



State of Washington

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908

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April 11, 2019

Delivered electronically to Phillip Lloyd, Treasurer for the 2016 Robert Ferguson for Attorney General Campaign

Subject: Robert Ferguson for Attorney General Campaign Complaint Return Letter; PDC Case 28291

Dear Mr. Lloyd:

Below is a copy of an electronic letter sent to Glen Morgan concerning the complaint he filed with the Public Disclosure Commission (PDC) against the 2016 Robert Ferguson for Attorney General. As noted below in the letter to Mr. Morgan, the PDC will not be conducting a more formal investigation into these allegations or taking further enforcement action in this instance.

However, PDC staff is reminding the Robert Ferguson Campaign to provide a more detailed breakdown for expenditures made to reimburse individuals or payments made to consultants or vendors, including the sub-vendor breakdown, in the future. In addition, please be aware of the changes to the disclosure of debt and other changes to the reporting requirements as part of the passage ESHB 2938.

Based on these facts, the PDC has dismissed the allegations listed in the complaint filed against the 2016 Robert Ferguson for Attorney General Campaign in accordance with RCW 42.17A.755(1). If you have questions, please contact Kurt Young at (360) 664-8854, toll-free at 1-877-601-2828, or by email at kurt.young@pdcc.wa.gov.

Sincerely,

Endorsed by:

s/_____
Kurt Young
PDC Compliance Officer

s/_____
BG Sandahl, Deputy Director
For Peter Lavalley, Executive Director



Public Disclosure Commission
Shining Light on Washington Politics Since 1972



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April 11, 2019

Sent electronically to Glen Morgan

Subject: 2016 Robert Ferguson for Attorney General Campaign PDC Case 28291

Mr. Morgan:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on March 1, 2018 against the Robert Ferguson for Attorney General Campaign. The complaint alleged numerous violations of: RCW 42.17A as detailed below.

PDC staff reviewed the allegations listed in the complaint you filed, the statutes, rules and reporting requirements, queried the PDC contribution and expenditure database for the 2016 Robert Ferguson for Attorney General Campaign, reviewed the Candidate Registrations (C-1 report), Monetary Contributions reports (C-3 reports), and Summary Full Campaign Contribution and Expenditure reports (C-4 reports), filed by the 2016 Robert Ferguson for Attorney General Campaign (Campaign), and the responses to the complaints provided by the Phillip Lloyd, Treasurer for the Campaign. Based on staff's review, we found the following:

- On January 2, 2013, Robert W. Ferguson filed a Candidate Registration (C-1 report) with the Public Disclosure Commission (PDC), declaring his 2016 candidacy for re-election to the office of Attorney General in Washington State, and selecting the Full Reporting Option. The C-1 report listed Phillip Lloyd as Campaign Treasurer/Secretary, and Mr. Ferguson as Chair of his Campaign.
- Mr. Ferguson was elected Attorney General in 2012 and was re-elected to that office in 2016. Prior to that he served from January 2004 to December 31, 2012 as a King County Councilmember.
- On December 11, 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 that Robert Ferguson
- In December 2017, the Campaign Finance Unit of the Attorney General's Office notified Peter Lavallee, Executive Director of the PDC stating that their office could not investigate the allegations listed in Mr. Morgan's complaint filed as a CAN, since they are employed by and acting on behalf of Attorney General Ferguson.
- On December 11, 2017 John Gerberding, Senior Deputy Prosecutor Attorney with the King County Prosecutor's Office sent a letter to Ms. Dalton indicating the King County Prosecuting Attorney would not be investigating Mr. Morgan's allegations.

Allegations: Prohibited uses of Surplus Funds

The complaint alleged violations of RCW 42.17A.430(8) by making prohibited surplus funds expenditures from the Robert Ferguson Surplus Funds account, including a \$1,000 contribution to the Eastside Democratic Dinner Committee (EDDC), a political committee registered with the PDC, and an expenditure to pay for the King County Bar Association dues for AG Ferguson.

- Mr. Lloyd stated that he prepared and made out a check from the surplus funds account to the EDDC, but that the check “was never delivered to the committee.” He stated he voided out the check made to the EDDC and filed an amended C-4 report removing the expenditure from the Schedule A, since the check was never delivered.

PDC staff reviewed the August 2017 C-4 report filed by the Robert Ferguson Surplus Funds account disclosing a \$1,000 expenditure made on August 31, 2017 to the EDDC. An August 2017 amended C-4 report was filed removing that expenditure from the Schedule A of that report. Staff also reviewed the C-3 reports filed by the EDDC and queried the PDC database, but the committee did not report receiving a \$1,000 contribution from the Bob Ferguson Surplus Funds account. Since no surplus funds’ expenditure was made, and no corresponding contribution received by the Eastside Democratic Dinner Committee, there was no prohibited use of surplus funds.

- Mr. Lloyd stated that the surplus funds expenditure to the King County Bar Association payment was directly related to Bob Ferguson’s role as Attorney General of Washington State, and that the expenditure was therefore a permissible use of Surplus Funds. The Washington State Attorney General paying his bar association dues using surplus funds is a permissible use of surplus funds since the expenditure was directly related to the office held.

Allegations: Failure to timely disclose contribution and expenditure information on C-3 and C-4 reports

The complaint alleged violations of RCW 42.17A.235 by failing to timely disclose contribution and expenditure activities undertaken by the Campaign on C-3 and C-4 reports.

- Mr. Lloyd stated the Campaign timely filed the initial C-3 and C-4 reports, and that the alleged late filings were “routine amendments to previously filed reports” disclosing updated information as it became available. He stated none of the information disclosed on the amended reports provided “any material changes” to the information disclosed on the initial reports, and that the last two reports listed in the complaint were filed “on the day following the Labor Day holiday and so we believe that these were not filed late.”

Of the 11 allegations listed in the complaint for this section, staff reviewed the details of three of the reports that contained allegations of late filed reports, and included the following C-3 and C-4 amended filings:

- The changes were minor in nature and included the following: Employer information for one contributor was changed from “Self-employed” to “INND”; Aggregate total for a contributor from \$75 to \$120, which required the Campaign to provide the Employer and Occupation of the contributor, was listed as retired; (3) Aggregate totals for two contributors was corrected; from \$1,500 up to \$2,000 for one contributor, and \$1,500 down to \$1,000 for another contributor); (4) The Teamsters Local 117 aggregate contribution totals for the 2016 general election was increased from \$1,000 to \$2,000; and A C-4 report disclosed a new \$131 in-kind contribution from Carney, Badley, Spellman, PS for “event catering.”

- All 11 of the amended reports filed by the Campaign, had been electronically submitted prior to the complaint being filed, and appear to have timely updated the filings as they were provided or became aware of additional information.

Allegations: Failure to timely disclose debts and obligations, and provide a breakdown of sub-vendors and/or detailed description of services provided, and refunded contributions

The complaint alleged violations of RCW 42.17.A.235 and .240 by the Campaign for failing to timely: (1) disclose debts and obligations; (2) provide a proper detail and sub-vendor breakdown for expenditures made to work contracted out to a third party; and reimbursements made to individuals, including the candidate, for out-of-pocket expenditures; (3) descriptions of services provided by vendors and number of political advertisements printed or mailed; and (4) improperly accounting for refunded contributions.

Staff reviewed the spreadsheet submitted by the complainant which included 137 separate expenditures disclosed by the Campaign on C-4 reports as follows:

- 38 expenditures made to Mandate Media totaling \$83,775 for Payroll Taxes; Consulting; Facebook and other online advertising; Website hosting and services; and Data services (as reported through Blue State Digital).
- 25 expenditures made to Bank of America Business Card, the Campaign credit card, totaling \$55,678 for payments made using the Campaign credit card and included the four expenditures made to The Westin Hotel totaling \$27,557 for event catering and travel); a \$12,737 expenditure made to the Washington State Convention Center for catering; and five expenditures made to several Seattle restaurants totaling \$3,632 for catering for campaign events.
- The remaining expenditures included: (1) Nine expenditures to Newman Partners totaling \$42,188 for Consulting and Fundraising Consulting; (2) Eight expenditures made by the Campaign to NGP Van Inc. totaling \$9,665 for Campaign Data Services; (3) Five expenditures made by the Campaign to Cameron Caldwell totaling \$7,945 for Campaign Wages; (4) Nine expenditures made by the Campaign to the United States Treasury totaling \$6,479 for Payroll Taxes; (5) One expenditure made to the Pro-Mail Associates Inc. totaling \$4,410 for postage for a mailing; (6) Eight expenditures made by the Campaign to Sydney Miyahara totaling \$4,139 for Campaign Wages; and (7) Seven expenditures made by the Campaign to Signapay totaling \$4,326 for Credit Card Processing fees for contributions received.

Staff's review of the debt allegations determined that the vast number of expenditures listed did not meet the definition of debt but were instead recurring expenditures paid to the same vendors every month for rent, consulting, payroll taxes, wages, credit card processing fees for contributions, data services, cellular bills and payments to Mr. Lloyd's firm, Seattle CFO LLC. The expenditures made to Seattle CFO LLC were for campaign finance compliance, and the expenditures disclosed as reimbursements were made to campaign workers and volunteers were for direct Campaign related out-of-pocket expenditures for mileage, travel, parking and miscellaneous.

Mr. Lloyd stated the Campaign researched the 137 allegations and found only three of the expenditures listed were required to have been disclosed as debts, and that the remaining expenditures were not debt since "they were either prepayments of expenses or incurred in the current period."

He noted that the Campaign should have disclosed three expenditures as debt and stated, “the public was never deprived of this information for more than a short period of time”, and there “was no material impact to the public, even if an error was made.” The three expenditures included:

1. A \$12,000 debt was disclosed on the 21-Day Pre-General Election C-4 report as owed to Corr Cronin Baumgardner Fogg & Moore, a law firm, and a \$10,450 expenditure was made to the firm on the 7-day Pre-General Election C-4 report, both for legal services performed on behalf of the Campaign. Mr. Lloyd stated the Campaign failed to disclose the remaining \$1,460 of the original \$12,000 balance as debt, since the Campaign inadvertently thought the October 25th expenditure represented the final payment for legal services. The Campaign timely disclosed the expenditure on the January 2017 C-4 report but failed to disclose the \$1,460 debt for legal services on the November and December 2016 reports.
2. Two expenditures were made in January of 2016 to Overnight Printing to print “thank you postcards” and “holiday cards” and should have been disclosed by the Campaign as debts on the November and December 2015 C-4 reports. The invoices had been “misdirected by the vendor” and that the print jobs were completed and received by the Campaign on November 10 and December 16, 2015, respectively. The Campaign made the expenditures to Overnight Printing in January of 2016, and that the two print jobs should have been disclosed as debt and apologized for the oversight.

The two print jobs were disclosed more than 10 months before the 2016 general election was held, totaled slightly more than \$1,000, and represented 0.2% of the total expenditures made by the Campaign. The \$1,460 owed to Corr Cronin Baumgardner Fogg & Moore for legal services has previously been disclosed as a portion of the \$12,000 initial debt owed to the law firm.

Mr. Lloyd stated the Campaign made a number of expenditures to Mandate Media during the 2016 election and discovered that three of the 38 expenditures had been made for media deposits, which required the Campaign to file amended C-4 reports disclosing the sub-vendor breakdown.

Concerning the refunding of contributions, Mr. Lloyd stated that the Campaign “followed past practice” of listing the refunds as expenditures on the Schedule A to C-4 report and filing a Schedule C “Corrections” making corrections to the C-4 report. He stated that none of the refunds in question involved contributions that exceeded the contribution limits for a Statewide Executive candidate.

Staff reviewed the contributions that the Campaign refunded to contributors and determined the contribution were properly and timely refunded, and accurately disclosed.

Allegations: Contributions received from an entity not doing business in Washington State.

The complaint alleged violations of RCW 42.17A.405 by the Campaign for accepting five contributions from business entities that were not doing business in Washington State, and failing to timely return the contributions within 10 days of receipt.

- Mr. Lloyd stated that the Campaign reviewed the allegation concerning a \$1,000 contribution received from Apollo Education Group, Inc. and found the contributor is the parent company of University of Phoenix, which has a branch campus in Tukwila.
- Mr. Lloyd stated the other four contributions listed in the complaint were received from large national law firms and public relations firms that included Bruning Law Group (\$500); Dentons US LLP (\$1,000); Heartland Solutions Group Inc. (\$1,000); and Reed Smith LLP (\$2,000).

- He stated that the Campaign believed they were all permissible contributions that were timely and accurately disclosed and added based on the PDC rule, if an entity purchased software services from Microsoft, or supplies from Amazon.com, that could constitute sufficient business in Washington to comply with WAC 390-17-310 determining if “*A corporation or business entity is "doing business in Washington state"*” for purposes of RCW 42.17A.405.

No evidence was provided by the complainant concerning the contributors listed in his complaint, and the internal controls established by the Campaign and Mr. Lloyd properly “vetted” the monetary contributions received.

Allegations: Failure to disclose Committee Officers and individuals that are authorized to make expenditures, and to timely amend Candidate Registration (C-1 report)

The complaint alleged violations of RCW 42.17A.205 by failing to disclose committee officers and individuals authorized to make expenditures, to process and deposit contributions on the C-1 report, and to timely amend the C-1 report within two weeks of any material changes to the campaign.

- Mr. Lloyd stated that only Attorney General Ferguson and he were authorized to make expenditures on behalf of the Campaign. He stated that Newman Partners, Cameron Caldwell, Michael Webb, Mandate Media, and Sydney Myahara, the five individuals listed in the complaint were not committee officers or principal decision-makers for the Campaign but were consultants and campaign vendors not required to have been disclosed on the C-1 report. He stated that the Campaign timely filed the C-1 reports.

Allegation: Personal use of campaign contributions

The complaint alleged that the Friends of Bob Ferguson made illegal payments to the candidate and other committee staff/vendors/volunteers to reimburse them for out-of-pocket expenditures for mileage and to pay telephone phone bills. The complaint alleged the expenditures constituted a “personal use” issue and that the Campaign failed to maintain sufficient documentation to verify those activities were campaign related, although no evidence was provided.

- Mr. Lloyd stated that the expenditures listed were to reimburse the candidate, campaign staff members and consultants for mileage they incurred on behalf of the Campaign. He stated that the expenditures made by the Campaign to reimburse the individuals for mileage costs were adequately documented.
- Mr. Lloyd stated that Attorney General Ferguson uses the cellphone to make political calls, since he is prohibited from using his office phone to make calls. He added that the Campaign expenditures for the cellphone this phone is a necessary campaign expense, and therefore not a personal use of campaign funds as alleged.

Allegations: Failure to include sponsor identification on political advertisements and other miscellaneous allegations

The complaint alleged that the Friends of Bob Ferguson failed to include the complete sponsor identification on political advertising, including the Campaign Facebook page.

- Mr. Lloyd stated that the Campaign did not expend any campaign funds to pay for Mr. Ferguson’s Facebook page, which is free, and that the Campaign complied with the PDC rule for “small online advertising” found in WAC 390-18-030.

- The page provided a link to Mr. Ferguson’s website that appears with the advertising, “automatically [taking] the reader directly to the required disclosures upon being clicked once.” Mr. Lloyd stated that Mr. Ferguson’s campaign website did have the proper sponsor ID.
- Mr. Lloyd stated that the remaining miscellaneous allegations failed to provide any evidence and he added that the *“treasurer (or in some cases an authorized designee from his office) makes deposits of checks.* He stated the Campaign is “not aware of any deficiencies” on Attorney General Ferguson’s F-1 reports and added concerning the PDC reports, those reports “are circulated as drafts prior to filing, approved by Bob Ferguson, and then filed using software that requires both passwords to be entered simultaneously.” In addition, staff noted that despite filing the reports electronically, RCW 42.17A.235(7) states that all C-3 and C-4 reports filed by the Campaign, “shall be certified as correct by the candidate and treasurer.

Mr. Lloyd added that the 2016 Campaign received almost \$800,000 in contributions and made more than \$500,000 in expenditures, which constituted “significant” contribution and expenditure activities and *“demonstrated proactive steps to be as transparent as possible.”*

A number of the allegations listed in your complaint were based “on information and belief”, but you failed to provide any evidence to support or substantiate those allegations. PDC staff has dismissed those allegations in accordance with RCW 42.17A.755(1).

As noted above, a number of the allegations listed in your complaint concerned information disclosed on amended C-3 and C-4 reports filed by the Campaign. Staff’s review of the initial and amended C-3 and C-4 reports filed by the Campaign confirmed a good faith effort was made to comply with the PDC reporting requirements for the 2016 election, and found dating back to 2009, the Campaign filed 40 amended C-3 reports and 20 amended C-4 reports providing additional and/or updated disclosure information as they became aware of it.

Staff does not believe that “recurring expenditures” such as the expenditures referred to above were reportable as debts or obligations in 2016 unless the scheduled payment due date was not met by the candidate’s campaign or political committee and the reporting period has ended.

Staff did note there were expenditures made by the Campaign, either as reimbursements to individuals or volunteers, or payments made to a consultant or vendor for which it appears a more detailed description and possibly a sub-vendor breakdown likely should have been provided.

The Campaign acknowledged failing to timely: (1) disclose debts for three expenditures listed in the complaint as noted above for a portion of unpaid legal services; and the two printing orders with Overnight Printing; and (2) file amended C-4 reports disclosing the required sub-vendor information for expenditures made to Media Mandate. Staff would classify these issues as reporting discrepancies which are minor or technical in nature and does not believe that the violations rise to the level of any enforcement action.

The issues listed above are mitigated by the facts the Campaign was in frequent contact with PDC staff throughout the 2016 election in order to comply with the reporting requirements, and timely filed the overwhelming majority of the initially filed C-3 and C-4 reports. In addition, the Campaign disclosed receiving more than \$1.395 million in total contributions received and spent more than \$1.395 million in expenditures that included \$512,630 in expenditures made for the 2016 election and \$883,000 in transfers to the surplus funds account.

PDC staff found no evidence of a material violation that would require conducting a more formal investigation into your complaints or pursuing enforcement action in this instance. However, staff has reminded the Campaign to provide a more detailed breakdown for expenditures made to reimburse individuals or payments made to consultants or vendors, including the sub-vendor breakdown, in the future. In addition, please be aware of the changes to the disclosure of debt and other reporting requirements as part of the passage EHSB 2938.

Based on this information, PDC staff is dismissing the remaining allegations listed in the complaint in accordance with RCW 42.17A.755(1). If you have questions, you may contact me at (360) 664-8854, toll-free at 1-877-601-2828, or by e-mail at kurt.young@pdc.wa.gov.

Sincerely,

Endorsed by:

s/_____
Kurt Young, PDC Compliance Officer

s/_____
BG Sandahl, Deputy Director
For Peter Lavalley, Executive Director

cc: Robert Ferguson Campaign

