

Respondent Name
Bob Ferguson
Complainant Name
Tallman Trask
Complaint Description
Tallman Trask reported via the portal (Tue, 27 Jun 2023 at 6:36 PM) Please see the attached complaint.
What impact does the alleged violation(s) have on the public?
List of attached evidence or contact information where evidence may be found
List of potential witnesses
Certification (Complainant)
I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

Public Disclosure Commission
711 Capitol Way, Rm. 206
Olympia, WA 98504

June 27, 2023

Dear Public Disclosure Commission:

This is a complaint regarding violations of RCW 42.17A.405, 42.17A.490, and the “first in, first out” rule by the Bob Ferguson for Governor Exploratory Committee. The Committee has failed to appropriately identify individual contributors involved in surplus fund transfers and likely accepted over-the-limit contributions.

On April 27, 2023, the Commission decided, after discussion, to host a special meeting on May 11 regarding guidance on the use of surplus campaign funds during campaigns for another office. The Commission did so after discussion of the then-current guidance and with an eye towards collecting public comment prior to adjusting, clarifying, or maintaining the guidance. On May 2, 2023, the Commission posted details of the special meeting on its website, including information about public comment. The Commission presented two options to the public: Option 1, which would have kept the then-current guidance, and Option 2, which would treat transfers of surplus funds in the same manner as other contributions.

During the May 11, 2023 special meeting, the Commission considered spoken public comment from three individuals and 18 written comments submitted by individuals, organizations, and campaigns. The vast majority of these comments supported Option 2 and treating surplus fund transfers in the same manner as other contributions.

The Commission unanimously adopted Option 2 on May 11, 2023. The Commission directed commission staff to Option 2 as temporary guidance and to draft formal guidance for consideration and possible adoption during the May 27, 2023 meeting.

Between April 28, 2023 and May 10, 2023 the Robert Ferguson Surplus Funds account transferred \$1,181,015.54 to the Bob Ferguson for Governor Exploratory Committee. There were six separate transfers:

- \$79,320.16 on April 28, 2023 (Report Number 110145936)
- \$80,221.00 on May 2, 2023 (Report Number 110145942)
- \$202,083.40 on May 3, 2023 (Report Number 110145943)
- \$342,764.45 on May 5, 2023 (Report Number 110145948)
- \$250,814.03 on May 8, 2023 (Report Number 110145951)
- \$225,812.50 on May 10, 2023 (Report Number 110146516)

Each of these transfers was made without full disclosure. The transfers were made in bulk, without attribution to individual contributors, and without disclosure of individual contribution amounts. Despite filing C3 and C4 reports since, the Committee has not amended these prior reports to conform with the law or the PDC’s interpretation.

The transfers violated the statutory disclosure requirements within RCW 42.17A.490. Transfers from surplus fund accounts to campaigns for a different office are, under the statute, contributions and require full disclosure as contributions. These transfers did not conform to those requirements when they were filed, have not been updated to conform with the requirements, and need to be corrected.

The transfers also account for an extraordinary amount of money in a gubernatorial campaign this early in the cycle. The amount transferred is equal to nearly 16% of the amount the Democratic candidate raised during the 2020 gubernatorial race.

However, the nonconforming transfers appear to hide a larger issue. By aggregating contribution information from Mr. Ferguson's prior campaigns and Mr. Ferguson's surplus funds committee, I was able to determine that at least some individuals have likely given over-the-limit amounts to Mr. Ferguson's 2024 gubernatorial campaign.

For example, Robert Gellatly of Bellevue contributed a total of \$5900 to Mr. Ferguson's 2016 and 2020 campaigns for attorney general. Mr. Gellatly contributed \$1000 on October 31, 2015, \$1000 on April 29, 2016, \$1000 on September 29, 2016, \$1900 on September 25, 2019, and \$1000 on August 25, 2020. Following the "first in, first out" method, it appears that most or all of Mr. Gellatly's contributions were later transferred to the surplus funds account. If Mr. Gellatly's surplus contributions were later transferred to the 2024 gubernatorial campaign, the contribution limits were exceeded. Without clear disclosures regarding the surplus fund transfers, that information is not clear to the PDC or the public.

Exemplifying the lack of clarity, it is difficult to determine if some maximum contributors to the 2024 campaign are actually over-the-limit contributors. William Neukom of Seattle, for example, made a maximum contribution of \$4800 (with \$2400 allocated to the primary election and \$2400 allocated to the general election) to the Committee on May 11, 2024. The C3 report disclosing that contribution has a note at stating that it describes surplus fund transfers. However, it is not clear if that note applies to some or all of the disclosed contributions, and it is not clear if individuals listed within it had contributions included in prior surplus fund transfers. Mr. Neukom contributed \$4000 to Mr. Ferguson's 2020 campaign for attorney general on November 19, 2019. Mr. Neukom also contributed \$2500 to Mr. Ferguson's 2016 campaign for attorney general on November 25, 2015. According to my calculations and following the "first in, first out" method, most or all of Mr. Neukom's earlier contributions were deposited into Mr. Ferguson's surplus funds account. If any portion Mr. Neukom's additional prior contributions were transferred from the surplus funds account to the 2024 campaign during the period the campaign was not attributing transferred fund to individual contributors, the contribution limits were exceeded.

In order to discover even that limited information, I was forced to download contributor information from multiple prior campaigns, download information from the surplus fund filings, and to download information from the current campaign's filings. Without accurate disclosure of transfers from surplus fund accounts, as required by the statute and the Commission's interpretation, it would be nigh on impossible for the average Washingtonian to discover the

same information. With accurate disclosures of surplus fund transfers, appropriately allocated to individual contributors as the Commission's interpretation requires, the information would be easy for anyone to discover.

While I recognize that some candidates and individuals have raised retroactivity concerns regarding the enforcement of RCW 42.17A.490, the Commission should not be dissuaded from enforcing the law. There are three reasons why the retroactivity concerns are not compelling.

First, as the Commission explained when adopting the current interpretation, the law itself has not changed nor has its meaning. RCW 42.17A.490 says what it always said and means what it always meant. It is merely the Commission's nonbinding interpretation that has changed. The prior interpretation described an inaccurate reading of the law, and never bound the Commission or any other body to follow it. There is no retroactivity issue because candidates and committees were subject to the same legal requirements prior to the new interpretation.

Second, the Commission's enforcement powers permit application of the new interpretation as appropriate. There is no reason, for example, that the Commission needs to reopen the books of years and decades old campaigns to force adjustments. The money in those campaigns is gone, the campaigns are over, and there are no ongoing concerns with those transfers.

Third, for ongoing campaigns, the RCW 42.17A.490 issues are also ongoing. The failure to disclose and apportion surplus fund transfers is not an issue because of some minor procedural requirement or technical reporting requirement. It is an issue because it is impossible or nearly impossible to suss out current and ongoing contribution limit violations. Without the surplus fund transfer information it is simply not possible to determine if groups and individuals whose aggregate contributions to the surplus funds account exceed or likely exceed the current contribution limits have either permitted the transfer of amounts over the limit or made additional contributions in excess of the limits.

Violations of RCW 42.17A.490 by ongoing campaigns may hide other violations, particularly violations of contribution limits. For ongoing campaigns, enforcement of RCW 42.17A.490 is necessary to determine if over the limit contributions were and are enabled by aggregated surplus fund transfers.

Thank you,

Tallman Trask