness of the electoral process, knowing that the rules will be enforced and that no one is above them.

I am an elector in the municipality of Nanaimo. I am registered on the voters roll and voted in the election. I was not a member of any campaign in the election. I am self-employed as an Internet consultant and have experience with the technologies relevant to this complaint. Prior to this I was a journalist and author for more than 10 years. I make this complaint in good faith driven by a journalistic moral compass.

Yours truly,

A handwritten signature in blue ink, appearing to read "Diane Brennan", written over a light blue grid background.

# Evidence of Election Irregularities by Diane Brennan

This report compiles evidence drawn from several public Internet sources and includes some evidence that Mrs. Diane Brennan has since caused to be removed from the Internet. For verification purposes, I can make the original screenshots available to Elections BC upon request.

While every effort was made to document all instances of unlawful Internet advertising by Mrs. Brennan's campaign on Nov. 15, 2014, there may be additional unlawful advertising or other actions that I am not aware of.

The report is divided into 4 sections:

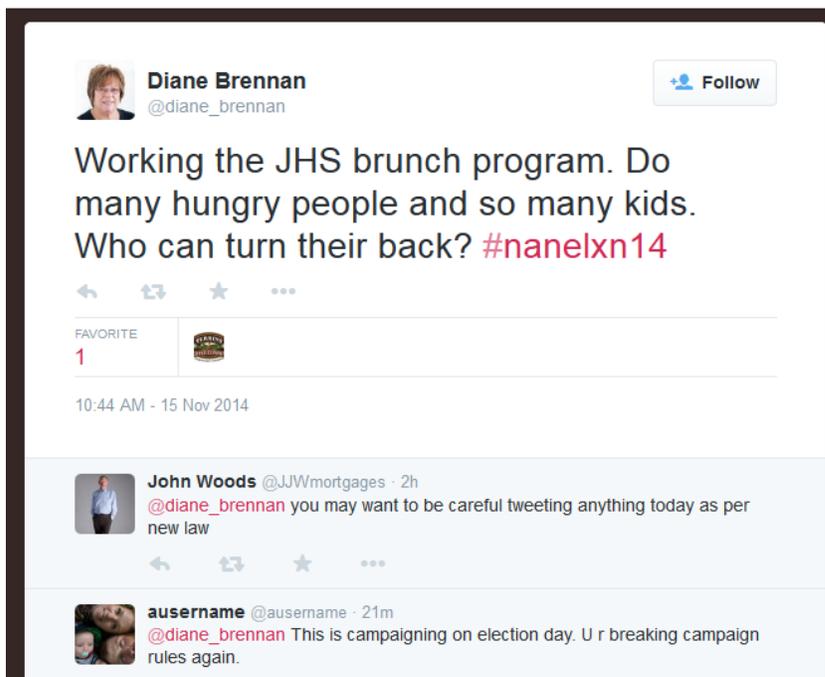
- 1) A chronology of the unlawful advertising supported by screenshots showing electronic timestamps;
- 2) An analysis of the audience reach of the unlawful advertising;
- 3) An analysis of the campaign-oriented nature of Mrs. Brennan's social media posts; and,
- 4) Evidence of Mrs. Brennan's repeated contempt for Elections BC rules.

# 1. Sequence of Diane Brennan's social media activity on Nov. 15, 2014

I am aware of six separate actions by Mrs. Brennan on social media on Nov. 15, 2014. These actions include posts and deletions of posts.

The following is a chronological timeline of these actions based on the electronic timestamps of the posts or estimates based on real time observations:

## 10:44am Nov. 15 - Diane Brennan Twitter Post



*The electronic timestamp is shown below the message. The screenshot was taken by Pam Agnew at 1:02pm on Nov. 15. It also shows a message by John Woods at 10:55am cautioning Diane Brennan about the legality of her message.*

## 12:38pm Nov. 15 - New “Elect Diane Brennan” Facebook Cover Photo Posted.

The screenshot shows a Facebook interface. At the top, there is a search bar with the text "Find friends" and a profile picture of a person named "Dominic". Below this, the page title "Cover Photos" is visible, along with navigation links "Back to Album - Elect Diane Brennan's Photos - Elect Diane Brennan's Page" and "Previous - Next". The main content is a cover photo featuring the word "VOTE" in large, white, hand-drawn letters. Surrounding it are various translations of "vote" in different languages and scripts, including "MENGUNDI", "äänestää", "투표를 하다", "balsuoti", "להצביע", "balsot", "STEMMEN", "oy", "vermek", "मत देना", "يُصَوِّتُ، يُدَلِّي بِصَوْتِهِ", "STEMME", "głosować", "hlasovat", "投票する", "ψηφίζω", "szavaz", "voter", "ГОЛОСУВАТИ", "memberi", "suara", "wählen", "VOTARE", "stem", "VOTAR", "ลงคะแนนเสียง", "मीरन, رایہ ورکول, انہول, غورہ کول, خوبنول: ترہ کول, پہ عامو رایو خرگندول". Below the cover photo, there are "Like" and "Comment" buttons. The post is by "Elect Diane Brennan" and is dated "Saturday, November 15, 2014 at 12:38pm". A red arrow points to the timestamp. The post also shows "2 people like this" and a comment input field. On the right side, there are options for "Album: Cover Photos", "Shared with: Public", "Open Photo Viewer", "Embed Post", and "Report Photo".

*Electronic timestamp shown in tool Tip. The screen capture was taken by Dominic Jones on Nov. 16 hence the timestamp text indicates “Yesterday.”*

## 12:41pm Nov. 15 - Diane Brennan Twitter Post

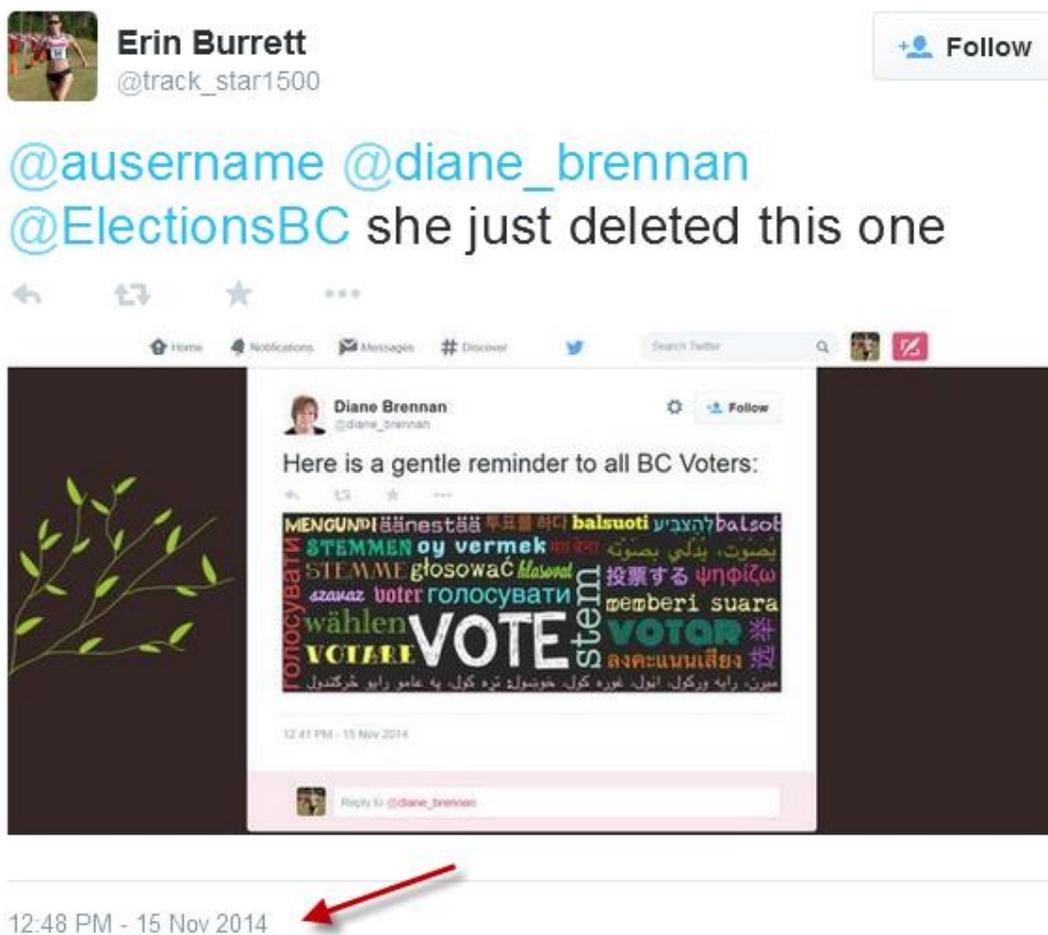


*The electronic timestamp shows that the message was posted at 12:41pm. The screenshot was taken by Erin Burrett.*

## Between approximately 12:48pm and 1:30pm Nov. 15 - Removal of Twitter Posts.

It is my understanding that **Elections BC staff** contacted Mrs. Brennan concerning her Twitter activity and instructed her to remove offending posts. This was done after other Twitter users copied the Elections BC Twitter account on their messages to Mrs. Brennan complaining about her activity.

The 12:41pm “Vote” image Tweet was removed by Mrs. Brennan at approximately 12:48pm, according to a message by Twitter User Erin Burret. See below:



However, at 1:02pm the earlier Twitter message from 10:44am remained accessible. At 1:30pm, when Dominic Jones viewed Mrs. Brennan’s Twitter feed, the 10:44am message had also been removed.

The Facebook post of 12:38pm **was not removed** at any time on Nov. 15.

## 4:21pm Nov. 15 - New “Elect Diane Brennan” Facebook Cover Photo Posted.



*The tooltip shows the electronic timestamp of 4:21pm on Nov. 15. The screenshot was taken by Dominic Jones on Nov. 16.*

## 2. Reach of Social Media Activity Materially Significant

I estimate Diane Brennan’s social media activity on Nov. 15 reached a potential audience of **4,304**. This is highly material considering that she won election only by 100 votes (or 0.08 percentage points) over the next highest candidate in the election.

Due to the viral nature of social media, measuring the distribution of individual social media messages is an inexact science. This is because actual distribution is a combination of direct distribution to followers, plus the additional distribution of recipients sharing the message and from indexing by search engines, such as hashtag streams on Twitter.

To illustrate, consider the following two examples:

### **4:21pm Facebook Post reached ~ 2,827 people**

When the cover photograph on the Elect Diane Brennan page was changed at 4:21pm, a message saying “**Elect Diane Brennan** updated their cover photo” was instantly sent to the News Feeds of the **284** people who were following the page at the time. But this is only the beginning of the post’s reach.

Comments and likes on the cover photo generated additional notifications to recipients’ own followers. For instance, when NDP Candidate for Nanaimo-Ladysmith, **Sheila Malcolmson**, “liked” and then commented on Diane Brennan’s new cover photo, her 1045 friends and an additional 95 followers (total **1,140**) received notifications to the effect that “**Shiela Malcolmson** commented on **Elect Diane Brennan**’s cover photo.”

Additionally, when Arjan Manhas commented on the same photo, notifications to the effect of “**Arjan Manhas** commented on **Elect Diane Brennan**’s cover photo” were sent to **1043** more people.

The **viral nature of social media** is what makes it so effective, and potentially so prejudicial in an election. Notifications of this kind can be delivered to electors on their **mobile phones at voting places**, thereby undermining of the 100-metre rule.

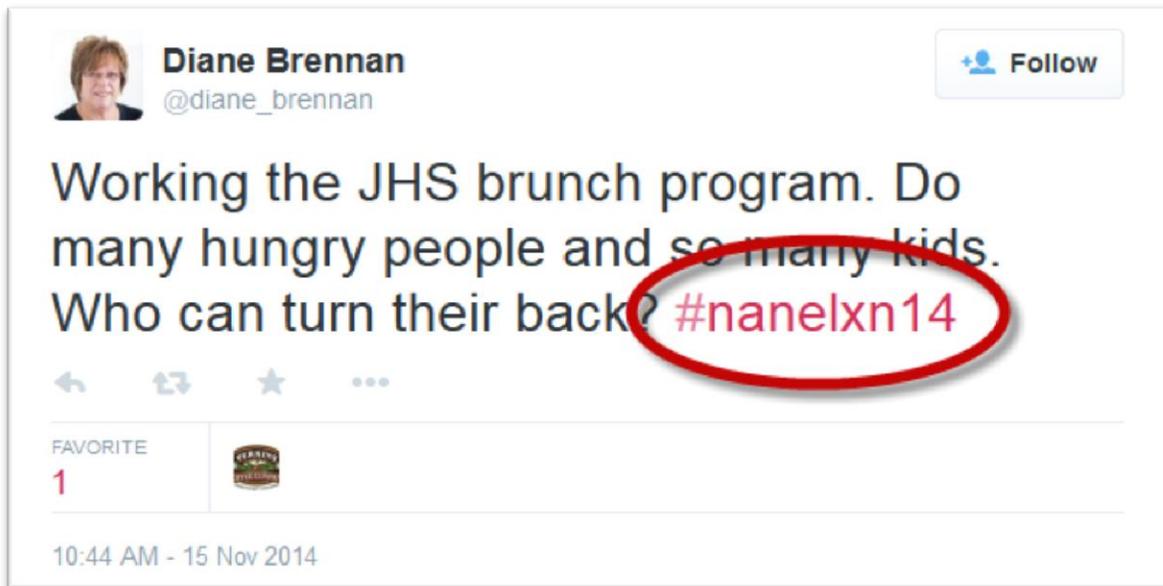
In the instance of the 4:21pm Elect Diane Brennan cover photo update alone, notifications were sent to approximately **2,827 people** when counting the followers of all those who liked it.

There is no way of knowing, of course, how many of these people actually saw the advertising, where they were or what effect it had on their voting choices. But even if one halves this audience figure, it’s still a materially significant level of irregular promotional activity in an election where the margin of victory was so slight.

It bears remembering that the 4:21pm Facebook post occurred **after Elections BC contacted the candidate** to instruct her to remove her Twitter messages.

### 10:44am Tweet had estimated reach of more than 836 people

On Nov. 15, 2014, Diane Brennan's Twitter account was followed by 836 people. However, the reach of her message at 10:44am must also take into account the additional distribution generated by her use of a hashtag #nanelxn14.



Using the #nanelxn14 hashtag resulted in the message *being seen by people who were not directly following* Diane Brennan, but who were tracking local election news through the hashtag.

It is impossible to tell from public sources how many Twitter users were monitoring the hashtag, but it was easily in the *hundreds*. Twitter would be able to provide Elections BC with more accurate information.

Finally, it is important to realize that even though **Elections BC** required the candidate to remove this particular message, **removal had little or no effect on the message's reach.**

This is because the median time during which a tweet is current in user's feeds is **just 18 minutes**<sup>2</sup>. In this instance, the message was removed more than 2

<sup>2</sup> When Is My Tweet's Prime of Life? (A brief statistical interlude.) Bray, Peter. November 2012

*hours after* first being sent, at which time it was largely disseminated and consumed. *The damage had already been done.* Therefore, Elections BC's ordered removal of the message has not provided adequate remedy for the harm done by Mrs. Brennan's activities.

### **Calculating Total Reach of Diane Brennan's Unlawful Social Media Advertising**

My estimated total reach figure is the simple sum of the direct and secondary distribution of the four messages on both Twitter and Facebook. It is a conservative estimate in that it does not count any additional reach from the use of the Twitter election hashtag.

The components are thus:

1. 10:44am Twitter = 836 (hashtag reach excluded)
2. 12:38pm Facebook = 432 (direct + 2 likes)
3. 12:41pm Twitter = 209 (removed after 7 minutes therefore used 25% of 836 direct followers)
4. 4:21pm Facebook = 2,827

TOTAL REACH = 4,304

Considering the slim margin by which Mrs. Brennan was elected, it is my view that the significant reach of her unlawful advertising on Nov. 15 had a material, determining effect on the voting results.

Further, the actions taken by Elections BC on Nov. 15 were ineffective and insufficient to remedy or prevent harm to the integrity of the election.

### **3. Content & Timing of Messages Was Campaign Oriented**

While there are some exceptions from the prohibition against social media messages by candidates on general voting day, none of Mrs. Brennan's activity falls under those exceptions.

All of the messages were campaign oriented and designed both to promote herself as a candidate and to reach the broadest possible audience of electors at times when they were likely at or heading to voting places.

Since both Twitter messages were deleted on instruction from Elections BC staff, I presume that they have already been deemed to be unlawful. However, I would point out that they were clearly campaign oriented and not open to interpretation.

The first message at 10:44am included the #nanelxn14 hashtag, which clearly associated it with the election. While the typo might have ruined the impact, the message was meant to portray Mrs. Brennan as a person who cares for the poor, including hungry children. It further implied that electors who did not vote for her were guilty of “turning their back.”

The second Twitter post and first Facebook message containing the “Vote” image were in clear breach of elections laws and the guidelines communicated to all candidates throughout the election period, including in a letter on Nov. 14.

The second Facebook post at 4:21pm contained a photograph of Mrs. Brennan flanked by **well-known local politicians**. They included, incumbent Councilor Diana Johnstone, who was not seeking re-election, and federal NDP candidate Shiela Malcolmson, who endorsed Mrs. Brennan. This photo was clearly political and campaign oriented. It was also potentially misleading as Diana Johnstone had not endorsed Mrs. Brennan.

Moreover, every Facebook notification about the photo included the text “**Elect Diane Brennan.**” For example, direct followers of Mrs. Brennan’s page received notices stating “*Elect Diane Brennan has updated their cover photo,*” while friends and followers of Shiela Malcolmson received notifications stating “*Shiela Malcolmson commented on Elect Diane Brennan’s cover photo.*”

The **timing** of Mrs. Brennan’s social media updates coincided with times when increased numbers of electors would presumably be heading to the voting places – after breakfast (10:44am), during the lunch hour (12:38pm and 12:41pm) and just before sunset (4:21pm).

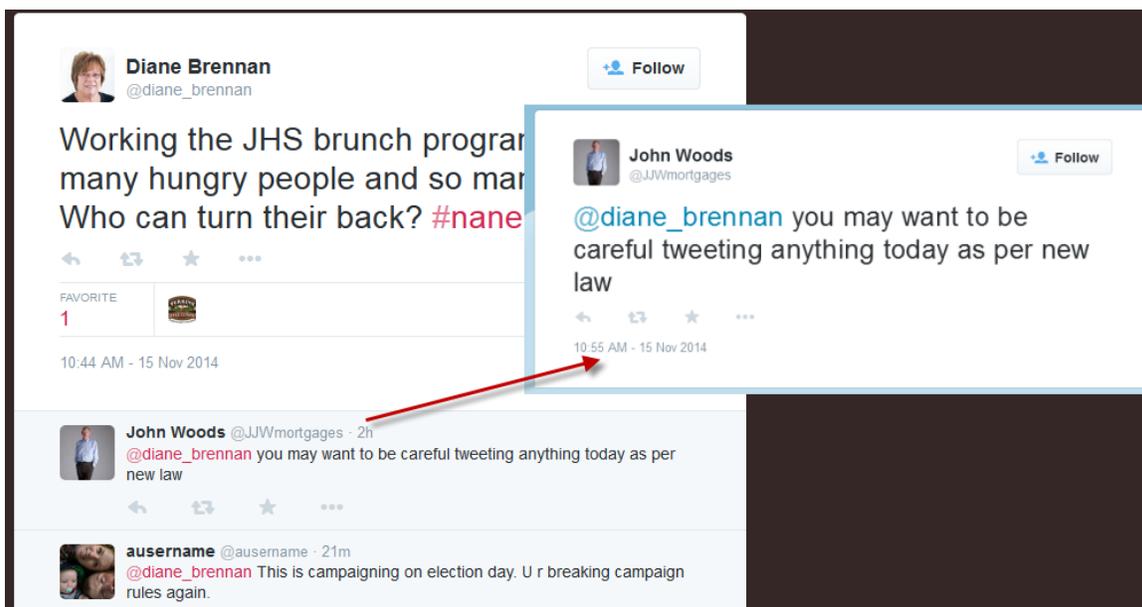
## 4. Evidence of Mrs. Brennan’s Contempt for Elections BC Rules

From my review of public communications on social media, it’s clear that there was widespread awareness among local candidates, election staff and the electorate of the prohibition against Internet campaigning on general voting day. The rules around campaigning on general voting day are made clear on Elections BC’s website and in the guidelines issued to all candidates.

Indeed, Elections BC reminded all candidates of the general voting day rules for campaigning again on Nov. 14 in a concise, clearly worded and bullet listed letter to all candidates on the morning of Nov. 14. The letter specifically mentioned Facebook and Twitter.

It is inconceivable that Mrs. Brennan was not aware of the prohibitions against Internet advertising on general voting Day, Nov. 15. At minimum, she had a duty to know.

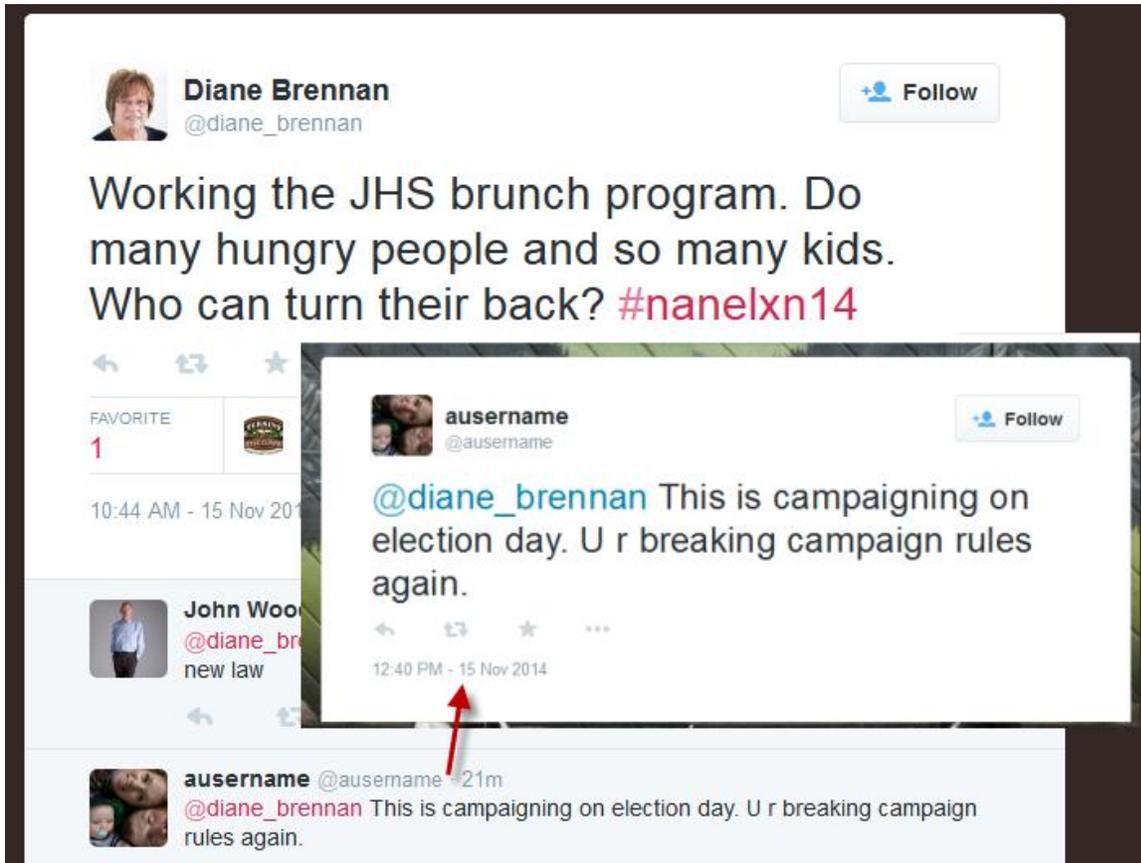
The public record also shows that Mrs. Brennan ignored messages from users on Facebook alerting her to the rules. The first of these was made at 10:55am Nov. 15 by John Woods of Gabriola Island in response to Mrs. Brennan's 10:44am Twitter message. See below:



The message from John Woods would have been sent to Mrs. Brennan's Twitter account and she would have been aware of it through any Twitter application on her phone or other computer device. It bears noting that Mrs. Brennan is an experienced and regular Twitter user, having opened her current account on the service in October 2011 and having made over 2600 messages. A review of her Twitter account shows that she routinely replies to @ messages direct to her.

Despite John Woods' message, the record shows that Mrs. Brennan posted a new cover photo to her Facebook Page at 12:38pm.

Mrs. Brennan was again alerted to the unlawful nature of her 10:44am, Twitter message at 12:40pm by a person using the Twitter account @ausername. See below:



Despite this, Mrs. Brennan proceeded to post her second message on Twitter one minute later at 12:41pm.

The record shows that one minute later, at 12:42pm, @ausername posted a message to Mrs. Brennan *and the Elections BC Twitter account*.

It was only after this, at about 12:48pm, that Mrs. Brennan deleted her 12:41pm Twitter message containing the "Vote" image.

Shortly before or at 1:30pm, after apparently being contacted by Elections BC, Mrs. Brennan finally deleted her 10:44am Twitter message.

However, the "Vote" cover photo that she posted to her Elect Diane Brennan Facebook page at 12:38pm was not deleted at any point on Nov. 15.

Finally, at 4:21pm Mrs. Brennan posted a new cover photo to her Facebook page, notwithstanding the fact that she had every reason to know that such activity was prohibited given that **Elections BC had contacted her directly earlier in the day.**

Based on all of the above, I submit that the public record overwhelmingly suggests that it is implausible that Mrs. Brennan was unaware of the rules at any time during her repeated unlawful actions on Nov. 15.

Consequently, Mrs. Brennan's actions suggest that she either thinks she is above the law, or that she calculated that ignoring the rules was a risk worth taking if it helped her get over the vote threshold needed for election.

ENDS