



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: 13-026
WITH RCW 42.17A)	
)	
Preserve Marriage Washington)	
)	
)	REPORT OF INVESTIGATION
)	
Respondent.)	
_____)	

I.
BACKGROUND

- 1.1 Preserve Marriage Washington (PMW) was a political committee formed to call a referendum election on SB 6239, legislation approved in the 2011-12 legislative session. SB 6239 created equality in civil marriage and changed Washington's domestic partnership laws. The referendum was assigned ballot number R-74.
- 1.2 On Wednesday, February 22, 2012, PMW filed a C-1pc Political Committee Registration indicating that the committee was "for" R-74.¹ The registration statement (**Exhibit 1**) listed Joseph Backholm as the committee's treasurer and campaign manager. Mr. Backholm's address, and that of the committee, was listed as 16108 Ash Way in Lynnwood, Washington, the address of the Family Policy Institute of Washington (FPIW). (In 2012, Mr. Backholm was the Executive Director of FPIW, a position he still holds.)
- 1.3 Washington State voters approved R-74 in the November 6, 2012 general election with 53.7% of votes cast. The Washington Secretary of State's Office certified the vote on December 5, 2012, and SB 6239 became effective on December 6, 2012.
- 1.4 On August 15, 2012, Sandra Turner Fukumoto filed a complaint against PMW. (**Exhibit 2.**)

¹ On March 1, 2012, PMW filed an amended registration to clarify that, although the committee sought to qualify R-74 for the ballot, assuming that the measure qualified, PMW would then advocate a "no" vote (i.e., that SB 6239 should be rejected).

II.
ALLEGATIONS IN COMPLAINT

2.1 In her complaint, Ms. Fukumoto alleged that PMW violated RCW 42.17A.235 and RCW 42.17A.240 by failing to disclose expenditures, debt, or in-kind contributions connected with staff services performed by the following individuals:

- Chris Plante, who Ms. Fukumoto described as PMW's Deputy Campaign Director;
- Frank Schubert, who Ms. Fukumoto described as PMW's Campaign Manager; and
- Joseph Backholm, PMW Treasurer.

III.
FINDINGS

3.1 **PMW Response Regarding Chris Plante, Frank Schubert:** On September 6, 2012, PMW counsel Joseph Vanderhulst provided a preliminary response to Ms. Fukumoto's complaint. **(Exhibit 3.)** Mr. Vanderhulst stated that Chris Plante served as PMW's Deputy Campaign Director, and that on its first C-4 report to the PDC, filed March 12, 2012, PMW timely disclosed in-kind contributions from the National Organization for Marriage (NOM), Mr. Plante's employer, for his services in establishing the committee. **(Exhibit 4.)** He stated that the committee also previously disclosed an estimated debt to NOM for Mr. Plante's services, and that with its response, PMW had filed amended reports to correct this estimate, and to make it clear that the debt was for campaign management.

3.2 Mr. Vanderhulst stated further that Frank Schubert began serving as Campaign Manager for PMW in April 2012, and was compensated according to a monthly retainer agreement. He stated that although PMW received contemporaneous invoices from Mr. Schubert's company, Mission Public Affairs, due to an administrative error, these invoices were not listed as debts on PMW's C-4 reports. He stated that the committee's amended reports, filed September 6, 2012 corrected this oversight, listing the debts incurred to Mr. Schubert in the reporting periods. He noted that on August 10, 2012, prior to Ms. Fukumoto's August 15, 2012 complaint, PMW began disclosing debts to Mission Public Affairs and payments against those debts. **(Exhibit 5.)**

3.3 **Amended C-4 Reports by PMW:** The amended C-4 reports filed by PMW on September 6, 2012 **(Exhibit 6)** indicate that the committee initially over-

reported by approximately \$10,000 an estimated debt to NOM incurred in the month of April 2012 for the services of Chris Plante, and under-reported the committee's debts to NOM over the following three months. The under-reported debts to NOM incurred in May, June, and July 2012 totaled \$59,627 in value, and were reported between 28 and 88 days late. However, the full extent of the debts were disclosed to the public 61 days before the general election.

PMW Debts to NOM					
Staff Services Incurred In	Original Debt Disclosed	As Amended	Difference	Days Late	Days before Election
April 2012	\$38,293	\$28,098	-\$10,195	NA	NA
May 2012	0	\$16,305	\$16,305	88	61
June 2012	0	\$23,829	\$23,829	59	61
July 2012	0	\$19,493	\$19,493	28	61

3.4 The amended C-4 reports filed by PMW on September 6, 2012 indicate that in its original C-4 reports for April, May, and July, 2012, the committee omitted a total of \$50,110 in debts to Mission Public Affairs incurred during the reporting periods. The debts were reported between 28 and 120 days late, 61 days before the general election. Although the committee failed to timely disclose a debt for the services of Frank Schubert performed in July 2012, as noted in Mr. Vanderhulst's response, the C-4 for July that was filed on August 10, 2012 did include a debt to Mission Public Affairs for Mr. Schubert's June retainer of \$20,000.

PMW Debts to Mission Public Affairs					
Staff Services Incurred In	Original Debt Disclosed	Amended	Difference	Days Late	Days before Election
April 2012	0	\$15,000	\$15,000	120	61
May 2012	0	\$15,110	\$15,110	88	61
July 2012	0	\$20,000	\$20,000	28	61

3.5 **PMW Response Regarding Joseph Backholm:** In his September 6, 2012 preliminary response to the complaint, PMW counsel Joseph Vanderhulst stated that Joseph Backholm served PMW as a volunteer. He stated that unlike Mr. Schubert and Mr. Plante, who have served as paid campaign managers for similar committees in the past in other states, Mr. Backholm has not, and does not ordinarily charge a fee or receive compensation for serving as a political committee chairman and treasurer.

3.6 On March 20, 2013, Mr. Vanderhulst submitted a supplemental response dated March 19, 2013, addressing the allegation of unreported in-kind contributions in the form of Mr. Backholm's services to PMW, and other unreported in-kind contributions. **(Exhibit 7)** He stated that Mr. Backholm was not compensated in any way by FPIW for the time spent providing services to PMW, and that neither his duties nor his work schedule with FPIW were affected by his PMW activities. He stated that the FPIW board of directors did not grant Mr. Backholm leave from his duties with FPIW, because FPIW continued to function as it had previously. He stated that because Mr. Backholm's duties and work schedule with FPIW were not affected, his compensation from FPIW was not affected. He stated that Mr. Backholm did not take paid leave from FPIW, because he did not take leave or time off from work during the campaign, but continued to work the same amount of time for FPIW as he had before becoming treasurer for PMW. He stated that PMW did not make use of the office space or other administrative resources of FPIW, or of any other person or entity, but hired and paid its own administrative staff. He stated that early in the campaign, FPIW received calls regarding the marriage ballot measure campaign, but these were directed to PMW and FPIW staff were instructed to clarify that FPIW was not involved in the ballot measure campaign.

3.7 **Interview with Joseph Backholm:** On August 19, 2013, Joseph Backholm was interviewed under oath by telephone. Mr. Backholm confirmed that he was not employed by PMW during the R-74 campaign, but rather worked for FPIW, his sole employer since 2008. He stated that the FPIW board decided that while he volunteered for PMW, he was not released from his position as Director of FPIW. Mr. Backholm stated that he has no set work schedule for FPIW, and was expected to simply "get the job done." He stated that he worked nights and weekends for FPIW, and to compensate, would occasionally take days or hours off in the middle of the week to spend time with his family or attend his children's school assemblies.

3.8 Mr. Backholm stated that his duties as volunteer treasurer for PMW included signing checks, holding weekly conference calls, and acting as spokesman for PMW, including at three or four media or public appearances or debates throughout the campaign. Mr. Backholm did not recall the amount of time he spent working on PMW activities in total or on a daily basis, and did not track this time spent on the PMW campaign. However, he stated that there were many days when he had no active involvement with the campaign. He stated that he did not engage in substantive travel outside the state for PMW, but only attended media activities in the Seattle area.

3.9 Mr. Backholm stated that his FPIW work schedule is unpredictable, and involves travel on behalf of his employer. He stated that throughout the year, he is located in his office approximately 40% of the time. He stated that the weekly conference calls he held for PMW happened in a variety of locations,

including his home or car, in media studios, and occasionally from his office, wherever he happened to be at the time. He stated that PMW had a separate office suite in the same building as FPIW, and that he would sign checks and conduct other campaign business in the PMW office. He stated that on occasions when scheduling conflicts arose between FPIW work and PMW activity, the conflicts were resolved in the least inconvenient way for all parties concerned, including by rescheduling obligations.

3.10 **Additional Untimely Reporting by PMW:** In reviewing PMW's response to the complaint, and the committee's contribution and expenditure reports, staff noted instances of late reporting in addition to those noted in the complaint. The additional late-reported activity was as follows:

- A C-4 report filed on October 30, 2012 for the period of September 1 - October 15, 2012 disclosed approximately \$302,000 more in contribution deposits, \$20,000 more in expenditures and approximately \$90,000 more in debts, orders placed, and obligations, than the original C-4 report for the same period, filed on October 16, 2012. **(Exhibit 8.)** Nearly all of the contributions were disclosed in a substantially timely manner on C-3 reports, however the expenditure activity (including debts and obligations), included over \$70,000 in previously undisclosed obligations and payments to Mission Public Affairs for campaign management, and numerous smaller obligations for legal services, video production, and other services. This expenditure activity was due to be disclosed on October 16, 2012, and was reported 14 days late, though seven days before the election.
- A C-4 report filed on June 6, 2013 for the period of October 16 - 29, 2012 disclosed approximately \$7,000 more in contribution deposits than the original C-4 report for the same period, filed on October 30, 2012. **(Exhibit 9.)** Again, while the contributions were disclosed in a substantially timely manner on C-3 reports, this deposit activity was due to be disclosed on a C-4 report on October 30, 2012, and was reported 219 days late.
- A C-4 report filed on January 10, 2013 for the period of October 30 - November 30, 2012 disclosed approximately \$43,000 more in debts, orders placed, and obligations than the original C-4 report for the same period, filed on December 10, 2012. A subsequent amendment for same reporting period, filed on June 6, 2013, disclosed approximately \$66,000 in additional previously undisclosed debts. **(Exhibit 10.)** These obligations, for campaign management, consulting, legal, and compliance services, were due to be disclosed on December 10, 2012, and were reported between 31 – 178 days late.

- 3.11 On September 5, 2014, and November 13, 2014, Mr. Vanderhulst sent written explanations for the additional late reporting by PMW. **(Exhibit 11)**. He stated that the late reported PMW contributions resulted from the committee's inability to know that a credit card contribution had been received until it had actually cleared PMW's account. He stated that the committee obtained contributor data through an online system separate from the credit card processing system so that it could track individual contributions and collect contributor data for reporting purposes, and out of an abundance of caution, used the earliest possible date for each contribution's date of deposit. He stated that in some cases, the lag in discovering this information resulted in a contribution being disclosed after the C-4 cutoff for the relevant deposit date.
- 3.12 Regarding the late reporting of PMW's expenditure activity, Mr. Vanderhulst stated that while PMW did monitor and track the work that consultants and vendors performed on the committee's behalf, PMW reported its debts only when invoiced. He stated that NOM and ActRight Compliance Services and Engagement had an agreement with PMW to combine invoices for their representatives' services during October and November into one, so that the pre-election work would appear on one invoice. He stated that these invoices were not ready until after the C-4 cutoff for December 2012. In the case of Mission Public Affairs, he stated that a good faith mix-up resulted in the vendor failing to provide invoices in a timely manner.
- 3.13 Mr. Vanderhulst stated that in the interest of full disclosure, PMW amended its reports to reflect the dates of debts provided by the vendors, rather than the dates when PMW was made aware that an outstanding debt remained. He stated that no harm to the public resulted from the late disclosure, as it could be determined from PMW's reports that the committee was using certain vendors on a recurring basis, such as Mission Public Affairs, and that the amounts of invoices were frequently consistent. He stated that the corrections to the committee's reports should not be considered late, but rather best efforts to ensure that the reports filed were accurate as soon as information became known.

IV. SCOPE

4.1 Staff reviewed the following documents:

- A complaint against Preserve Marriage Washington (PMW) received on August 15, 2012 from Sandra Turner Fukumoto, under cover letter from the law firm of Davis Wright Tremaine LLP;
- Email dated September 6, 2012 from Joseph Vanderhulst, Staff Attorney, ActRight Legal Foundation and counsel for PMW;

- Letter dated March 19, 2013 from Joseph Vanderhulst, Subject: *Request for Additional Response to Complaint*, PDC Case No. 13-026;
- PDC contribution and expenditure reports and data submitted by Preserve Marriage Washington for the 2012 general election;
- An email received on September 5, 2014 from Joseph Vanderhulst with an attached letter (which was also sent First Class Mail), Subject: *Explanation of Amendments to C-4 Reports by Preserve Marriage Washington*; and
- An email received on November 13, 2014 from Joseph Vanderhulst.

4.2 PDC staff interviewed Joseph Backholm, PMW Treasurer, under oath on August 19, 2013.

V.
LAW

RCW 42.17A.005(20) defines "expenditure" to include a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. For the purposes of RCW 42.17A, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made.

RCW 42.17A.235 and .240 require political committees to file timely, accurate reports of monetary and in-kind contributions, including contributions pledged but not received, and monetary and in-kind expenditures, including debts, orders placed and obligations. The reports are filed monthly following an excess of \$200 in contribution or expenditure activity, except during the five months before the election, during which time summary reports of receipts and expenditures are required to be filed 21 days and again 7 days before each election in which the committee is participating. The reports must 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. Any contributions received and expenditures made prior to the date of registration must be disclosed on the day the registration is filed. Reports of contributions must include the name and address of any contributor who has given more than \$25 in the aggregate.

Respectfully submitted this 15th day of May, 2015.



William A. Lemp III
Lead Political Finance Investigator



Tony Perkins
Assistant Director

EXHIBIT LIST

- Exhibit 1** C-1pc Political Committee Registration filed on February 22, 2012 by Preserve Marriage Washington (PMW).
- Exhibit 2** Complaint against PMW, filed on August 15, 2012 by Sandra Turner Fukumoto.
- Exhibit 3** Preliminary response to Ms. Fukumoto's complaint, submitted on September 6, 2012 by Joseph Vanderhulst, PMW counsel.
- Exhibit 4** C-4 Summary, Full Report of Receipts and Expenditures, filed by PMW on March 12, 2012, disclosing in-kind contributions from the National Organization for Marriage (NOM), for the services of Chris Plante in establishing PMW.
- Exhibit 5** C-4 report filed by PMW on August 10, 2012, disclosing debts to Mission Public Affairs (Frank Schubert) and payments against those debts.
- Exhibit 6** Amended C-4 Reports filed by PMW on September 6, 2012.
- Exhibit 7** Supplemental response to the complaint, received on March 20, 2013 from Joseph Vanderhulst.
- Exhibit 8** Original and amended C-4 reports filed on October 16, 2012 and October 30, 2012 by PMW for the period of September 1 - October 15, 2012.
- Exhibit 9** Original and amended C-4 reports filed on October 30, 2012 and June 6, 2013 by PMW for the period of October 16 - 29, 2012.
- Exhibit 10** Original and amended C-4 reports filed on December 10, 2012, January 10, 2013, and June 6, 2013 by PMW for the period of October 30 - November 30, 2012.
- Exhibit 11** Supplemental responses submitted on September 5, 2014, and November 13, 2014, by Joseph Vanderhulst, containing written explanations for the additional late reporting by PMW.