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***Original via email to:***  
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September 22, 2023

Public Disclosure Commission  
711 Capitol Way S #206  
Olympia, WA 98504

Re: Complaint No. [141453](#)  
BIL File No. 6843-001

Dear PDC Staff,

We represent Franklin County Democrats to respond to the allegations raised by Glen Morgan in his August 16, 2023, complaint. Mr. Morgan's complaint, which is one out of over 100 complaints he has lodged against progressive candidates and committees in 2023 alone, alleges late reporting in violation of RCW 42.17A.235 and .240 and failure to list the vendor and the addresses of the vendor for in-kind contributions.

In 2019-2021, the Franklin County Democratic Central Committee (FCDCC) lost several longtime and prominent board members, including its treasurer and secretary, which resulted in a significant loss of institutional knowledge. In 2022, FCDCC began to rebuild itself from the destabilization that occurred during the pandemic. During the summer of 2022, Diane McDaniel was appointed permanent treasurer of FCDCC. When McDaniel started her role as appointed permanent treasurer, she did not have access to the ORCA records from the prior treasurer. Throughout August 2022, McDaniel self-reported to the PDC for past-due reports and asked for compliance staff's assistance with obtaining the Committee's ORCA access so back reports could be filed. McDaniel also attended PDC online training for ORCA reporting and PDC rules, and filed all past-due reports. Similarly, the FCDCC itself hosted trainings for its volunteers, including a training with the Compliance Officer for the Washington State Democrats.

## **I. Allegedly Late Reports.**

It is initially worth noting that most of the reports Morgan cited as "extremely late," were not in fact "late," but were instead reports that were initially timely submitted and later amended in good faith to address oversights after they were discovered. Under the FCPA, political committees must file reports of contributions and expenditures made as well as bank deposits on prescribed schedules. RCW 42.17A.235. However, amendments to previously filed reports are expressly allowed for under the Act, *see* RCW 42.17A.235(10), and neither the Act nor accompanying regulations impose rigid penalties for late or amended reporting. Such penalties would have the perverse effect of discouraging committees from correcting past errors or offering additional disclosure through late or amended reports. Indeed, although

Morgan provided the records to allege noncompliance, the records are actually proof of FCDCC's diligent efforts to bring FCDCC into compliance with PDC requirements.

## **II. Alleged Failure to Adequately Report Information about In-Kind Contributions.**

Morgan also alleges FCDCC violated RCW 42.17A.235 and RCW 42.17A.240 for failure to list the vendor and vendor addresses<sup>1</sup> for in-kind contributions. Morgan cites three examples of insufficient reporting for in-kind contributions: (1) gift cards for an October 2022 meeting; (2) beverages for a June 2023 Loveland Dinner; and (3) cake for Loveland Dinner. For each of these examples, Morgan cites language from the PDC website, suggesting the addresses of vendors for in-kind contributions are required by law. While FCDCC contends that the public impact of failing to identify the vendor of a cake, drinks, and gift cards is hardly significant, it nonetheless has taken remedial measure to supplement its previous disclosure. On September 9, 2023, McDaniel amended the reports listing these in-kind contributions to include the vendor and vendor address.

## **III. An Alternative Response is Appropriate in this Case Due to Various Mitigating Factors.**

The PDC's enforcement procedures recognize that the potential harm to the public of a committee's late reporting depends on the nature of the information being reported. Thus, a committee's failure to timely file accurate reports is a minor violation "[w]hen required information is not timely disclosed, but the public is not deprived of critical information" or "[w]hen incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information." WAC 390-37-061. Additionally, the Director may consider the specific context in which the late and amended reporting occurs in determining whether an alternative response to alleged noncompliance is appropriate. WAC 390-37-061(3).

Here, several factors set out in WAC 390-37-061 make clear that an alternative response is appropriate, as addressed below.

### **1. Any noncompliance resulted from a good-faith error, omission, or misunderstanding.**

There is no reason to believe that any noncompliance is the result of anything other than good faith omissions. At no point did FCDCC attempt to intentionally conceal, deceive or mislead or participate in collusive behavior. The alleged noncompliance cited by Morgan is the result of FCDCC's lack of familiarity with PDC reporting.

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<sup>1</sup> The PDC guideline to list vendor addresses for in-kind contributions is advisory only and has not undergone rule-making proceedings under the APA and is therefore not enforceable in this proceeding. The PDC's authority to adopt rules implementing the FCPA is governed by the state Administrative Procedure Act (APA). RCW 42.17A.110(1). Commission rules that have undergone rulemaking proceedings under the APA and declaratory orders issued pursuant to WAC 390-12-350 can be grounds for finding a violation subjecting a person to a penalty or administrative sanction. *Wash. Educ. Ass'n v. Pub. Disclosure Comm'n*, 150 Wn. 2d 612, 619 (2003) (en banc). Agencies are encouraged under state law to adopt statements of policy in order "to advise the public of [their] current opinions, approaches, and likely courses of action." RCW 34.05.230(1). However, statements of policy carry the force of law only after being subjected to rule-making proceedings under the APA and adoption as formal agency rules; otherwise, they are "advisory only." *Id.* Thus, guidance from the PDC website is agency opinion that cannot be violated or enforced without going through rule-making proceedings.

**2. The impact of the noncompliance on the public was minimal.**

There has been no suggestion that the Committee's late filings had any impact in any election, or that voters were deprived of critical information. The opposite is true, given the small size of this Committee.

**3. The respondent's organization or campaign was relatively unsophisticated or small.**

FCDCC is a very small Committee run entirely by volunteers in the community. Overall, FCDCC's alleged mistakes were a result of its small size and limited access to knowledge about PDC reporting.

**4. The total expenditures by the respondent in the campaign or statement period were relatively modest.**

FCDCC is a small committee with modest contributions and expenditures. For instance, in 2020, FCDCC had \$4,100 contributions and \$4,932.51 expenditures. In 2021, FCDCC had \$3,005.97 in contributions and \$1,700.01 in expenditures. In 2022, FCDCC had \$921 in contributions and \$1,832.25 in expenditures.

**5. The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.**

As noted, the majority of reports Morgan points to as allegedly late were in fact merely amended reports. Overall, the volume of allegedly late disclosures is small relative to the Committee's history of timely reporting.

**6. There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.**

There is no suggestion that any person benefitted from any noncompliance. Indeed, FCDCC's alleged period of noncompliance has been a burden and not a benefit, politically or economically, to FCDCC and its volunteers. McDaniel spent the majority of her first month as treasurer attempting to restore lost information and work with the PDC to ensure compliance. Additionally, FCDCC has not prospered financially or economically because of these alleged violations.

**7. The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).**

FCDCC has exercised extreme diligence in correcting alleged violations as soon as the noncompliance was brought to its attention, prior to a complaint being filed. Once McDaniel came on board in summer of 2022, she immediately began to ensure FCDCC's full compliance with PDC

requirements. Over several months, McDaniel self-reported to the PDC about past-due reports, obtained past records from prior FCDCC officers, maintained constant contact with the PDC, and attended PDC trainings. Additionally, FCDCC itself took measures to ensure continued compliance, such as scheduling a training with the Compliance Officer for the Washington State Democrats.

FCDCC's actions make clear that as soon as it realized there was a problem, it took it seriously, immediately implemented solutions to address them by filing missing reports, and has ensured that the problems do not recur.

It is also worth noting that despite Morgan's best efforts to find late reports, he was unsuccessful in finding any late reports filed after McDaniels brought the Committee into compliance in the summer of 2022 and that the Committee has had no late reports over the past year. This track record helps put any previous violations into perspective and confirms that systems have been improved so as to ensure timely reporting going forward.

**8. The respondent made a good-faith effort to comply, including by consulting with PDC staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.**

FCDCC acknowledges its responsibility to comply with regulations and takes those obligations seriously. To the extent new deficiencies in previous reporting were brought to its attention by Morgan's complaint, the Committee acted quickly to address those issues by filing amendments (e.g. to supplement its previous reporting of in-kind contributions). FCDCC has tried its best to cooperate with staff and will continue to do so.

In light of these considerations, FCDCC requests that the PDC resolve this matter through a written reminder or an alternative response rather than a full investigation and adjudicative hearing. The PDC has frequently resolved similar cases through an alternate response to a formal investigation and enforcement under WAC 390-37-061. *See, e.g.*, PDC Case No. 27923 (complaint involving reports filed between 1-10 days late and amendments of timely reports dismissed with reminder); PDC Case No. 47219 (complaint involving periodic late reports dismissed with reminder); PDC Case No. 30820 (complaint involving periodic late reports and large volume of timely reporting dismissed with reminder); PDC Case No. 51086 (complaint involving failure to timely report in-kind staff contributions and other late reporting dismissed with warning as \$3,843.78 in late disclosed staff time was "not material in amount and had no impact on the public"); PDC Case No. 59665 (complaint involving reports filed between 2-107 days late dismissed with warning).

If the PDC chooses to pursue further assessment of this matter, it should ultimately be dismissed with a reminder or warning letter because FCDCC has engaged in good faith efforts to timely and accurately file required reports.

Please contact me with any questions or concerns at (206) 257-6011.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Franco-Malone" and "Juliana DeFilippis" joined together.

Danielle Franco-Malone  
Juliana DeFilippis

*Counsel for Franklin County Democrats*