

COMMENT ON DRAFT PDC INTERPRETATION 23-01 FOR THE MAY 25, 2023, REGULAR MEETING

We appreciate that the Commission has now clarified its interpretation related to the transfer of surplus contributions to a candidate's campaign for a different office. The draft interpretation before the Commission is consistent with the relevant statutes and will promote transparency and equitable application of contribution limits. We offer our comment today to request that the PDC put campaigns on notice that all transferred surplus contributions to a campaign for a different office are subject to the applicable disclosure requirements and contribution limits, including contributions transferred prior to the PDC's adoption of this interpretation.

The PDC's draft interpretation does not constitute a change in the legal requirements associated with the transfer of surplus funds. Instead, this interpretation merely aligns the agency's guidance with the unambiguous statutory requirements. Where an agency interpretation follows express statutory language, even contrary to prior agency guidance, the interpretation does not amount to a change in the law and should have retroactive effect to enforce the clear statutory mandate. *See Loyal Pig, LLC v. Washington State Dep't of Ecology*, 13 Wash. App. 2d 127, 143-146 (2020); *see also Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 19 (2002).

Now that the agency's interpretation has been announced, the PDC should notify campaigns that they must report any previously transferred contributions to identify contributors and allow the public and the PDC to monitor compliance with campaign contribution limits. This step is needed to ensure that longstanding statutory requirements are equitably and consistently enforced—whether a campaign made a transfer before or after the May 11, 2023, special meeting on this issue. In making this request, we are not asking that any campaign be sanctioned for past transfers under the prior agency guidelines so long as those transferred contributions are now reported under the agency's clarified interpretation and subject to contribution limits.