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Washington Coalition *for* Open Government

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May 8, 2023

Washington Public Disclosure Commission
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VIA email only to pdc@pdc.wa.gov

RE: Comment on May 11, 2023, Commission Special Meeting Agenda Item

Dear Chair Jarrett & Commissioners Isserlis, Downing, Hayward and Exec. Dir. Frey Lavallee:

I am writing to you on behalf of the Washington Coalition for Open Government (WashCOG) to offer our comments of record for the PDC's May 11, 2023, special meeting agenda item regarding:

Requirements for a Candidate's Use of Campaign Contributions Received for a Different Office than the Office the Candidate is Currently Seeking.

WashCOG is Washington's only independent, statewide, non-profit, non-partisan, education and advocacy organization working with the executive, judicial and legislative branches of government to defend and strengthen Washington's Open Government laws, and to vindicate the Public Records Act (PRA) and the Open Public Meetings Act (OPMA). WashCOG is a truly broad-based coalition with members who are citizen activists, government officials, and representatives of business, labor, media, law, and public policy organizations.

In a memo to Commissioners dated April 25, 2023, PDC General Council Sean Flynn indicated the question for this agenda item is:

"When a contributor gives permission to transfer the value of their contribution from a candidate's surplus campaign funds to that same candidate's subsequent campaign for a different office, does that transfer count towards the contributor's contribution limit for the subsequent campaign?"

We request, and infer, that the corollary aspects and importance of "disclosure" of those donations by individual contributors will be included in the scope of the Commissioners' deliberations towards the answer to the question.

For reasons we identify below, when a candidate uses surplus funds to campaign for **a different office** than the office for which the candidate initially received the contribution, those funds should be treated as a new, discrete/distinct contribution for the office currently being sought, and subjected to the same disclosure requirements and contribution limits as would otherwise apply to any other "new" contributions for the "new" office the candidate is seeking.

Stated simply: "Option 2" provides a general statement of the better approach, which should be crafted to embrace the following concepts:

(1) Individual permission from individual donors should continue to be required every time a candidate proposes to use a prior contribution to run for a "new office" (as distinguished from using prior contributions to run for re-election to the same office). The written records documenting such permission should be required to be made available for public inspection to the same extent the PDC requires other campaign records to be available for public inspection.

(2) The current "per-donor/per-election cycle" campaign contribution limits should apply to all amounts received from an individual donor, regardless of whether the amounts have been held-over by the candidate from a prior campaign for a different office, or contributed to the candidate's campaign for the "new office" during the current election cycle, or consist of a combination of both "old" and "new" money from the individual contributor; and

(3) Campaigns should be required to fully disclose the individual identities of the contributors - and the amount of each of their contributions - whenever "surplus"

money held-over by the candidate is being used by a candidate to run for a new office in the current election cycle.

The nature and timing of such disclosures should be subjected to the same requirements as "new" contributions, rather than multiple donations from various donors being aggregated and reported as a single lump-sum donation from the candidate's "surplus" funds.

Additionally, the Commission should ensure its rules expressly require the "Last-In, First-Out" accounting methodology be used by candidates to identify the specific individual donors, as well as the amount of their respective contributions, when contributions that were made in a prior election cycle are being transferred from the candidate's "surplus" fund to the candidate's campaign for a different office.

The "Campaign Contributions and Disclosures" issue before the Commission is relatively narrow: It does <u>not</u> involve whether there should be limits on campaign contributions and expenditures, the specific dollar amount of any limits, third-party independent expenditures, or prohibitions on electioneering.

Even so, the Commission's answer to this pending question is of enormous importance, and the potential consequences that will flow from the Commission's answer to this important question go to the very heart of the reason Washington's voters created the Public Disclosure Commission, and the Public Records Act, in the first place.

The notion that the public does not have a great interest in excess funds that are used for statutorily limited purposes <u>unrelated to a candidate running for office</u> provides no justification whatsoever for anything less than fully applying contribution limits and disclosure requirements when the excess funds **<u>ARE</u>** <u>proposed to be used by a candidate to run for office</u>, especially a new, different office.

Any other view:

(a) ignores the importance of the existing requirement in RCW 42.17A .490 that a candidate obtain individualized donor permission (for the benefit of the

individual donor) before using that individual donor's contribution to run for a different office, and

(b) would be fundamentally repugnant to even the most basic understanding of why voters passed Initiative 276 in 1972 (for the benefit of both voters and the larger public, as distinct from merely the interests of an individual donor).

Moreover, we do not read Initiative 134 (adopted 21-years later in 1993) - including what is now codified as sub-sections .430 and .490 of 42.17A RCW - as rejecting or otherwise over-turning the purposes or essence of transparency mandated by Initiative 276 in connection with campaign contributions, campaign financing, campaign expenditures, and campaign public disclosures.

As Commissioners likely know, the PDC and the PRA are cut from the same cloth, Initiative 276, which was then codified as RCW 42.17. The portions of I-276 governing public records were excised in 2005 by SHB 1133 and then codified as a separate statute in RCW 42.56.

Initiative 276 stated in relevant part:

"BE IT ENACTED, by the people of the State of Washington:

SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided,

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings,

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests,

(4) That our representative form of government is founded on the belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people,

(5) That public confidence in government at all levels is essential and must be promoted by all possible means,…

(10) That the public's right to know of the financing of political campaigns, and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private,

(11) That, mindful of the right of individuals to privacy and the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected…

SECTION 12. Identification of Contributions and communications.

No contribution shall be made and no expenditure shall be incurred, directly or indirectly in a fictitious name, anonymously, or by one person through an agent, relative or other person in such a manner as to conceal the identity of the source of the contribution." *(Emphasis added)*

A candidate making a "single lump-sum deposit" of surplus co-mingled funds from multiple donors who contributed to an earlier campaign for a different office (consistent with what PDC staff have generally identified as "Option #1") not only runs directly counter to the spirit - if not the clear language - of Section 12 of Initiative 276, it would:

- Eviscerate the public's right to know whose contributions are actually financing campaigns in the current election cycle,
- Effectively nullify campaign contribution limits for some self-selected deep-pocket donors who may choose (for their own private reasons) to "game" their contributions over an extended period of early years/campaigns in a way that has the effect of providing those donors with the opportunity to exert disproportionate

influence, and have a disproportionate impact, during the current election cycle, and

- Effectively disavow the history of why voters created the Public Disclosure Commission in the first place when citizens took the initiative 50 years ago to craft, gather petition signatures for, campaign for, and then voted to approve, Initiative 276.

Were "Option #1" to be adopted by the PDC, no one should be surprised if:

- A candidate wins election and becomes well entrenched…
- Then, does not have to expend a lot of money getting re-elected, perhaps multiple times…
- And in the meantime, deploys a fundraising machine working hard 24/7/365, except when the legislature is in session - or even when the legislature is in session if the candidate holds a position in local government...
- All with the intent of building a war chest for a future campaign for a different office.

Without disclosure of which donors' accumulated funds a candidate is using, and without campaign contribution limits that include transfers of surplus funds from campaigns for other offices, the PDC would invite deep pockets to max-out campaign contribution limits with good reason to have more than a casual hope/expectation that excess funds donated to entrenched officials will be carried over to subsequent years, and then used to augment the funds collected during the current election cycle, without members of the public knowing which "long-view" funders may be having a de facto-secret, and disproportionately-large, impact in the current race.

The better course would be to approve "Option 2."

By doing so, the PDC would take action that is consistent with vindicating both:

(1) The reason for the Commission's existence, and

(2) The enormous wisdom of citizen public interest advocates who 50-years ago insisted on shining a bright light into the increasingly deep recesses of campaign finance. In the process, and in the subsequent five decades, history has demonstrated their work was both worth the effort, and that it helped to protect the public interest from purely private purposes.

Now, at this moment of significant consequence, the torch which shines the bright light is in the hands of the PDC's current Commissioners. We ask, respectfully, that you direct the light of the torch in the direction of "Option 2."

We are appreciative of the PDC staff's recognition of the timeliness of this issue. As a result, we request the Commission act expeditiously to issue "an interpretation" consistent with our foregoing comments and recommendations. Then, if needed (based on the experience with the "interpretation" during the interim), set this matter for formal rulemaking in January 2025.

Thank you for the opportunity to offer these comments.
Please do not hesitate to let us know if you have any questions, comments or concerns.

Sincerely,

Michael R. Fancher, President
Washington Coalition for Open Government