

July 23, 2021

Kurt Young
Compliance Officer
Washington Public Disclosure Commission
711 Capital Way S., Suite 206
Olympia, WA 98501

Re: Seattle Foundation – PDC Case Number 92059

Dear Mr. Young:

We are writing on behalf of Seattle Foundation in response to the complaint filed by Stefan Sharkansky. Mr. Sharkansky alleged that Seattle Foundation violated RCW 42.17A.207 by making contributions of \$50,000 each to Washington Fairness Coalition and Keep Washington Rolling in 2019 and to Yes for Transit in 2020. In short, Seattle Foundation was unaware of the relatively new statute and is committed to complying with any disclosure obligations, but it does not believe the registration and reporting statutes apply to the activities raised in the complaint.

Before addressing the specific contributions, it may be helpful to explain Seattle Foundation's basic structure. As a 501(c)(3) nonprofit community foundation founded in 1946, Seattle Foundation serves as a public charity facilitating and pooling donations used to address community needs and to support local nonprofits.

Seattle Foundation receives donations from individuals, families, businesses, and other organizations, many of which are maintained in donor advised funds and/or subject to donor-imposed restrictions, such as endowments or scholarships. As a result, Seattle Foundation tracks the sources and purposes of different donations separately and manages all of its accounting through separate funds, including for administrative operations. Seattle Foundation currently manages more than 1,200 unique funds.

In addition to donor advised funds, Seattle Foundation maintains various Area of Interest funds. An Area of Interest fund focuses on a particular cause such as civic leadership, environmental protection, or climate issues. Donors can contribute directly to an Area of Interest fund and Area of Interest funds may also receive funds through inter-fund transfers from other Area of Interest

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funds with aligned interest, as well as from interest from previously received gifts and bequests; principal plus interest from previously received gifts and bequests; and distributions from established donor advised fund accounts. Each Area of Interest fund is accounted for separately to ensure money within each fund is being used for its designated purpose (e.g., supporting arts education). Seattle Foundation decides when and how to spend money in support of that Area of Interest fund's particular cause. Although not a primary purpose of Area of Interest funds, on occasion, those expenditures include contributions to political committees.

The PDC and Attorney General have previously analyzed political committee formation questions by focusing on the purpose and activities of a particular fund involved in receiving a contribution or making an expenditure, rather than of the overall organization. *See, e.g., State v. Grocery Manufacturers Association*, 195 Wn.2d 442 (2020) (State contended that GMA's Defense of Brand fund was a political committee). We assume the PDC will take a consistent approach with incidental committees and focus on the individual funds at issue, particularly given the structure of an organization such as Seattle Foundation which manages distinct funds. With that in mind, it is important to recognize that the contributions mentioned in Mr. Sharkansky's complaint came from three different Area of Interest funds.

In 2019, the Climate Justice Area of Interest fund contributed \$50,000 to Keep Washington Rolling. The Climate Justice Area of Interest fund received only \$265 in new donations during 2019, with the remainder of the fund coming from interfund transfers of \$254,250 from funds which were created before 2019 with gifts that were not designated or earmarked for political contributions. Similarly, the Catalyzing Community Impact fund contributed \$50,000 to the Washington Fairness Coalition in 2019 and received only \$5 in new donations in 2019 with the remainder of funding, \$147,000, coming from interfund transfers of gifts received in previous years that were not designated or earmarked for any political contributions. In 2020, the Civic Leadership Area of Interest fund contributed \$50,000 to Yes for Transit 2020. The Civic Leadership Area of Interest fund was created in 2017 and received most of its funding in 2017-2020. In 2020, it did receive one gift in excess of \$10,000 months after it made the contribution to Yes for Transit 2020.

RCW 42.17A.207 requires registration and reporting only if the incidental committee is required under RCW 42.17A.240(d)(2) to disclose a payment of more than \$10,000 received by the incidental committee from any single person during the same calendar year. Neither of the Area of Interest funds making the 2019 expenditures meets the criteria triggering registration and reporting as an incidental committee in 2019.

As for 2020, the Civic Leadership Area of Interest fund did receive one gift in excess of \$10,000 but that gift was not made for the purpose of facilitating the \$50,000 contribution made to Yes for Transit 2020. Indeed, the contribution to Yes for Transit 2020 was made in October of 2020 but the individual gift was not made to Seattle Foundation's Civic Leadership Area of Interest Fund until December 31, 2020. Moreover, the gift received was for only \$25,000—only half of

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the amount the Civic Leadership Area of Interest fund had contributed months earlier to Yes for Transit 2020. At the time of the contribution to Yes for Transit 2020, the Civic Leadership Area of Interest fund had other pre-existing funds accumulated since its inception in 2017 which served as the source of the contribution to Yes for Transit 2020. It is difficult to see any public interest advanced in requiring registration and reporting under those circumstances, but Seattle Foundation is willing to do so if the PDC believes it is necessary.

We would also note that much of the information required on the PDC's C1 is already readily available to the public on Seattle Foundation's IRS Form 990. For example, Seattle Foundation's annual information return to the IRS identifies all of its Board members and officers and, if applicable, includes a Schedule C for reporting lobbying activities and a Schedule R to identify affiliated organizations.

We are also mindful that the United States Supreme Court recently held facially unconstitutional a California statute requiring charitable organizations to disclose their donors to the California Attorney General. *See Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2372 (2021). Even though the California statute contemplated a confidential filing of donor information, the Supreme Court recognized that such a compelled disclosure created an unnecessary risk of chilling First Amendment rights and was not narrowly tailored to an important government interest. Unlike in the California case, the funds at issue here were already publicly reported—by the recipients in their PDC filings—raising further doubts about the constitutionality of imposing additional disclosure burdens on charitable organizations. In light of the Supreme Court's decision, we are unsure whether the PDC believes Washington's incidental committee requirement is constitutional. Please let us know if the PDC still expects charitable organizations to disclose donor information publicly, even if the donors were not contributing for purposes of making political expenditures and the recipient political committees have already publicly reported receipt of the contributions.

Again, Seattle Foundation's goal is to comply with any lawful disclosure obligations. The disclosure obligation was new, and unfamiliar to Seattle Foundation, and this remains an evolving area of the law. But Seattle Foundation believes the 2019 activity is plainly outside of the registration and reporting requirements and that the information disclosed in this letter highlights the lack of public interest in registering and reporting the 2020 activity. Nevertheless, if the PDC believes it should register and report the limited Civic Leadership Area of Interest

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fund 2020 activities, it is willing to do so. Please let us know the PDC's view as to whether the information in this letter sufficiently addresses the issues.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in blue ink, reading "Robert J. Maguire". The signature is written in a cursive style with a large, stylized "R" and "M".

Robert J. Maguire

cc: Alyssa Farber, Seattle Foundation