

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Complaint Disposition
Concerning:

2024 Bob Ferguson for Governor Campaign,

Respondent.

PDC No. 137263

ORDER OF DISMISSAL

This matter was considered by the Washington State Public Disclosure Commission (“Commission” or “PDC”) at its regularly scheduled meeting on December 7, 2023 via telephonic and online access. At issue was resolution of two complaints against the 2024 Bob Ferguson for Governor Campaign alleging violation of RCW 42.17A.235 and 240, requiring the reporting of contributor names.

Nancy Isserlis, Commission Chair, presided. Other Commissioners attending were Fred Jarrett, Allen Hayward, J. Robert Leach, and Douglass North. Also attending were Robert Maguire and Michele Radosevich, Davis Wright Tremaine, representing the Commission; and Sean Flynn and Philip Stutzman of the PDC staff. Notice was provided to the Respondent, and the meeting was open to the public and recorded.

The Commission had before it the following materials:

1. The Stipulation as to Facts Concerning the Reporting of Transferred Contributions and Staff Recommendation (“Stipulation”), dated December 1, 2023, and signed by

1 Kim Bradford, Deputy Director, for the Commission staff, and Wellesley Daniels,
2 Campaign Manager, for the 2024 Bob Ferguson for Governor Campaign
3 (“Campaign”).

- 4
- 5 2. The Complaint, filed on May 19, 2023, by Michael Christopherson, alleging that the
6 amounts transferred to the Campaign from earlier Bob Ferguson for Attorney General
7 Campaigns should be reported pursuant to RCW 42.17A.235 and .240 as coming
8 from the original donors and count against their contribution limits.
- 9 3. The Complaint, filed on June 27, 2023, by Tallman Trask, alleging the same
10 violation.

11 **I. JURISDICTION**

12 The Commission has jurisdiction of this matter pursuant to Chapter 42.17A RCW,
13 Chapter 34.05 RCW, and Title 390 WAC.

14 **II. FINDINGS OF FACT**

15 The Commission adopts the following facts as set forth in the Stipulation:

- 16
- 17 1. On April 27, 2023, the Commission considered a petition for a Declaratory Order
18 concerning the interpretation of RCW 42.17A.490 and the use of contributions to
19 further the candidacy of an individual for an office other than the office
20 designated on the statement of organization. The petition questioned the
21 correctness of the published guidance on the PDC website, *PDC Guidelines &*
22 *Restrictions – Using Contributions for a Different Office*, which provided that the
23 transfers of leftover contributions to a new campaign for a different office,
24 pursuant to RCW 42.17A.490, were not attributed to the original contributor and
25 did not count against that contributor’s contribution limit for the new campaign.
26
27

1 The basis for the published guidance came from a legal memo prepared for the
2 Commission in 1995, which the Commission adopted on August 27, 1995. The
3 guidance was published on the Commission’s website. The Commission asked
4 staff to bring these matters back to a special meeting on May 11, 2023, at which
5 staff would present draft interpretations for the Commission’s consideration, and
6 to allow for public comment.
7

8 2. The Ferguson Campaign stated that on April 24, 2023 it began asking past donors
9 from Bob Ferguson’s 2016 and 2020 campaigns for attorney general for written
10 permission to transfer funds left over from their contributions to his gubernatorial
11 Campaign.
12

13 3. On May 2, 2023, staff published notice seeking public comment on two options
14 regarding the interpretation of RCW 42.17A.490, which the Commission was
15 considering. The first option included the current agency guidance that “[w]hen a
16 candidate is transferring contributions left over from a previously completed
17 election campaign to a new campaign for a different office, those contributions
18 that are moved to the new campaign are NOT attributed to their sources, nor do
19 they count toward the contributor’s limit for the new campaign.” The second
20 option proposed a new alternative interpretation that “[w]hen, with the written
21 approval of the contributor, a candidate is transferring contributions left over from
22 a previously completed election campaign, whether or not designated as surplus
23 funds, to a new campaign for a different office, those contributions that are moved
24 to the new campaign **must be attributed to their sources, and count toward the**
25 **contributor’s limit for the new campaign.** Each contributor whose written
26
27

1 approval was obtained must be identified along with their contribution.” The
2 April 25 staff memo advised the Commission on the two options.

3 4. On May 2, 2023, the Ferguson Campaign filed a Candidate Registration (C-1)
4 with the PDC.

5 5. On May 9, 2023, May 10, 2023, and May 11, 2023, the Ferguson Campaign filed
6 eight C-3 reports disclosing that beginning April 24, 2023, it had received
7 monetary contributions totaling \$1,272,079.71. The reports consisted of transfers,
8 with permission from the underlying contributors, from surplus funds remaining
9 after the 2016 and 2020 campaigns of Bob Ferguson for Attorney General. The C-
10 3 reports included lump sum amounts and did not identify the individual
11 contributors attributed to the transfers. All of these transfers occurred prior to the
12 time the Commission’s May 11, 2023, special meeting began.
13

14 6. On May 11, 2023, the Commission voted unanimously to change its published
15 guidance of RCW 42.17A.490, providing that the transfer of unspent campaign
16 funds to a campaign for a different office are contributions to the new campaign.
17

18 7. On May 11, 2023, PDC staff informed Abbot Taylor, Treasurer for the Ferguson
19 Campaign, of the Commission’s action. After the Commission adopted a new
20 interpretation to RCW 42.17A.490, the Ferguson Campaign began immediately
21 following the new interpretation for subsequent transfers with permission.
22

23 8. On May 19, 2023, the PDC received a complaint filed by Michael Christophersen
24 alleging that the Ferguson Campaign had violated RCW 42.17A.235 and .240 by
25 failing to identify the names and other required information for contributors who
26 gave their written approval to use their contributions, originally given to further
27

1 the 2016 or 2020 Bob Ferguson campaigns for Attorney General, to further the
2 2024 campaign for Governor.

3 9. On June 9, 2023, the Campaign responded to the complaint, defending its
4 reliance on the published interpretation of RCW 42.17A.490 as it existed at the
5 time of the transfers.

6
7 10. On May 25, 2023, the Commission formally adopted PDC Interpretation 23-01
8 regarding application of RCW 42.17A.490 on contribution limits applied to
9 transferred campaign funds, which states in part, "...the Commission determines
10 that the use of a candidate's surplus contributions for the same person's campaign
11 for a different office are considered contributions to that new campaign."

12
13 11. On June 27, 2023, the PDC received a complaint from Tallman Trask that was
14 similar to the complaint filed by Michael Christophersen. On July 14, 2023, the
15 Campaign responded to the complaint, again defending its reliance on published
16 interpretation of RCW 42.17A.490 as it existed at the time of the transfers.

17 12. On July 21, 2023, staff held an Initial Hearing (Case Status Review) to convert
18 staff's initial review of the two complaints to a formal investigation.

19 13. On August 17, 2023, Mr. Taylor informed PDC staff that on August 16, 2023, the
20 Campaign voluntarily filed amended C-3 reports that retroactively applied the
21 new PDC Interpretation 23-01 to the campaign's past surplus fund transfers.

22
23 14. The amended C-3 reports disclosed the required contributor information for
24 contributions totaling \$1,183,403.88, in accordance with RCW 42.17A.235 and
25 .240. The remaining \$88,675.83, initially transferred to the Campaign in lump
26 sum amounts, was returned to the Bob Ferguson Surplus Fund.
27

- 1 15. The Campaign used the FIFO (First-In-First-Out) standard, based on the
2 assumption that the first contributions received were the first contributions spent
3 by the campaign, to determine which contributions were eligible to be transferred.
4 All transfers were made with the written permission of the contributors.
5
6 16. No evidence was found that remaining surplus contributions transferred to the
7 2024 campaign for Governor exceeded contribution limits.

8 **III. CONCLUSIONS OF LAW**

- 9
10 1. The sole issue before the Commission is whether, at the time the Campaign filed
11 the C-3 forms reporting the transfers from the Bob Ferguson for Attorney General
12 campaign, it violated RCW 42.17A.235 and 240 by reporting the transfers as
13 lump sums rather than reporting the names of the individual contributors to the
14 earlier campaigns to ensure adherence to individual contribution limits. Based
15 on the facts as represented by the Campaign and agreed to in the Stipulation, the
16 Commission concludes that the Campaign did not violate this reporting
17 requirement.
18
19 2. RCW 42.17A.235 requires campaign committees to report contributions to the
20 committee.
21
22 3. RCW 42.17A.240 specifies that campaign committees report the names and
23 addresses of contributors to the committee.
24
25 4. Each of the transfers at issue was completed and reported prior to the date on
26 which the Commission adopted a change in the interpretation of RCW
27 42.17A.490 treating transfers as new contributions, requiring reporting of
individual contributor names and counting those transfers toward contribution


limits. Therefore, the reporting of the transfers complied with the letter of the law at the time the transfers occurred.

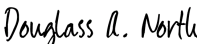
- 5. When the Commission adopted the new interpretation of RCW 42.17A.490 governing transfers, it did not specify that it intended to retroactively apply the new requirement to prior transfers.
- 6. The Campaign subsequently complied with the new interpretation by amending its C-3 forms to report the names of individual contributors. Commission staff has verified that contribution limits were not exceeded.


IV. ORDER

This Order will be the Final Order. After consideration of the facts and the law as set forth and represented by the Campaign in the Stipulation, the Commission unanimously declines to find a violation of RCW 42.17A.235 and 240. This matter is dismissed.

So ordered this 21st day of December, 2023.


DocuSigned by:

 C12AF73D7D6A431...
 Allen Hayward

DocuSigned by:

 676196863EA1409...
 Douglass A. North

DocuSigned by:

 8CA82FC3C03E47D...
 Nancy Isserlis

DocuSigned by:

 306D7E7E0F75403...
 Fred Jarrett

DocuSigned by:

 F7154764A0CA47A...
 J. Robert Leach