Friends of Hilary Franz appreciates this opportunity to offer public comment regarding the PDC's guidance on surplus funds rules related to transfers to a campaign for a different office. The PDC has framed its decision as either (1) affirming the current guidance, under which transferred contributions are exempt from disclosure requirements and contribution limits, or (2) updating that guidance to ensure that the transferred contributions are attributed to their sources and count against the contributors' limits for the new campaign. **We urge the Commission to adopt option (2), which ensures that its guidance is consistent with the relevant statutory provisions and advances the Commission's important goals related to transparency and contribution limits.**

Under Washington law, a candidate has several options for disposing of any contributions that remain after the election is concluded (i.e., surplus funds), including holding the funds for possible future use for a campaign for the same office. RCW 42.17A.430. If a candidate chooses instead to run for a different office, contributions may be transferred to that new campaign with the written approval of past contributors under RCW 42.17A.490.

The PDC's current guidelines appear to be based on an exception from the meaning of "contribution" in RCW 42.17A.430: "The disposal of surplus funds under this section shall not be considered a contribution. . ." But the transfer and use of surplus contributions in a campaign for a different office does not qualify as the disposal of surplus funds under section 42.17A.430. Indeed, the use of such funds in a different campaign would not be permitted under RCW 42.17A.430. Instead, RCW 42.17A.490 governs that specific use of contributions. And nothing in RCW 42.17A.490 would except the approved transfer of surplus contributions to a candidate's campaign for a different office from the generally applicable definition of contribution.[1] Instead, RCW 42.17A.490 is clear in prohibiting a candidate from using contributions raised for one office in support of a campaign for a different office, absent the written approval of the contributor. In the absence of such authorization, the contribution must be disposed of as "surplus funds," e.g. returned to the contributor, transferred to a political party, etc. RCW 42.17A.490(2), RCW 42.17A.430.

Beyond this conflict with the plain meaning of the statutes, the PDC's current interpretation undermines the public policy aims of the Fair Campaign Practices Act by preventing the public from knowing the source of political contributions when they are transferred from a candidate's prior campaign to a campaign for a different office and allowing candidates and contributors to exceed contribution limits.

The lack of transparency presents a particular concern with respect to the application and enforcement of the first-in first-out rule for identifying the contributors of surplus funds. The public has no way of knowing whether a candidate has properly attributed any surplus funds to only the most recent contributors to a concluded election campaign. If surplus funds are not attributed correctly, a candidate might obtain written approval to transfer from supporter whose contribution was already spent and, on that basis, transfer funds without approval of the actual contributor of the funds.

Additionally, the exemption from contribution limits under current guidance raises significant equity concerns. Consider, for example, a situation in which a contributor donated $1,000 (the maximum at the time) to the contributor's preferred candidate for state representative in 2022. If that candidate

[1] The term "contribution" includes "anything of value" provided for "less than full consideration." *See* RCW 42.17A.005(15). As the petition argues, a former contributor's written approval to transfer a prior contribution to a candidate's new campaign for a different office should qualify as a contribution under this definition.

retained the contribution as surplus funds after the election, they could later transfer the contribution to their 2024 primary campaign for state senator with the contributor's written approval. The PDC's interpretation would treat those funds as if they did not come from the contributor. The contributor would not be identified in PDC filings for the new campaign and would be free to contribute up to the applicable limit of $1,200 without counting the earlier contribution despite the donative intent the contributor expressed when allowing their original contribution to be used for this new campaign. Significantly, the PDC's interpretation results in a substantial fundraising advantage for candidates who have accumulated surplus funds from past campaigns by allowing such candidates to obtain double contributions from their supporters.

Because the PDC's current guidance conflicts with the governing statutes and the important public policy purposes underlying those statutes, we urge the PDC to adopt option 2 and revise its erroneous guidance on this important issue.