



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdca.wa.gov

June 18, 2020

Delivered electronically to James Dow Constantine at “dowconstantine@gmail.com”

Subject: Complaint filed by Glen Morgan, PDC Case 17442

Dear Mr. Constantine:

Below is a copy of an electronic letter sent to Glen Morgan concerning a complaint filed with the Public Disclosure Commission (PDC).

As noted in the letter to Mr. Morgan, the PDC has dismissed this matter in accordance with RCW 42.17A.755(1) and will not conduct a more formal investigation into these allegations or take further enforcement action in this matter.

However, pursuant to WAC 390-37-060(1)(d), this serves as a formal written warning concerning your failure to timely disclose debts, properly report sub-vendor information, including underlying vendors when reimbursements for out-of-pocket expenditures were made, and failure to include complete expenditure descriptions when required. Staff expects you to timely disclose debts, properly report sub-vendor information, and include complete expenditure descriptions when required on all future required reports of contributions and expenditures for campaign and surplus accounts. The Commission will consider this formal written warning in deciding on further Commission action if there are future violations of PDC laws or rules.

If you have questions, you may contact Jennifer Hansen at 1-360-586-4560 toll-free at 1-877-601-2828, or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Electronically signed

Jennifer Hansen
Compliance Officer

Endorsed by,

Electronically signed

Peter Lavalley
Executive Director



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June 18, 2020

Delivered electronically to Glen Morgan at “glen@wethegoverned.com”

Subject: Complaint regarding James Dow Constantine, PDC Case 17442

Dear Mr. Morgan:

The Public Disclosure Commission (PDC) has completed its review of the complaint received May 1, 2017, initially as a Citizens Action Notice filed under RCW 42.17A.765(4), and later converted to a PDC complaint following implementation of Engrossed Substitute House Bill 2938, which took effect June 7, 2018. The complaint alleged that James Dow Constantine, the incumbent King County Executive, and a candidate for re-election to that office in 2017, may have committed multiple violations of Chapter 42.17A RCW as detailed below.

PDC staff reviewed the allegations; the applicable statutes, rules, and reporting requirements; the response provided by Campaign Treasurer, Philip Lloyd on behalf of the candidate, the Campaign and the Surplus Funds Account; queried the Respondent’s data in the PDC contribution and expenditure database; and reviewed the Candidate and Surplus Funds Account Registrations (C-1 reports), Monetary Contributions reports (C-3 reports), Summary Full Campaign Contribution and Expenditure reports (C-4 reports), and Statements of Financial Affairs reports (F-1 reports), filed by the Respondent, to determine whether the record supports a finding of one or more violations.

Based on staff’s review, we found the following:

- On January 6, 2014, James Dow Constantine filed a C-1 report with the PDC declaring his candidacy for re-election to the office of King County Executive in election year 2017, selecting the Full Reporting Option. The C-1 report listed Philip Lloyd as the non-ministerial Treasurer of the Campaign. Mr. Constantine was elected King County Executive in 2009 and was re-elected to that office in 2013 and 2017. In addition, Mr. Constantine is currently registered for re-election in 2021.
- The Friends of Dow Constantine Surplus Funds Account was registered with the PDC during 2013 and is currently active.
- As an elected official, Mr. Constantine was required to submit an F-1 report each year by April 15th disclosing personal financial affairs for the previous calendar year.
- On May 1, 2017, you filed a complaint with the PDC and a 45-Day Citizens Action Notice (CAN) with the Washington State Attorney General’s Office, alleging multiple violations of Chapter 42.17A RCW.

- On May 31, 2018, the Attorney General's Office notified you that it had not completed its review or investigation into the allegations stated in your complaint and of their decision to return it to the PDC in accordance with the passage of House Bill 2938.
- For the 2017 election cycle, the Campaign disclosed \$1,646,847.68 in contributions received, which included a beginning balance of \$296,024.70, \$1,646,847.68 in expenditures made (including two transfers totaling \$550,000 to the Friends of Dow Constantine Surplus Funds Account) and two transfers totaling \$24,051.92 to the 2021 Re-election Campaign, to zero out the 2017 Campaign on January 31, 2020.

RCW 42.17A.205(2)(c) requires that the C-1 report include the names, addresses, and titles of the committee officers; or if it has no officers, the names, addresses, and titles of its responsible leaders.

RCW 42.17A.235 and **.240** require candidates, single election political committees, and continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election in which the committee makes expenditures, and in the month following the election. Contributions are reported weekly during this same time period and must be disclosed on Monday for contributions deposited during the previous seven days.

RCW 42.17A.425 requires that expenditures made or incurred by any candidate or political committee be authorized by the candidate or the person or persons named on the candidate's or committee's registration form.

RCW 42.17A.430 states, in part, the surplus funds of a candidate or a candidate's authorized committee may only be disposed of in any one or more of the following ways:

- (1) Return to a contributor in an amount not to exceed that contributor's original contribution;
- (2) Reimburse the candidate for verifiable lost earnings;
- (3) Transfer without limit to a political party or to a caucus political committee;
- (4) Donate to a charitable organization registered in accordance with chapter [19.09](#) RCW;
- (5) Transmit to the state treasurer, the Washington state legacy project, state library, and archives account, or the legislative international trade account;
- (6) Hold the surplus in the depository or depositories designated in accordance with RCW [42.17A.215](#) for possible use in a future election campaign for the same office last sought by the candidate; or
- (7) Hold the surplus campaign funds in a separate account for non-reimbursed public office-related expenses or as provided in this section.

RCW 42.17A.445 prohibits personal use of campaign funds except reimbursement of direct out-of-pocket campaign related expenses, reimbursement for verifiable lost earnings or repayment of loans up to the allowable limit.

RCW 42.17A.700(7) obligates every elected official and every executive state officer submitting their statement of financial affairs to certify that they have read and are familiar with RCW [42.17A.555](#) or [42.52.180](#), whichever is applicable.

RCW 42.17A.710 identifies the required contents of the statement of financial affairs including, in part, every public or private office, directorship, and position held as trustee; except that an elected official or executive state officer need not report the elected official's or executive state officer's service on a governmental board, commission, association, or functional equivalent, when such service is part of the elected official's or executive state officer's official duties.

WAC 390-05-245 defines "officer of a candidate's authorized committee," or "officer of a candidate's committee" as any person designated by the committee as an officer on the C-1 report and any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee.

WAC 390-16-037 obligates any person required to report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255(5)(b) to identify any candidate(s) or ballot proposition(s) supported or opposed by the expenditure, and to describe in detail the goods and/or services provided by the expenditure. The rule includes two examples for disclosing the details of the goods and/or services provided.

WAC 390-16-205 states expenditures by agents and agents' sub-vendors, made on behalf of a candidate or political committee, shall be deemed expenditures by the candidate or committee. The rule states that in accordance with WAC 390-16-037, such expenditures shall be reported by the candidate or political committee as if made or incurred by the candidate or committee directly. The rule includes three examples for disclosing the details of the goods and/or services provided.

WAC 390-24-150 defines, for the purposes of filing the F-1, the term "officer" as president, vice president, secretary, treasurer, or some derivation thereof; one who holds a corporate office; or appointed by the board of directors in accordance with the bylaws.

ALLEGATIONS RE: 2017 KING COUNTY EXECUTIVE CAMPAIGN

Allegation 1: Violation of RCW 42.17A.235 for failure to submit C-3 and C-4 reports at the time of registration for campaign activities that occurred prior to January 6, 2014.

- On January 6, 2014, the Friends of Dow Constantine 2017 campaign submitted a C-1 report registering for re-election to the office of King County Executive in the 2017 election.
- The complaint alleged that the Campaign had activity dated prior to the submittal of the C-1 and was required to file C-3 and C-4 reports disclosing that activity at the same time as the registration.
- Although required by the applicable law in 2014 and confirmed by Mr. Lloyd in the response to the complaint, the activities connected to this allegation are beyond the five-year statute of limitations in accordance with RCW 42.17A.770.

Allegation 2: Violation of RCW 42.17A.235 & RCW 42.17A.240 for failure to file accurate, timely C-3 and C-4 reports.

- The complaint alleged that the Campaign failed to timely file the March 2017 C-4 report.
- On April 7, 2017, the Campaign submitted the March 2017 C-4 report disclosing \$103,957 in contributions, \$52,359 in expenditures and debt totaling \$6,135.05. On April 21, 2017, the Campaign submitted an amendment to the March 2017 C-4 report disclosing debt totaling \$10,753.78 including a previously undisclosed \$2,938.84 debt owed to EMPS for credit card processing. The debt was reported 11 days late.
- On April 5, 2017, the Campaign submitted a C-3 report disclosing two \$100 donations from Lawrence James received on March 21, 2017.
- The complaint alleged that the Campaign submitted a C-3 report disclosing a duplicate contribution from Mr. James, artificially inflating the total deposit amount of the C-3.
- In their response, the Campaign stated that the donations from Mr. James were not duplicated and that he had given two \$100 donations on the same day.

Allegation 3: Violation of RCW 42.17A.240 & WAC 390-16-037 for failure to report occupation and employer information for individual donors of more than \$100 dollars in the aggregate.

- On March 2, 2017, the Campaign submitted a C-3 report disclosing a \$1,000 donation from Martha Wyckoff received on February 21, 2017 and identified her occupation as “self-employed farmer.”
- The complaint alleged that Ms. Wyckoff’s occupation and employer information was incorrectly identified on the C-3 report.
- In their response, the Campaign stated that Ms. Wyckoff had provided her occupation and employer along with her contribution and did not believe it to be incorrect.
- The profile the complaint cites as evidence that Ms. Wyckoff is not a farmer includes the statement that “she raises hay in Central Washington with her husband and three sons.”

Allegation 4: Violation of RCW 42.17A.235 & RCW 42.17A.240 for failure to timely and accurately disclose debts owed or orders placed.

- The complaint included a spreadsheet of 199 expenditures totaling \$470,517 meant to show expenses that likely were required to be reported as debts in an earlier reporting period.
- In their response, the Campaign stated that they reviewed the “unreported debts” provided in the complaint and found that the majority of the expenditures were either a) expenses incurred in the current reporting period, b) were pre-payments of future expenses or c) were actually reported as debts.
- The Campaign stated that they now believe credit card fees that debit the account in the next month should be reported as debts and have made changes to their internal procedures to ensure future compliance.
- On June 7, 2018, Engrossed Substitute House Bill (ESHB) 2938 became effective, clarifying that for the purposes of reporting expenditures under RCW 42.17A.240, debt does not include “regularly recurring expenditures of the same amount that have already been reported at least once and that are not late or outstanding.”

Allegation 5: Violation of RCW 42.17A.235 & WAC 390-16-205 for failure to properly breakdown expenses.

- The complaint included a spreadsheet of 123 expenditures meant to show expenses that likely required more detailed descriptions. The list identified payments to consultants and

expenses for advertisements, printing and mailing services that may have required sub-vendor information, run dates, and itemized breakdowns. Many of the expenses listed were identified as “illegal” or “needing further detail” but did not include specific evidence to prove this allegation.

- In their response, the Campaign identified a small number of minor errors in descriptions that needed attention and submitted amendments to C-4 reports to correct the descriptions originally disclosed.
- Staff noted that more than 30 percent of the activities connected to this allegation are beyond the five-year statute of limitations in accordance with RCW 42.17A.770.

Allegation 6: Violation of RCW 42.17A.430 for misuse of campaign funds.

- On April 6, 2015, the Campaign disclosed a \$250 expense to the Spokane County Democrats for advertising.
- The complaint alleged that this was a misuse of campaign funds because Mr. Constantine was not running in Spokane County and would have no reason to solicit support in that location.
- On July 2, 2014, the Campaign disclosed a \$100 expenditure to the Washington State Democratic Central Committee for attendance at a party event.
- The complaint alleged that Mr. Constantine did not receive \$100 dollars’ worth of goods or services at this event and that this was a misuse of campaign funds.
- Although both expenditures are beyond the five-year statute of limitations in accordance with RCW 42.17A.770, the Campaign stated that they believed both expenses to be campaign related.

Allegation 7: Violation of RCW 42.17A.205 & WAC 390-05-245 for failure to include all committee officers on the C-1 report.

- The C-1 submitted by the Campaign for the 2017 election identified Philip Lloyd as the non-ministerial treasurer and Dow Constantine as Chair.
- The complaint alleged that GreenC3 LLC, Newman Partners, Northwest Passage Consulting, Gina Topp and Novksy & Associates LLC met the definition of “committee officer” and should have been included on the C-1 report.
- Although this allegation is beyond the five-year statute of limitations in accordance with RCW 42.17A.770, the Campaign stated that they believed all committee officers were identified on the C-1 report.

Allegation 8: Violation of RCW 42.17A.425 for illegal expenditures made by individuals not listed on the C-1 report as committee officers.

- The complaint alleged that expenditures were made illegally by GreenC3 LLC, Newman Partners, Northwest Passage Consulting, Gina Topp and Novksy & Associates LLC but did not include evidence to support the allegation.
- In their response, the Campaign stated that all strategic and policy decisions are made by the candidate and confirmed that none of vendors listed in the complaint were committee officers.

Allegation 9: Violation of RCW 42.17A.445 for personal use of campaign funds.

- The complaint included a spreadsheet of 73 expenditures meant to show expenses that were not related to the 2017 Campaign and were likely personal in nature. All expenses listed for costs related to a campaign telephone were accompanied by a comment indicating that the phone was not used exclusively for campaign business and these

payments were illegal. The remaining expenses listed were identified as “illegal” and not related to the 2017 Campaign. No specific evidence was given to prove this allegation.

- In their response, the Campaign stated that they were not aware of any instance where Mr. Constantine used campaign funds for personal use.
- Staff noted that more than 40 percent of the activities connected to this allegation are beyond the five-year statute of limitations in accordance with RCW 42.17A.770.

ALLEGATIONS RE: SURPLUS FUNDS ACCOUNT

Allegation 10: Violation of RCW 42.17A.430 for misuse of surplus funds.

- On June 1, 2015, the James Dow Constantine Surplus Funds Account disclosed a \$500 expenditure to Northwest Progressive Institute for event sponsorship.
- The complaint alleged that this expenditure failed to meet any of the permissible uses of surplus funds described in RCW 42.17A.430 but did not include specific evidence to support the allegation and was not reviewed further by staff.

Allegation 11: Violation of RCW 42.17A.240 & WAC 390-16-205 for failure to properly breakdown expenditures made from the Surplus Funds Account.

- The complaint included a spreadsheet of 85 expenditures meant to show expenses that likely required more detailed descriptions. The list identified payments for costs related to work meetings, postage, food, and one donation of \$100 to the West Seattle Rotary. All of the expenses listed were alleged to lack the identity of the initial recipient of the payment and the purpose of the expense, but the complaint did not include specific evidence to prove this allegation.
- In his response, Mr. Lloyd stated that they believed the expenditures were disclosed properly.
- During its review, staff found that the more recent expenditures made from the Surplus Funds Account were made directly to vendors, rather than as reimbursements, and included more complete descriptions.
- Staff noted that more than 70 percent of the activities connected to this allegation are beyond the five-year statute of limitations in accordance with RCW 42.17A.770.

ALLEGATIONS RE: STATEMENTS OF FINANCIAL AFFAIRS

Allegation 12: Violation of 42.17A.700 for failure to acknowledge understanding of RCW 42.17A.555 (prohibition on use of facilities) on the F-1 covering calendar year 2015.

- On April 14, 2016, James Dow Constantine submitted an F-1 report using the PDC’s electronic filing system, disclosing his personal financial information for calendar year 2015.
- The complaint alleged that Mr. Constantine failed to acknowledge his understanding of the prohibitions described in RCW 42.17A.555.
- During its review, staff found that although the F-1 submitted for calendar year 2015 was missing the checkmark for this specific acknowledgement, the F-1 reports filed in 2015, 2017, 2019 and 2020, showed that Mr. Constantine is aware of the prohibition against use of facilities described in RCW 42.17A.555.
- In their response, the Campaign stated that this error was unintentional.

Allegation 13: Violation of RCW 42.17A.710 for failure to include retirement assets on the F-1 report.

- The complaint alleged that Mr. Constantine failed to include his PERS retirement account as an asset on the F-1 report. However, the complaint did not reference a specific F-1 report or include specific evidence regarding this allegation.
- The response stated that the omission of this information was likely an oversight and that previously submitted F-1 reports would be reviewed and amended if appropriate.
- Staff noted that Mr. Constantine’s F-1 report covering calendar year 2019, submitted electronically on April 14, 2020, included an asset titled “Washington State Retirement Systems (PERS 2)” with a value of \$0 to \$29,999.

Allegation 14: Violation of RCW 42.17A.710 & WAC 390-24-150 for failure to include all offices held with corporations on the F-1.

- The complaint alleged that Mr. Constantine failed to include his membership on the board of Sound Transit and all payments required to be disclosed as described in RCW 42.17A.710. However, the complaint did not reference a specific F-1 report or include specific evidence regarding this allegation. An addendum to the original complaint alleged that Mr. Constantine failed to include Forterra Strong Communities Fund Manager, LLC on the F-1 report.
- In his response, Mr. Lloyd stated that the F-1 reports were reviewed for potential amendments regarding Mr. Constantine’s position with Forterra.
- In 2017, the Commission directed staff to advise filers that positions held by an elected official or executive state officer, when such service is part of the elected official’s or executive state officer’s official duties, need not be included on the F-1.
- The language in RCW 42.17A.710(1)(d) was subsequently updated and now states, “every public or private office, directorship, and position held as trustee; except that an elected official or executive state officer need not report the elected official’s or executive state officer’s service on a governmental board, commission, association, or functional equivalent, when such service is part of the elected official’s or executive state officer’s official duties.”
- Staff found that the Sound Transit board, including Mr. Constantine, is almost entirely comprised of elected officials who serve as part of their official duties.

Based on our findings, staff has determined that, in this instance, the deficiencies found in on the annual F-1 report as detailed in allegations 12 and 13 do not amount to the finding of a violation that warrants further investigation.

Staff noted that allegation 6 regarding misuse of campaign funds and allegation 7 regarding the C-1 report are beyond the five-year statute of limitations in accordance with RCW 42.17A.770 and were not reviewed further.

Staff noted that allegation 1, and part of 5 and 11, are beyond the five-year statute of limitations in accordance with RCW 42.17A.770. However, the Campaign will be warned about the portions of these allegations that are not.

Pursuant to WAC 390-37-060(1)(d), the Respondent will receive a formal written warning concerning failure to timely disclose debts, properly report sub-vendor information, including underlying vendors when reimbursements for out-of-pocket expenditures were made, and failure to include complete expenditure descriptions when required. The formal written warning will

include staff's expectation that the Respondent timely disclose debts, properly report sub-vendor information, including underlying vendors when reimbursements for out-of-pocket expenditures were made, and that the Respondent include complete expenditure descriptions when required on all future required reports of contributions and expenditures for campaign and surplus accounts. The Commission will consider the formal written warning in deciding on further Commission action if there are future violations of PDC laws or rules.

Staff's investigation did not find evidence to support violations of the second portion of allegation 2 regarding a duplicate contribution on a C-3 report, allegations 3, 8, 9 or 10, or allegation 14 pursuant to Commission interpretation and the current language in RCW 42.17A.710(1)(d).

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Jennifer Hansen at 1-360-586-4560 toll-free at 1-877-601-2828, or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Electronically signed

Jennifer Hansen
Compliance Officer

Endorsed by,

Electronically signed

Peter Lavalley
Executive Director

cc: James Dow Constantine