

Executive Summary and Staff Analysis
Saving Whatcom County dba Save Whatcom, PDC Case No. 14-004
Whatcom First, PDC Case No. 14-005

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in a 45-day citizen action letter (complaint) filed on October 18, 2013, by Mike Estes against Saving Whatcom County dba Save Whatcom (Save Whatcom), PDC Case No. 14-004, and Whatcom First, PDC Case No. 14-005, two affiliated political committees that participated in Whatcom County elections in 2013. The complaint was filed with the Washington Attorney General's Office (AGO) electronically on October 18, 2013 and by U.S. mail on October 21, 2013, and referred to the Public Disclosure Commission (PDC) for investigation and possible action.

Allegations

The complaint alleged that Save Whatcom and Whatcom First violated RCW 42.17A.235 and .240 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. The complaint further alleges that save Whatcom failed to file some of its reports electronically as required by RCW 42.17A.245.

Applicable Statutes

RCW 42.17A.235 states that **RCW 42.17A.240** requires political committees, including bona fide political party committees, to timely and accurately file reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Contribution deposits made during this same time period must be disclosed on C-3 reports on the Monday following the date of deposit.

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.

Investigative Findings (Background)

On August 13, 2013, Save Whatcom registered with the PDC as a first-time political committee participating in the 2013 elections. On September 16, 2013, Save Whatcom registered Whatcom First with the PDC to pay for communication expenses associated

with Save Whatcom's local campaign messaging. Save Whatcom and Whatcom First stated they are affiliated with each other. They share a post office box and use the same treasurer, Orphalee Smith. Both committees stated they were created to encourage jobs and business growth in Whatcom County, and that any future ongoing programs are still being developed. During the 2013 elections, the two committees supported candidates for Whatcom County Council and the Port of Bellingham. Both committees initially paper-filed their reports. On October 14, Save Whatcom began filing electronically, and both committees filed electronically starting in mid-October.

Investigative Findings (Save Whatcom)

C-4 reports (Two late reports)

On October 15, 2013, Save Whatcom filed its initial C-4 report for August 2013 covering the period August 1 through August 31, 2013, disclosing the receipt of \$5,000 in monetary contributions and \$1,932 in in-kind contributions. No monetary expenditures were reported. The August 2013 C-4 report was required to be filed by September 10, 2013, and was filed 35 days late.

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 the receipt of \$151,248 in monetary contributions, three monetary expenditures totaling \$154,802, and in-kind contributions totaling \$4,343. Its most significant expenditure was a \$154,000 monetary contribution to Whatcom First made on October 14, 2013. The 21-day pre-general election C-4 report was required to be filed by October 15, 2013, and was filed six days late. On October 29, 2013, Save Whatcom timely filed its 7-day pre-general election C-4 report.

C-3 reports (7 late reports)

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 of its 24 C-3 reports between three and 28 days late, disclosing \$151,525 in contributions received. The seven late-filed C-3 reports included:

- A September 23, 2013, paper-filed C-3 report disclosing a \$5,000 contribution from an individual who later became the Whatcom First campaign manager/media consultant, received and deposited on August 23, 2013 (28 days late).
- An October 17, 2013, electronically-filed C-3 report disclosing a \$12,000 contribution from SSA Marine, Inc. (3 days late).

- An October 17, 2013, electronically-filed C-3 report disclosing two \$50,000 contributions from Cloud Peak Energy, a coal mining and energy company headquartered in Wyoming, and Global Coal Sales, operating out of Columbus, Ohio. (3 days late).
- An October 17, 2013, electronically-filed C-3 report disclosing six contributions totaling \$33,150, including two \$16,000 contributions from Corbin and Barbara Robertson, a couple from Houston, Texas (an Executive of Quintana Minerals Corporation) (3 days late).
- Three paper-filed C-3 reports disclosing 13 contributions totaling \$1,375 (7-24 days late).

Failure to File Electronically

On August 23, 2013, Save Whatcom received and deposited a \$5,000 contribution from Richard Donahue. Save Whatcom expected to use this contribution to make expenditures in 2013, and was therefore required to electronically file a C-3 report disclosing this contribution on August 26, 2013. The committee filed the C-3 report electronically 49 days late on October 14, 2013. In addition, Save Whatcom was late in electronically filing, or failed to electronically file, the following C-3 reports:

- 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.

Investigative Findings (Whatcom First)

Whatcom First's only activities during the 2013 general election were to make independent expenditures supporting or opposing Whatcom County Council and Port of Bellingham candidates. On October 14 and October 28, 2013, Whatcom First received \$154,000 and \$5,000, respectively, from Save Whatcom.

Whatcom First filed 21 reports of Independent Expenditures and Electioneering Communications (C-6 reports) disclosing \$151,305 in independent expenditure activities, the majority of which was spent on four Whatcom County Council races. Whatcom First filed 108 amended C-6 reports.

C-4 reports (2 late reports)

21-day pre-general election C-4 report - On October 17, 2013, Whatcom First electronically-filed its initial C-4 report covering the period September 1 through October 15, 2013, disclosing the receipt of \$154,190 in monetary contributions, no in-kind contributions, no monetary expenditures, and no outstanding orders-placed, debts or obligations. The 21-day pre-general election C-4 report was filed two days late.

On November 3, 2013, two days before the general election, Whatcom First amended its 21-day pre-general election C-4 report and added \$5,442 in new, previously unreported monetary expenditures, and \$11,839 in previously unreported orders placed. The \$5,442 in new expenditures were all made on October 15, 2013, and included expenditures for mailing services and newspaper advertising. The \$11,839 in previously unreported orders placed were for printing 100,000 brochures, 19,600 postcards for newspaper inserts, campaign signs, and committee remittance envelopes. The \$17,281 in previously unreported expenditures were disclosed 19 days late.

7-day pre-general election C-4 report - On October 29, 2013, Whatcom First timely filed its 7-day pre-general election C-4 report. However, the report did not include any orders placed, debts or obligations on Schedule B. On November 10, 2013, Whatcom First amended the report to include \$9,380 in orders placed, debts and obligations. These expenditures, for flyer inserts, printing of mail pieces, and postage, were filed 12 days late and seven days after the general election.

The late-reported expenditures and orders placed on the 21-day and 7-day pre-general election C-4 reports totaled \$26,661. \$17,281 was disclosed 19 days late, and \$9,380 was disclosed 12 days late, representing 17.8 percent of Whatcom First's total campaign expenditures through October 29, 2013.

C-3 reports (1 late report)

Whatcom First filed six original C-3 reports during the 2013 election. Five of the six reports were filed timely, disclosing \$159,000 in contributions. One report was filed seven days late, disclosing \$190. The treasurer stated that the bank deposit for the late-filed C-3 report was made by another member of Whatcom First, and she was not aware of the deposit until after it had already been made.

Conclusion

Save Whatcom – Save Whatcom was a new political committee participating for the first time in elections in 2013. It concentrated its efforts on the Whatcom County Council races in closely watched elections. Save Whatcom raised \$168,686 and spent \$163,981 by contributing to Whatcom First, an affiliated committee that spent the money on independent expenditures in those same Whatcom County Council races and Port of Bellingham races. Save Whatcom had received more than \$5,000 in contributions by the end of August, but did not begin filing electronically until October 14th when it began receiving much larger contributions. Save Whatcom filed two of its three C-4 reports late. The two late-filed C-4 reports included \$1,932 in in-kind contributions, reported 35 days late on October 15, 2013, and \$154,802 in monetary expenditures and \$4,343 in in-kind contributions received, filed six days late on October 21, 2013. Save Whatcom filed seven of 24 C-3 reports between three and 28 days late, disclosing \$151,525 in contributions received. Given the profile of the election, and the short time-frame in which Save Whatcom operated, the late-filed C-4 and C-3 reports warrant enforcement action.

Whatcom First - Whatcom First raised \$159,615, spent \$140,437, and had \$9,380 in orders placed, debts and obligations as of October 29, 2013. It received its funding from Save Whatcom, and spent its money on Whatcom County Council and Port of Bellingham races. Whatcom First amended its 21-day pre-general election C-4 report on November 3, 2013, disclosing \$17,281 in previously unreported expenditures, 19 days late. Whatcom First initially filed its 7-day pre-general election C-4 report timely on October 29, 2013. However, that report did not include any orders placed, debts, or obligations. On November 10, 2013, Whatcom First amended its 7-day pre-general election C-4 report to include \$9,380 in previously unreported orders placed, debts and obligations. Given the profile of the election, and the short time-frame in which Whatcom First operated, the late-filed C-4 reports warrant enforcement action.

Recommendation

Save Whatcom - Based on the Commission's actions concerning the separate enforcement action brought by staff against Save Whatcom for its late reporting, PDC staff recommends that the Commission:

- 1) Conduct enforcement as noted in the separately filed Notice of Administrative Charges, find violations as noted in the charges and assess an appropriate penalty; and
- 2) Recommend to the Attorney General that no further action be taken.

Whatcom First - Based on the Commission's actions concerning the separate enforcement action brought by staff against Whatcom First for its late reporting, PDC staff recommends that the Commission:

- 1) Conduct enforcement as noted in the separately filed Notice of Administrative Charges, find violations as noted in the charges and assess an appropriate penalty;
- 2) Recommend to the Attorney General that no further action be taken.