

November 4, 2024

DELIVERED ELECTRONICALLY

Washington Public Disclosure Commission
Attention: Phil Stutzman
Evergreen Plaza
711 Capitol Way South, Suite 206
Olympia, Washington 98501

Re: PDC Case Number 160779

Dear Mr. Stutzman,

I write on behalf of We Stand With Dave Reichert (the “Campaign” or the “Reichert Campaign”), the authorized committee for Dave Reichert’s campaign for Governor, in response to a complaint filed with the Public Disclosure Commission (the “PDC” or the “Commission”) by Marque Jones (the “Complainant”) on October 10, 2024 (the “Original Complaint”), the additional inquiries raised by PDC staff in its October 23, 2024 email to the Campaign (the “Staff Email”), and an additional complaint filed with the PDC by Marina Multhaup on October 29, 2024 (the “Additional Complaint”).

As requested in your November 4 email, this letter represents the Campaign’s initial response to the Original Complaint, Staff Email and Additional Complaint. The Campaign will supplement this response with additional details as the Campaign completes its review of contribution and expenditure records.

Background

To date, the Reichert Campaign has raised over \$6.5 million from nearly 30,000 unique contributors in nearly 60,000 separate transactions. For context, this represents more contributions and contributors than all but one other candidate for state office this election cycle, and more than any other Republican running for any office in over a decade.

Despite this exceptionally large volume of contributions, the Campaign has rigorously adhered to the disclosure requirements and deadlines set by the Fair Campaign Practices Act (the “FCPA”) and PDC rules. Contributions are deposited and reported on-time, reports are filed on-time, and the Campaign, through its finance team, treasurer and legal counsel, have set up systems to ensure its compliance obligations are met in full. It is remarkable—and telling—that, for a campaign of its size and prominence, only one other PDC complaint prior to the Original Complaint had even been filed against the Campaign (which complaint was promptly dismissed).

As discussed in more detail below, the vast majority of the issues raised by the Original Complaint, Staff Email and Additional Complaint are either irrelevant or have already been resolved in full compliance with the FCPA and PDC rules. The Campaign has devoted considerable resources to PDC compliance and has taken prompt action whenever an issue arises. Both the Original Complaint and Additional Complaint should be dismissed in full.

Response

A. Timely and Accurate Reporting of Small Contributions.

The Original Complaint alleges “that information provided [by the Reichert Campaign] compared to Bob Ferguson [the other candidate for Governor] is insufficient” and that “there is a significant difference between Dave and Bob” and includes a screenshot of some of the aggregated “Small Contributions” reported by the Reichert Campaign. PDC staff elaborated that this allegation “appears to be motivated by the fact that, according to the PDC database, on 10/18/2024, the campaign had accepted \$1,348,652.11 in contributions from 33,683 donors. This computes to an average contribution of \$40.00 per donor.” The Complainant and PDC staff apparently question whether the Campaign “may have violated RCW 42.17A.235 and .240 by failing to timely and accurately report the names and addresses of contributors giving over \$100 in the aggregate during the campaign.” However, the Campaign *has* accurately tracked and reported its non-itemized “small contributions” and has not violated RCW 42.17A.235 or .240.

Even if the average non-itemized contribution were exactly \$40.00 (it is not—using the figures cited by PDC staff above, \$1,348,652.11 in non-itemized small contributions from 33,683 contributors is an average contribution of \$40.04 per donor), that is a coincidence, not a FCPA violation. Nor does the volume of the Campaign’s non-itemized contributions, whether measured in terms of aggregate dollars received or number of contributors making a non-itemized contribution. While these are certainly large numbers overall as well as relative to most other campaigns, candidates for Governor appearing on the general election ballot *always* raise more contributions than candidates for other offices, often a substantial margin. In the context of the total contributions and number of contributors reported to date by the Reichert Campaign (over \$6.5 million from nearly 30,000 itemized contributors), the aggregate dollar amount and quantity of non-itemized small contributions is both reasonable and consistent with figures reported by other candidates for Governor.¹

Furthermore, while the average amount of a non-itemized contribution to the Reichert Campaign is *currently* near \$40, this average has fluctuated over time, as would be expected. Using a spreadsheet of the Campaign’s reported small contribution amounts provided by PDC staff, the running average amount of such non-itemized small contributions was initially over \$50 per contributor for the first two months of the Campaign, fell to below \$40 per contributor in August 2023, reaching a low of \$34.92 per contributor on October 10-11, 2023, before rising back to as high as \$41.48 per contributor on April 24, 2024, and is now once again gradually decreasing to the \$40.04 average as of October 11, 2024. That this average happens to now currently be near

¹ Compared, for example, that as of November 4, 2024, Bob Ferguson has reported raising \$1,559,607.08 in non-itemized small contributions from 50,925 non-itemized contributors this election cycle.

\$40 is sheer coincidence—on this date three months ago, the average was \$40.79, six months ago the average was \$41.34, and one year ago the average was \$35.65.

None of the information presented in the Complainant or Staff Email with respect to non-itemized contributions constitutes a violation of RCW 42.17A.235 or .240. The Campaign's small contribution reporting is accurate, and it is tracking all small contributors, including maintaining a separate and private list of the name, address and amount of each such contributor in accordance with RCW 41.17A.240(2)(c). If any contributor's contributions exceed \$100 in the aggregate, such contributions are itemized on subsequent C3 reports where the contributor is identified by his or her name and address.² This portion of the Original Complaint is obviously unfounded or frivolous.

B. Employer and Occupation Information.

The Staff Email also asks whether the Campaign “may have failed to collect the required employer and occupation information in accordance with WAC 390-16-034 for contributors giving over \$250 in the aggregate during the campaign.”

Since the Campaign's launch in June 2023, any written fundraising solicitation has included a form requesting the contributor's occupation and employer and such employer's city and state. *See, e.g.,* Ex. A (showing screenshot of Campaign's online donation form and scanned image of the Campaign's printed contribution envelope). Despite this, many contributors submitting contributions to the Campaign have not completed these lines when returning the Campaign's fundraising forms. (While the Campaign has programmatically required contributors to complete employer and occupation fields for online contributions in excess of \$250, it is not possible to do so for fundraising solicitations sent through the mail or distributed at events.)

In order to fulfill its compliance obligations, the Campaign thus established internal policies and procedures to attempt to collect the required employer and occupation information. In the absence of any explicit provision of the FCPA, any PDC rule, or even any formal PDC interpretation, the Campaign believed it was appropriate to apply a “best efforts” standard for its collection of incomplete employer and occupation information, similar to the process set forth 11 CFR § 104.7 with respect to an analogous federal law. Under the approach adopted by the Campaign, when contributors did not provide employer and occupation information despite contributing over \$250 in the aggregate, the Campaign would promptly send an email or letter to such contributors informing them of the Campaign's compliance obligations and instructing them to provide the missing information. If a C3 report reflecting a contribution was due before obtaining the missing information, the Campaign would timely file the C3 report and list “Information Requested” for the contributor's employer and occupation. The Campaign would also send periodic notices to such contributors, reminding them that the Campaign was required to report their employer and occupation.

² To further demonstrate that the Campaign has been consistently tracking non-itemized small contributions and properly reporting them, the C3 reports filed on Monday, November 4, 2024, for deposits made the previous week, have itemized all contributions, including many from contributors whose aggregate contributions have still not exceeded \$100.

Until mid-2024, the Campaign believed this “best efforts” policy (which complied with, if not exceeded, the standards required by the Federal Elections Commission under analogous federal requirements) satisfied its obligations under the FCPA. In mid-2024, the Campaign learned that PDC Commissioners had discussed this issue at a Commission meeting earlier in the year and adopted a motion instructing PDC staff to provide written guidance on the PDC website regarding political committees’ employer and occupation reporting obligations.

Thereafter, the Campaign immediately took two steps: First, it revised its internal procedures in order to dramatically increase its efforts to obtain employer and occupation information within ten business days of receiving contributions for which employer and occupation information was required. Because the Campaign had already entered the weekly C3 reporting period, as a practical matter, this means that the Campaign has now been able to include all required employer and occupation information on C3 reports when initially filed. The Campaign believes it has fully complied with the PDC staff’s updated guidance regarding employer and occupation reporting since the learning of the Commission’s recent discussion of the topic. Indeed, the Campaign is not aware of *any* contributions received since August where required employer and occupation information has not been timely reported.³

Second, the Campaign also redoubled its efforts to collect employer and occupation information from previously reported contributions. The Campaign now believes that it has collected employer and occupation information for all prior contributors whose aggregate contributions to the Campaign exceed \$250. The Campaign has been continually applying these updates to contribution-level records in its Aristotle database and amending previously filed C3 reports, even before receiving the Original Complaint.⁴ Due to limitations within Aristotle, the Campaign is still continuing to amend individual C3 reports but intends to complete these amendments as promptly as possible. In the meantime, for any contributor identified by the PDC or by an individual seeking to inspect the Campaign’s books of account, the Campaign believes it has collected and could provide any required employer and occupation information.

These collection efforts have consumed significant bandwidth for the Campaign—as noted above, the volume of contributions for gubernatorial campaigns is exceptionally large, so even if a small percentage of contributors neglect to provide their employer and occupation information upon first request, the raw number of such contributors from whom information must nonetheless be quickly obtained is still quite large. Moreover, a substantial number of the Campaign’s nearly 60,000 separate contributions have been transmitted through the mail, and the Campaign often lacks telephone numbers and email addresses for these contributors, rendering real-time communication impossible. Nevertheless, the Campaign has been endeavoring to comply with PDC staff’s interpretation of WAC 390-16-034. This portion of the Original Complaint should be dismissed.

³ There are a number of contributions reported since August 2024 which do list “Information Requested” in the employer or occupation fields. However, these involve contributions below the \$250 aggregate threshold, so employer and occupation information is not required to be reported. The usage of “Information Requested” in these fields (when no entry is required) appears to arise from a glitch in Aristotle, the compliance software used by the Campaign.

⁴ For example, the Campaign filed 48 amended C3 reports last month, 38 of which were submitted *before* the Campaign received the Original Complaint.

C. Over-Limit Contributions.

Lastly, PDC staff also questioned whether the Campaign “has accepted contributions in excess of the contribution limits set forth in RCW 42.17A.405(14),” and identified 16 contributors who may have contributed more than the \$2,400 per election limit.

As you know, a “[c]ontribution” does not include . . . [a] contribution received by a candidate . . . that is returned to the contributor within ten business days of the date on which it is received by the candidate[.]” RCW 42.17A.005(15)(b). In most instances cited by PDC staff, there was no over-limit contribution because the Campaign returned any over-limit amount within ten business days of its receipt. In several other instances, the Campaign attributed the contribution to one individual instead of his or her spouse, leading to an over-limit amount being reported.

Of the 16 contributors identified by PDC staff, the Campaign has determined that only three made a contribution that was not returned within 10 business days. For two of those contributors, the Campaign caught the error with the same calendar month and promptly issued a refund, and a refund has since been issued to the third such individual. For the other 13 contributors, the Campaign is in the process of reviewing what led to the acceptance of over-limit contributions, compiling its records that document the date and amount of refunds, and amending C3 reports where necessary. The Campaign will supplement this response with that information as soon as possible.

The Staff Email also requested that the Campaign “review [its] books of account and confirm whether the list above is a complete and accurate list of over-limit contributions accepted by the campaign” or “if there are additional over-limit contributions not on the above list.” The Campaign is conducting this review as well and will include any findings in its forthcoming supplemental response.

Lastly, PDC staff asked whether “the campaign ha[s] contributors who give a recurring amount on an a [*sic*] periodic basis that have continued after the contribution limit has been reached.” While the Campaign does have some contributors who make recurring contributions on periodic bases, none of the contributors described above have set up recurring contributions with the Campaign. The Campaign monitors contributors who have scheduled recurring contributions to ensure such recurring payments are turned off if the contributor reaches his or her \$2,400 per election limit.

In short, all but three over-limit amounts identified by PDC staff were either refunded within 10 days or only appeared to be an over-limit amount due to allocation to the wrong spouse, two of those three were still quickly caught and refunded by the Campaign *sua sponte*, and the only over-limit amount not caught by the Campaign was nonetheless promptly refunded as soon as it was discovered. In no case did the Campaign ever make expenditures out of these over-limit amounts. For these reasons, this portion of the Original Complaint should be dismissed as well.

D. Reporting the Actual Source of Contributions.

On October 29, the PDC received an additional complaint from attorney Marina Multhaup of the law firm Barnard Iglitzin & Lavitt LLP, which was added to PDC case number 160779. The

Additional Complaint alleges that Lawrence Patrick Hughes may have made campaign contributions in the name of his wife, Mary Ellen Hughes after she had passed away. Critically, the Campaign did not know that Mrs. Hughes was deceased until October 30, 2024, after the Additional Complaint was filed.⁵

The Campaign received two contribution checks drawn on accounts bearing the name of Lawrence P. Hughes and Mary Ellen Hughes (copies of which, with the account number and part of the signature redacted, are attached as Exhibit B):

- The first check, payable in the amount of \$4,800, was received by the Campaign on December 13, 2023. This check bore only the names of Lawrence P. Hughes and Mary Ellen Hughes. In accordance with guidance posted to the PDC's website⁶ and because the contribution did not include any instruction or notation to the contrary, the Campaign attributed equal parts of the contribution to each of the two individuals whose names were printed on the check. This contribution was timely deposited and reported, as shown on C3 report number 110196602 (subsequently amended by report number 110223709) filed with the PDC.
- The second check, payable in the amount of \$2,400, was received by the Campaign on May 1, 2024. This check also bore the names of Lawrence P Hughes and Mary Ellen Hughes, as well as that of a third individual, Christine D Hendley. This contribution was originally attributed only to Mary Ellen Hughes. It was timely deposited and reported, as shown on PDC report number 110220896.

Neither check included or was accompanied by any notation indicating that Mary Ellen Hughes was deceased or that the contribution was only from Lawrence Hughes. Had the Campaign been aware that she had passed away before these two checks were received, the first check would have been attributed entirely to Lawrence P. Hughes, designating \$2,400 as a primary election contribution and \$2,400 as a general election contribution. The second check would have been allocated to Christine D Hendley and designated as a primary election contribution, as Mr. Hughes would have already exceeded his contribution limitation but Ms. Headley had not previously made any contributions to the Campaign.

Upon receiving the Additional Complaint after the close of business on October 30, the Campaign promptly reviewed its records, identified the two checks above and by 11:00 AM on October 31 had sought written guidance from PDC staff regarding how to correct the Campaign's prior filings.

⁵ The Additional Complaint also alleges that one of the other political committees named therein "should have known" that a contribution from Mary Ellen Hughes was actually from Lawrence Patrick Hughes. As noted above, the Reichert Campaign did not know that Mrs. Hughes was deceased. Moreover, all checks sent to the Reichert Campaign are forwarded to the Campaign's treasurer in Georgia, where they are processed. Given that Reichert Campaign staff working in Washington were not aware of Mrs. Hughes's passing, an out-of-state ministerial treasurer certainly could not be expected to know of it.

⁶ See How Do I Know Who The Contributor Is When I Receive A Check With Two Names On It?, Wash. Public Disclosure Comm'n, *available at* <https://www.pdc.wa.gov/faq/how-do-i-know-who-contributor-when-i-receive-check-two-names-it>.

In accordance with such guidance received on November 1, 2024, the Campaign then reattributed the contributions originally attributed to Mary Ellen Hughes as follows:

- The December 13, 2023, contribution has now been attributed entirely to Lawrence P. Hughes, with \$2,400 designated for the primary election (as before) and \$2,400 designated for the general election. This new attribution is reflected on C3 report number 110258536.
- The May 1, 2024, contribution has been attributed to Christine D Hendley and designated for the primary election. This new attribution is reflected on C3 report number 110258533.

As a result of these reattributions, (a) Lawrence P. Hughes has not made an overlimit contribution to the Campaign and (b) the Campaign has accurately reported the actual source of the contributions in question.

Given the Campaign's lack of any knowledge that Mary Ellen Hughes was deceased, and that it promptly sought and followed PDC staff's guidance regarding resolution of the issue (and completed such resolution within three business days), the Additional Complaint should be immediately dismissed.

Conclusion

While the Campaign will supplement this response with additional information concerning the refunding and proper allocation of any over-limit amounts, this response provides ample reasons for the Commission to dismiss both the Original Complaint and Additional Complaint.

Sincerely,

CHALMERS, ADAMS, BACKER & KAUFMAN, LLC

/s/ Andrew R. Stokesbary

Andrew R. Stokesbary, Member

Counsel for We Stand With Dave Reichert