



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Saving Whatcom County (dba Save
Whatcom)

Respondent.

PDC Case No. 14-004

Report of Investigation

I.

Background

- 1.1 On August 13, 2013, Saving Whatcom County dba Save Whatcom (Save Whatcom) filed a Committee Registration (C-1pc report) as a first-time political committee participating in the 2013 elections. Save Whatcom registered with the Public Disclosure Commission (PDC) as an "Other Political Committee" and selected the Full Reporting option. The C-1pc indicated that Save Whatcom registered as a continuing political committee.
- 1.2 On September 16, 2013, Whatcom First filed a C-1pc report as a first-time political committee participating in the 2013 elections. Whatcom First also registered with the PDC as an "Other Political Committee" and selected the Full Reporting option. The C-1pc disclosed Whatcom First registered as a continuing political committee, and that Whatcom First was affiliated with Save Whatcom.
- 1.3 Whatcom First and Save Whatcom both have: (1) The same post office box; (2) Committee bank accounts at the same bank; (3) The same contact information for the records inspection period; and (4) The same treasurer, Orphalee Smith. Ms. Smith is a CPA. She indicated on the C-1pc that she performs only ministerial functions for Save Whatcom, and functions in addition to ministerial functions for Whatcom First.
- 1.4 On October 21, 2013, the Attorney General's Office (AGO) received a 45-day citizen action letter (complaint) in accordance with RCW 42.17A.765(4) from Mike Estes against Save Whatcom and Whatcom First. The complaint alleged that both committees were violating PDC laws by failing to report committee contribution and expenditure activities.

Allegations

- 2.1 Specifically, the complaint alleged that Save Whatcom and Whatcom First violated RCW 42.17A.235, .240, and .245 by failing to timely file Cash Receipts Monetary Contributions reports (C-3 reports) and Campaign Summary Receipts & Expenditures reports (C-4 reports) disclosing contribution and expenditure activities undertaken by the two committees, and that Save Whatcom failed to file its reports electronically. **Exhibit #1.**
- 2.2 This report addresses the allegations against Respondent Save Whatcom. The allegations concerning Respondent Whatcom First were investigated under PDC Case No 14-005.

III. Findings

- 3.1 Political committees under the Full Reporting option that registered with the PDC after the 2013 primary election, and participated only in the 2013 general election, were required to file C-3 reports weekly once the C-1pc was filed. For Save Whatcom, the weekly C-3 reporting requirements began once the C-1pc was received on August 13, 2013. Save Whatcom was also required to file the following C-4 reports:
 - An August 2013 Monthly C-4 report due on September 10, 2013, covering the period August 13 through 31, 2013;
 - A 21-day pre-general election C-4 report due on October 15, 2013, covering the period September 16 through October 14, 2013;
 - A 7-day pre-general election C-4 report due on October 29, 2013, covering the period October 15 through 28, 2013; and
 - A post-general election C-4 report by December 10, 2013, covering the period October 29 through November 30, 2013.
- 3.2 On October 28, 2013 Orphalee Smith, Treasurer for Save Whatcom and Whatcom First, submitted an email along with a two-page response letter on behalf of the both committees. **Exhibit #2.** Ms. Smith stated that she had previously served as a committee treasurer, but said her prior experience was before there were electronic filing requirements for C-3 and C-4 reports. She stated that once she became aware of the electronic filing requirements, she began submitting the reports electronically. She stated that she has been in communication with PDC staff concerning filing for Save Whatcom and Whatcom First, *"...regarding how to make my previously filed paper forms compatible with electronic filing requirements."*
- 3.3 Staff confirmed that Mr. Smith had been in frequent contact with PDC Filer Assistance Specialists since the two committees were formed.

3.4 On November 4, 2013, Chet Dow, Secretary for Whatcom First, submitted a two-page response letter on behalf of Whatcom First and Save Whatcom. **Exhibit #3.** Mr. Dow stated that Save Whatcom was created to encourage jobs and business growth in Whatcom County. He said future ongoing programs are still being developed. He said Save Whatcom committee members:

"...made the decision that it needed to support 2013 candidates for local government office that shared the same principles....It was suggested that we set up a related PAC to handle just the election activity expenses and thereby simplifying reporting and distinguishing the separate mission..."

3.5 Concerning Save Whatcom, Mr. Dow said there are no paid staff or committee members, and no committee headquarters. He stated the post office box was paid for by the treasurer, Orphalee Smith, and is shared by Whatcom First and Save Whatcom. He said all Save Whatcom committee officers and members are volunteers who use their own computers, phones, vehicles, etc. when conducting committee activities.

3.6 On November 18, 2013, Mr. Dow submitted an email in response to staff's November 14, 2013 request for additional information concerning Save Whatcom and Whatcom First. **Exhibit #4.** Mr. Dow stated in the email that Save Whatcom, *"grew out of an informal, ad-hoc group of like-minded individuals."* He went on to state:

- On August 5, 2013, the officers and principal decision makers of Save Whatcom first met and discussed their *"...mutual interests in forming an ongoing, locally-focused, independent political committee."*
- On August 8, 2013, the group met and decided to form a political committee named Save Whatcom.
- On Friday, August 9, 2013, the three individuals serving as officers of Save Whatcom executed a resolution documenting these actions and enabling the committee Treasurer to take necessary steps to make Save Whatcom operational.
- There were no Articles of Incorporation.
- On August 13, 2013, Save Whatcom registered with the PDC after a single bank account was established for Save Whatcom. There continues to be only one bank account.
- The C-1pc indicated that Save Whatcom was designated as a *"continuing political committee,"* and that Save Whatcom would continue to pursue its mission for an indefinite time-period beyond the 2013 election cycle.
- Local lobbying and fundraising to support such efforts are among possible future activities for Save Whatcom, but details of any future plans for ongoing programs are still being developed.

3.7 Mr. Dow stated that after consulting with PDC staff, Save Whatcom registered Whatcom First with the PDC “...to pay for communication expenses associated with Save Whatcom’s local campaign messaging. He stated that since they set up Save Whatcom as a continuing political committee, and that they decided to set up Whatcom First similarly “...with the intention to continue activity as long as circumstances warranted.” Finally, he stated that Save Whatcom would report an allocated portion of the post office box rental as an in-kind contribution from Ms. Smith.

Findings regarding the allegation that Save Whatcom failed to timely file committee C-4 reports

3.8 On October 15, 2013, Save Whatcom filed its August 2013 C-4 report covering the period August 1 through 31, 2013, disclosing the receipt of a \$5,000 monetary contribution, in-kind contributions totaling \$1,932, and no expenditures or orders placed. **Exhibit #5.** The August 2013 C-4 was required to be filed by September 10, 2013. It was filed 35 days late.

3.9 On October 21, 2013, Save Whatcom filed its 21-day pre-general election C-4 report covering the period September 1 through October 14, 2013, disclosing \$151,248 in monetary contributions received, \$4,343 in in-kind contributions received, and \$154,802 for three monetary expenditures. **Exhibit #6.** The three expenditures included:

- A \$154,000 monetary contribution to Whatcom First on October 14, 2013;
- A \$571 expenditure to Print and Copy for printing services on September 6, 2013; and
- A \$231 expenditure to Print and Copy for printing services on September 12, 2013.

3.10 The 21-day pre-general election C-4 report was required to be filed by October 15, 2013. It was filed six days late.

3.11 On October 29, 2013, Save Whatcom timely filed its 7-day pre-general election C-4 report covering the period October 15 through 28, 2013, disclosing \$8,385 in monetary contributions received, \$892 in in-kind contributions received, and \$6,353 in monetary expenditures.

Findings regarding the allegation that Save Whatcom failed to timely file C-3 reports

3.12 Save Whatcom filed a total of 24 C-3 reports during the 2013 election, disclosing the receipt of \$163,735 in monetary contributions. Save Whatcom filed seven C-3 reports late disclosing \$151,525 in contributions received that included the following: (**Exhibit #7**)

- August 23, 2013 deposit: On September 23, 2013, Save Whatcom paper-filed a C-3 report disclosing a \$5,000 contribution received and deposited on August 23, 2013.

The \$5,000 contribution was from Richard Donahue, future Campaign Manager/Media Contact person for Whatcom First. Save Whatcom was required to file the C-3 report by August 26, 2013. The C-3 report was filed 28 days late.

Ms. Smith signed the paper-filed C-3 report on September 19, 2013, and admitted the initial C-3 report for Save Whatcom was filed late. She went on to state "*...this was late mainly because of the fact the committee had just been formed and procedures were not established.*"

- September 10, 2013 deposit: On September 23, 2013, Save Whatcom paper-filed a C-3 report disclosing nine contributions totaling \$775 received and deposited on September 10, 2013. Save Whatcom was required to file the C-3 report by September 16, 2013. The report was filed seven days late. Ms. Smith stated that she deposited the funds on September 12, 2013, but said she was "*...distracted with my professional responsibilities.*"
- September 12, 2013 deposit: On September 23, 2013, Save Whatcom paper-filed a C-3 report disclosing three contributions totaling \$400 received during the period September 6 through 12, 2013, that were deposited on September 12, 2013. Save Whatcom was required to file the C-3 report by September 16, 2013. The report was filed seven days late.
- September 16, 2013 deposit: On October 17, 2013, Save Whatcom electronically filed a C-3 report disclosing one \$200 contribution received and deposited on September 16, 2013. Save Whatcom was required to file the C-3 report by September 23, 2013. The report was filed 24 days late. Ms. Smith stated that this contribution was processed through Pay Pal, and when she set up the Pay Pal account she did it incorrectly, and was not aware of the contribution until after the due date for the C-3 report.
- October 9, 2013 deposit: On October 17, 2013, Save Whatcom electronically filed a C-3 report disclosing one \$12,000 contribution from SSA Marine, Inc. received and deposited on October 9, 2013. Save Whatcom was required to file the C-3 report by October 14, 2013. The report was filed three days late.
- October 10, 2013 deposit: On October 17, 2013, Save Whatcom electronically filed a C-3 report disclosing two \$50,000 contributions received and deposited on October 10, 2013, as follows: (1) A \$50,000 contribution from Cloud Peak Energy, a coal mining and energy company headquartered in Wyoming; and (2) A \$50,000 contribution from Global Coal Sales operating out of Columbus, Ohio. Save Whatcom was required to file the C-3 report by October 14, 2013. The report was filed three days late.
- October 11, 2013 deposit: On October 17, 2013, Save Whatcom electronically filed a C-3 report disclosing six contributions totaling \$33,150 received on October 10, 2013 and deposited on October 11, 2013. The six contributions included: (1) Two \$16,000 contributions from Corbin and Barbara Robertson, from Houston, Texas with Mr. Robertson listed as an Executive of Quintana Minerals Corporation; (2) two \$500

contributions from a retired/homemaker husband and wife in Bellingham; (3) A \$100 contribution from an individual, and (4) two small contributions totaling \$50. Save Whatcom was required to file the C-3 report by October 14, 2013. The report was filed three days late.

3.13 Save Whatcom was required to file its reports electronically when it expected to expend five thousand dollars or more in the current year. This expectation occurred when the committee received a \$5,000 contribution from Richard Donahue on August 23, 2013. In addition, Save Whatcom was required to electronically file its C-3 report for \$775 that was paper-filed on September 23, 2013, and its C-3 report for \$400 that was paper-filed on September 23, 2013.

3.14 Concerning the late reporting, Ms. Smith stated that *"The errors made were not meant in any way to mislead the public. These errors and omissions were the result of me not being as well informed as to the new rules since I had last served as a Treasurer. In no way was it my or the committee's intention to mislead anybody about the sources of our financial support. The two committees were formed in mid-August and activity began immediately; consequently there was not time to establish procedures."*

Findings regarding the allegation that Save Whatcom failed to file electronically

3.15 Save Whatcom paper-filed filed seven C-3 reports totaling \$10,898.45 between September 23 and October 8, 2013. Because the first of the paper-filed C-3 reports disclosed a \$5,000 contribution from Richard Donahue, the C-3 totaling \$5,000 and all subsequent C-3 reports were required to be filed electronically. Following is a list of the seven paper-filed C-3 reports and the dates those reports were filed electronically. One C-3 report for \$525 was not filed electronically. The C-3 report for \$400 was electronically-filed with two C-3 reports, one for \$100 and one for \$300. **(Exhibit #8)**

- A C-3 totaling \$5,000 was due August 26th and was electronically-filed 49 days late on October 14th;
- A C-3 totaling \$775 was due September 16th and was electronically-filed 31 days late on October 17th;
- A C-3 totaling \$400 was due September 16th and was electronically-filed 31 days late on October 17th;
- A C-3 totaling \$1,623.45 was due September 23rd and was electronically-filed 24 days late on October 17th;
- A C-3 totaling \$1,575 was due September 23rd and was electronically-filed 24 days late on October 17th;
- A C-3 totaling \$1,000 was due October 7th and was electronically-filed 10 days late on October 17th; and
- A C-3 report totaling \$525 was due October 14th and was not filed electronically.

IV.
Scope

- 4.1 PDC staff reviewed the 45-day citizen action letter filed by Mike Estes against Save Whatcom and Whatcom First on October 2, 2013.
- 4.2 PDC Staff reviewed the following:
- A November 4, 2013 response letter from Chester Dow addressing the allegations in the complaint against Save Whatcom and Whatcom First.
 - A November 18, 2013, email from Mr. Dow in response to staff's request for additional information concerning Save Whatcom and Whatcom First.
 - An October 28, 2013 response letter from Orphalee Smith on behalf of Save Whatcom and Whatcom First.
 - Information, including queries of the PDC database, on the PDC website, concerning campaign finance reports filed by Save Whatcom and Whatcom First.

V.
Laws

- 5.1 **RCW 42.17A.235 and .240** require political committees to file timely, accurate reports of contributions and expenditures, including independent expenditures, orders-placed, debts or obligations. Political committees under the full reporting option are required to file C-4 reports 21 and 7 days before the general election, and a post-election C-4 report in the month following the election, regardless of the level of contribution or expenditure activities.
- 5.2 **RCW 42.17A.245** requires newly registered political committees that expect to expend five thousand dollars or more in the current year to file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055.

Respectfully submitted this 25th day of November, 2013.

 *Phil Stutzman for*

Kurt Young
Compliance Officer

List of Exhibits

- Exhibit #1** 45-day Citizen Action Letter filed by Mike Estes against Save Whatcom and Whatcom First.
- Exhibit #2** October 28, 2013 response letter from Orphalee Smith.
- Exhibit #3** November 4, 2013, two-page response letter from Chet Dow submitted on behalf of Save Whatcom and Whatcom First.
- Exhibit #4** November 18, 2013, two-page response email from Mr. Dow submitted on behalf of Save Whatcom and Whatcom First.
- Exhibit #5** August 2013 C-4 report for Save Whatcom.
- Exhibit #6** 21-day pre-general election C-4 report for Save Whatcom.
- Exhibit #7** Seven C-3 reports that were filed late by Save Whatcom.
- Exhibit #8** Seven C-3 reports that were electronically-filed late or not filed electronically by Save Whatcom.