



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE	)	PDC CASE NO: 13-004
WITH RCW 42.17	)	
	)	
Friends of Rob McKenna Campaign	)	
(McKenna for Governor)	)	REPORT OF INVESTIGATION
	)	
Respondent.	)	
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I.

BACKGROUND

- 1.1 Rob McKenna is the Washington State Attorney General (AG), and was first elected to that office in the November 2, 2004 general election.
- 1.2 On December 15, 2004, General McKenna filed a Candidate Registration (form C-1) with the Public Disclosure Commission for re-election in 2008. After winning in the November 4, 2008 general election, General McKenna filed a C-1 with the PDC on January 6, 2009, registering his candidacy for re-election as Attorney General in the November 6, 2012 general election. (AG McKenna Re-Election campaign)
- 1.3 At a June 8, 2011 event at Sammamish High School in Bellevue, General McKenna announced that rather than seeking re-election, he would run for the office of governor in 2012. **(Exhibit 1.)** On June 9, 2011, General McKenna amended his C-1 to reflect this change. **(Exhibit 2.)**
- 1.4 General McKenna then began the process of contacting contributors to his AG McKenna Re-Election campaign, seeking permission to use the contributors' funds to seek a different office. Between June 2011 – April 2012, the AG McKenna Re-Election campaign made 59 transfers totaling \$98,181 from the AG McKenna Re-Election campaign to his gubernatorial campaign (Friends of Rob McKenna, or McKenna for Governor campaign).

II.

ALLEGATIONS IN COMPLAINT

2.1 On August 9, 2012, a complaint against the 2012 McKenna for Governor campaign was received from Kelly Wicker, Deputy Campaign Manager for the Jay Inslee for Washington (Inslee for Governor) campaign for governor. **(Exhibit 3.)**

2.2 In her complaint, Ms. Wicker alleged that the McKenna for Governor campaign violated RCW 42.17.080, RCW 42.17.090, RCW 42.17A.235 and RCW 42.17A.240<sup>1</sup> by:

1. Failing to report \$33,000 in liabilities on its November and December 2011 Contribution and Expenditure Summary Reports (form C-4) for a November 8, 2011 fundraising event held at the Meydenbauer Center;
2. Failing to report a \$12,120 debt on its May 2012 C-4 for a fundraiser held May 24, 2012 at St. Martin's University;
3. Failing to report \$911 in liabilities on its September 2011 C-4 for a September 2011 fundraiser held at Foster Pepper law firm;
4. Failing to report \$38,759 in liabilities on its November 2011 C-4 for telemarketing expenses that were paid in December 2011;
5. Failing to report \$9,870 in expenditures on its May 2012 C-4 for payments to the AG McKenna Re-Election campaign;
6. Failing to report \$11,635 in expenditures to the AG McKenna Re-Election campaign;
7. Reporting a \$1,477 expenditure made June 3, 2011 to Island Security Systems when the expenditure was actually paid by the AG McKenna Re-Election campaign;
8. Reporting a \$1,320 expenditure made June 2, 2011 to USPS Bellevue when the expenditure was actually paid by the AG McKenna Re-Election campaign; and
9. Failing to make payments reimbursing the AG McKenna Re-Election campaign for items and staff services provided in May and June 2011, when those items and services allegedly benefitted the McKenna for Governor campaign.

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<sup>1</sup> In part, Ms. Wicker's complaint concerned violations that allegedly occurred in 2011. At that time, the statutes governing the alleged violations were RCW 42.17.080 and RCW 42.17.090. Effective January 1, 2012, those sections were recodified as RCW 42.17A.235 and RCW 42.17A.240, respectively. In this investigation, Ms. Wicker's allegations concerning activity occurring on or after January 1, 2012 were reviewed with reference to the recodified citations.

- 2.3 On August 10, 2012, PDC staff provided a copy of Ms. Wicker's complaint to the McKenna for Governor campaign, and invited a preliminary response.
- 2.4 On August 14, 2012, Ms. Wicker provided additional information in support of her allegations. **(Exhibit 4.)** Ms. Wicker's letter was accompanied by 28 pages of documents, primarily email communications, related to the AG McKenna Re-Election campaign's reservation of Sammamish High School for an event held on June 8, 2012. Ms. Wicker alleged that the email communications contained statements by Bellevue School District staff suggesting that General McKenna would announce his gubernatorial campaign at the event, and that, therefore, General McKenna became a candidate for Governor earlier than June 8, 2012.<sup>2</sup>
- 2.5 On September 10, 2012, PDC opened a formal investigation into Ms. Wicker's complaint, and requested a written response to her allegations from the McKenna for Governor campaign.
- 2.6 In its September 10, 2012 letter, PDC staff also drew the McKenna for Governor's campaign's attention to \$104,571 in monetary contributions that the campaign reportedly received on November 28 – 29, 2011, the first two days of a special legislative session announced by Governor Chris Gregoire on September 22, 2011. **(Exhibit 6.)** Beginning November 28, 2011, state officials such as General McKenna, and persons employed by or acting on behalf of such officials, were subject to a special legislative "session freeze," and prohibited by RCW 42.17.710 from soliciting or accepting contributions to a candidate's campaign. When responding to Ms. Wicker's allegations, staff asked the McKenna for Governor campaign to also address these \$104,571 in monetary contributions, and explain whether they were in fact accepted during the freeze period.

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<sup>2</sup> In reviewing the communications provided by Ms. Wicker, PDC staff found one mention of a potential gubernatorial announcement by General McKenna; that mention appeared in an email exchanged between an events coordinator and technician working for the school district. **(Exhibit 4, p 27.)** The email was sent on the afternoon of June 7, 2011, the same day that news outlets began reporting that an announcement from General McKenna was imminent **(Exhibit 5)**, and the day prior to the actual announcement. **(Exhibit 1.)** No representative of the McKenna campaign was included in the June 7, 2011 email exchange. There was no indication in the other documents provided by Ms. Wicker that any person other than General McKenna was aware of his plans prior his announcement on June 8, 2011.

III.

FINDINGS

- 3.1 **PDC Staff Contacts with McKenna for Governor Campaign Prior to Complaint:** At the time that he switched offices in June of 2011, General McKenna had raised approximately \$816,000 and spent approximately \$617,000 for his AG McKenna Re-Election campaign. On July 22, 2011, PDC staff contacted General McKenna by telephone to inquire about sizable expenditures paid out of his AG McKenna Re-Election campaign account in the late spring and early summer of 2011, a time when it could be assumed that his AG McKenna Re-Election campaign was winding down. Staff told General McKenna that if those expenses were related to a possible gubernatorial campaign, they should be paid with funds raised for his gubernatorial campaign. General McKenna stated that he believed the expenses were all legitimately related to his AG McKenna Re-Election campaign. **(Exhibit 7.)** He said that up until approximately May 31, 2011, he was planning on running for re-election as attorney general, and only on that date did he make up his mind to run for governor and inform his staff. He said the expenses incurred through that point in time were necessary expenses for his re-election campaign. He asked PDC staff to work with his campaign staff, including Finance Administrator Tom Perry, to obtain information about specific expenses.
- 3.2 On July 29, 2011, PDC staff sent a written inquiry to Mr. Perry, and to Mark Lamb, legal counsel for the AG McKenna Re-Election campaign and McKenna for Governor campaign, seeking an explanation for \$119,216 in expenses paid between April 5 – June 27, 2011, and falling into several categories: fundraising and consulting, phone calls, computer software and equipment, data services, and voter files. **(Exhibit 8.)**
- 3.3 On February 14, 2012, Mr. Lamb provided a general response to PDC staff concerning the questioned expenses. **(Exhibit 9.)** Mr. Lamb stated that staff and expenses paid for services in April and May of 2011 were attributable to the AG McKenna Re-Election campaign. He stated that equipment costs for tangible items that were subsequently used by the McKenna for Governor campaign (e.g., computers and compliance and voter lists software) would be valued at 5% to the AG McKenna Re-Election campaign and 95% to the campaign for governor. He stated that the McKenna for Governor campaign would pay the AG McKenna Re-Election campaign for the gubernatorial campaign's proportional share of the expenses.
- 3.4 On March 12, 2012, PDC staff requested additional explanation for the other questioned expenses from the AG McKenna Re-Election campaign, including

the services that a given vendor provided to the AG McKenna Re-Election campaign, and the dates that those services were rendered. **(Exhibit 10.)**

- 3.5 On March 16, 2012, Mr. Lamb provided a spreadsheet on behalf of the McKenna for Governor campaign that provided additional details regarding the questioned expenses. **(Exhibit 11.)** For staff and consultant services, the spreadsheet described the nature of the services rendered, and indicated that the services were performed on or before May 31, 2011, the approximate date that General McKenna switched campaigns and began seeking the office of governor. The spreadsheet attributed 100% of the cost of these services to the AG McKenna Re-Election campaign. Expenses for information technology services or tangible items such as computer equipment were divided between the AG McKenna Re-Election and gubernatorial campaigns according to the 5% / 95% split proposed in Mr. Lamb's February 14, 2012 email.
- 3.6 **Reimbursements to AG McKenna Re-Election campaign for Gubernatorial Campaign Expenses:** On May 22, 2012, the McKenna for Governor campaign made payments totaling \$9,870 to the AG McKenna Re-Election campaign, reimbursing that campaign for the services and tangible items that the campaign stated had been used for General McKenna's gubernatorial campaign. In the first reports disclosing these reimbursements, the vendor for each payment was identified as the business that received the original expense from the AG McKenna Re-Election campaign, making it appear as if the gubernatorial campaign had paid these vendors directly, rather than reimbursing the re-election campaign for each expense.
- 3.7 On August 24, 2012, at PDC staff's instruction, the McKenna for Governor campaign filed an amended C-4 report for the month of May 2012, correctly identifying the recipient of the May 22, 2012 reimbursements as the "Re-elect AG Rob McKenna Campaign." **(Exhibit 12.)** The same day, the campaign also amended a C-4 report originally filed on July 11, 2011 for the month of June 2011, to show the AG McKenna Re-Election campaign as the correct recipient of earlier reimbursements. **(Exhibit 13.)**
- 3.8 **McKenna for Governor Campaign Response to Wicker Allegations:** On August 17, 2012, Mr. Lamb provided an informal response to Ms. Wicker's allegations. **(Exhibit 14.)**
- 3.9 On September 28, 2012, Tom Perry provided a formal response to Ms. Wicker's allegations on behalf of the McKenna for Governor campaign. **(Exhibit 15.)** He acknowledged the requirement to disclose estimated debts, orders placed and obligations, but stated that in the cases highlighted by Ms. Wicker, the campaign was not in a position to know whether there was any amount owed, or to estimate that amount. He stated that all expenditures connected with the relevant activities had been timely reported. Mr. Perry

stated that the McKenna for Governor campaign had reimbursed the AG McKenna Re-Election campaign for a list of expenses that in some cases were inadvertently paid from re-election funds, and that contrary to Ms. Wicker's allegations, had been timely reported. He stated that to the extent the reimbursements had been improperly reported, the campaign had worked with PDC staff to correct its errors. Finally, Mr. Perry stated that staff payments occurring in late May and early June 2011 all concerned staff work performed in May for General McKenna's AG McKenna Re-Election campaign effort, before he began campaigning for governor.

3.10 Mr. Perry addressed Ms. Wicker's particular allegations as follows:

- **Debts Related to Meydenbauer Center Event:** Mr. Perry stated that the McKenna for Governor campaign made two payments totaling \$9,976 to the Meydenbauer Center on August 8, 2011 and October 28, 2011. He stated that the Center applied this deposit to the cost of the event with any overruns to be paid by the campaign and any shortage to be refunded to the campaign. He stated that the Center did not forward a bill to the McKenna for Governor campaign following the event, and the campaign treasurer was unaware that the cost of the event exceeded the deposit already paid. Mr. Perry stated that he was contacted by the Center in late January 2012 concerning a \$33,000.29 outstanding balance. He stated that the center's staff told him that a personnel changeover may have resulted in the customary bill not being sent. He stated that the McKenna for Governor campaign paid the balance at that point, and reported its payment on the January 2012 C-4 report.
- **Debts Related to Saint Martin's University Event.** Mr. Perry stated that the McKenna for Governor campaign paid \$932.50 by debit card on May 24, 2012 to Saint Martin's University as a deposit for the event, with the expectation that additional costs would be charged to the debit card number. He stated that the campaign received an invoice for \$12,120.45 from the university on June 27, 2012, paid the amount owing the following day, and reported this payment on the June C-4 report.
- **Debts Related to Foster Pepper Event:** Mr. Perry stated that the McKenna for Governor campaign held a fundraiser at the offices of the law firm Foster Pepper in downtown Seattle on September 30, 2011. He stated that although the caterer's invoice for the event was dated September 30, 2011, the invoice was not generated until October 2, 2011, and was at that point sent to Foster Pepper, not the McKenna for Governor campaign. He stated that the law firm then forwarded the invoice to Amy Barnes, the McKenna campaign's outside fundraising consultant, who then forwarded it to the campaign. He

stated that the campaign received the invoice for \$911 in early to mid November, and paid the expense on November 18, 2011.

- **Debts Related to Telemarketing Expenses:** Mr. Perry stated that FLS Connect, the telemarketing firm in question, provides prospecting services to the McKenna for Governor campaign. He stated that per the agreement with FLS, the company is entitled to payment only when contacted individuals contribute to the campaign. Because this occurs on a rolling basis, he stated, FLS invoices are always backwards-looking. He stated that the invoice cited in the complaint was presented on December 1, 2012, but that it concerned fundraising services performed before the legislative session freeze. He stated that before receiving the invoice for prospecting, the campaign had no way of knowing that an amount was owed, or reporting that amount as an outstanding debt.
- **May 2012 Reimbursements to AG McKenna Re-Election Campaign:** Although Ms. Wicker's August 9, 2012 complaint alleged that the McKenna gubernatorial campaign failed to report its May 22, 2012 reimbursements to the AG McKenna Re-Election campaign, Mr. Perry pointed out that the payments had been timely reported in the campaign's June C-4 report, albeit with the incorrect vendor listed. (That is, the original recipient of the payment, rather than the AG McKenna Re-Election campaign.) He stated that the gubernatorial campaign subsequently amended its reports to show the AG McKenna Re-Election campaign as the recipient of the reimbursements.
- **Failure to Report \$11,635 in Expenses:** Mr. Perry stated that the \$11,635 in expenses that Ms. Wicker alleged had not been reported were recurring fees initially paid through a debit card number provided to vendors during the AG McKenna Re-Election campaign. He stated that the expenses, including the \$1,320 expenditure on June 2, 2011 to USPS Bellevue and \$1,477 expenditure on June 3, 2011 to Island Security Systems highlighted in Ms. Wicker's complaint, were reimbursed by the gubernatorial campaign and reported by that campaign in the campaign's C-4 report for June of 2011. On August 24, 2012, the gubernatorial campaign amended this C-4 report to show the AG McKenna Re-Election campaign as the recipient of the reimbursements.
- **Staff Services Allegedly Performed on Behalf of Gubernatorial Campaign:** Mr. Perry stated that the staff services identified in Ms. Wicker's complaint were all for work performed for the AG McKenna Re-Election campaign in the month of May, similar to the consulting services addressed in the spreadsheet provided on March 16, 2012. He stated that the AG McKenna Re-Election campaign made payroll payments every two weeks, and the McKenna for Governor campaign made payroll payments twice each month.

- 3.11 **Contributions Reportedly Received During Session Freeze:** Tom Perry also addressed the concern raised by PDC staff concerning the \$104,571 in funds reportedly received by the McKenna for Governor campaign on November 28 – 29, 2011, during the legislative session freeze period. He stated that without exception, the contributions were from checks and credit card authorizations that the campaign received in the days leading up to 11:59 pm on November 27, 2011. He stated that the campaign mistakenly conflated the deposit date with the receipt date, and that this error had since been corrected with an amended filing. He stated that the McKenna for Governor campaign kept track of every contribution that came in after the beginning of the freeze period, and returned each contribution, including \$12,000 received in the first week of the freeze. He stated that he was responsible for the review of these receipts and deposits and could personally verify General McKenna's compliance with the session freeze prohibition.
- 3.12 On September 21, 2012, the McKenna for Governor campaign filed four amended C-3 reports disclosing the \$104,571 in contributions originally reported received on November 28 and 29, 2011. The amended reports reflected dates of receipt on November 25 and 26, 2011, including a \$50 contribution from Ole Brandal, a resident of Renton, received on November 26, 2011. **(Exhibit 16.)**
- 3.13 On October 9, 2012, Mr. Perry provided additional information concerning the contributions he stated were received before the beginning of the session freeze, which started on Monday, November 28, 2011. He stated that the checks and credit card authorizations were received in the mail or hand-delivered between November 24 – 27, 2011. He offered examples of credit card authorizations that were included in the McKenna for Governor campaign's deposits on November 28 and 29, 2011, including a hand-written \$50 authorization by contributor Ole Brandal. **(Exhibit 17.)** Mr. Brandal's remittance form, which included a reminder of the session freeze beginning on November 28, 2011, did not display a postmark or processing date. However, the authorization was hand-dated November 22, 2011.

#### IV.

#### SCOPE

##### 4.1 PDC staff reviewed the following documents:

1. A Candidate Registration (form C-1) received from Rob McKenna on January 6, 2009, and an amended C-1 registration received on June 9, 2011;

2. Original and amended Monetary Contribution reports (form C-3) and Summary Reports of Receipts and Expenditures (form C-4), received from the AG McKenna Re-Election campaign and the McKenna for Governor campaign;
3. A formal complaint against the McKenna for Governor campaign, received on August 9, 2012 from Kelly Wicker, Deputy Campaign Manager for the Inslee for Governor campaign, with exhibits;
4. A letter received from Ms. Wicker on August 14, 2012, containing additional information in support of her allegations, with exhibits;
5. A record of PDC staff's July 22, 2011 telephone call to AG Rob McKenna;
6. Correspondence sent by Mark Lamb on behalf of the AG McKenna Re-Election campaign and McKenna for Governor campaign, received on July 29 and November 11, 2011; January 6, February 14, March 15, March 16, May 22, August 10, August 16, October 5, and October 9, 2012, with exhibits;
7. A record of an August 17, 2012 telephone call to PDC staff from Mark Lamb;
8. A formal response to Ms. Wicker's complaint, submitted on September 28, 2012 by Tom Perry on behalf of the McKenna for Governor campaign; and
9. Additional correspondence to PDC staff, sent by Tom Perry on October 9, 2012.

V.

LAW

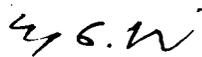
**RCW 42.17.080 and .090** require candidates to file timely, accurate reports of monetary and in-kind contributions and expenditures. The reports must disclose the name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by the report, and the amount, date, and purpose of each expenditure. The reports must also disclose any debt, obligation, note, unpaid loan, or other liability valued at more than \$250, or valued at more than \$50 that has been outstanding for over thirty days. Effective January 1, 2012, RCW 42.17.080 and .090 were recodified as **RCW 42.17A.235 and RCW 42.17A.240**, respectively.

**RCW 42.17.790** states that without the affirmative written permission of the contributor, a candidate for public office or the candidate's authorized committee may not use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee to

further the candidacy of the individual for an office other than the office designated on the statement of organization.

**RCW 42.17.710** states that during the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.

Respectfully submitted this 18<sup>th</sup> day of October, 2012.



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Tony Perkins  
Lead Political Finance Specialist  
Public Disclosure Commission

#### **EXHIBIT LIST**

- Exhibit 1** Seattle *Times* article published June 8, 2011: "*McKenna Launches campaign for governor.*"
- Exhibit 2** Amended C-1 Candidate Registration filed by Rob McKenna on June 9, 2011.
- Exhibit 3** Complaint against the McKenna for Governor campaign, received on August 9, 2012 from Kelly Wicker, Deputy Campaign Manager for the Inslee for Governor campaign.
- Exhibit 4** August 14, 2012 letter received from Ms. Wicker in support of her allegations, with exhibits.
- Exhibit 5** Seattle *Times* article published June 7, 2011: "*State AG Rob McKenna to announce race for governor.*"
- Exhibit 6** September 10, 2012 letter from PDC staff to McKenna for Governor campaign.

- Exhibit 7** Record of PDC staff's July 22, 2011 telephone call to AG Rob McKenna.
- Exhibit 8** PDC staff email to Mark Lamb, legal counsel to the AG Re-election campaign and McKenna for Governor campaign, sent on July 29, 2011.
- Exhibit 9** Email from Mark Lamb to PDC staff, received on February 14, 2012.
- Exhibit 10** PDC staff email to Mark Lamb, sent March 12, 2012.
- Exhibit 11** Spreadsheet containing information about questioned expenses by the Re-elect AG Rob McKenna campaign, received from Mark Lamb on March 16, 2012.
- Exhibit 12** Amended C-4 Summary Report of Receipts and Expenditures for the month of May 2012, filed on August 24, 2012 by the McKenna for Governor campaign.
- Exhibit 13** Amended C-4 report for the month of June 2011, filed on August 24, 2012 by the McKenna for Governor campaign.
- Exhibit 14** PDC staff's record of an August 17, 2012 telephone call from Mark Lamb.
- Exhibit 15** Formal response to Kelly Wicker's complaint, submitted on September 28, 2012 by Tom Perry on behalf of the McKenna for Governor campaign.
- Exhibit 16** Amended C-3 Monetary Contributions reports filed by the McKenna for Governor campaign on September 21, 2012.
- Exhibit 17** Email from Tom Perry to PDC staff, received on October 9, 2012 with exhibits.