



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: 15-065
WITH RCW 42.17A	)	
	)	
Jay Inslee for Washington	)	
	)	REPORT OF INVESTIGATION
	)	
Respondent.	)	
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I.  
BACKGROUND

1.1 On May 27, 2015, the Washington State Attorney General's Office (AGO) received a 45-Day Citizen Action Letter complaint against Jay Inslee for Washington. On June 2, 2015 the 45-Day Citizen Action Letter was forwarded to the Public Disclosure Commission (PDC) from the AGO. The AGO requested the PDC to review and make recommendation(s), or schedule an administrative hearing. The 45-Day Citizen's complaint came from Susan Hutchison, Chair, Washington State Republican Party. The complaint alleges that the Jay Inslee for Washington – 2016 Campaign has allegedly violated provisions from RCW 42.17A and WAC 390-16.

II.  
ALLEGATIONS IN COMPLAINT

2.1 In her complaint dated May 27, 2015, Ms. Hutchison, Chair, Washington State Republican Party, alleged that the Jay Inslee for Washington – 2016 Campaign 1) made personal use of contributions prohibited under RCW 42.17A.445, and 2) failed to register and report as the sponsor of a grassroots lobbying campaign under RCW 42.17A.640<sup>1</sup>. On three occasions the Jay Inslee for Washington sent emails to a list of supporters asking them to support legislation during the 2015 legislative session. Three emails and

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<sup>1</sup> In one portion of Ms. Hutchison's Citizen Action Letter, she cites RCW 42.17A.615 as the section requiring registration and reporting by sponsors of grassroots lobbying campaigns, however, that section pertains to the regular expense reports required from persons registered to perform *direct* lobbying.

linked Web pages were included with the complaint and are listed below as Exhibits 1, 2, and 3:

- 2.2 Email dated January 27, 2015, Subject Line: “Where will you be when Washington Leads?” There is House Bill number 1314 listed, however there is no information for the public to call the legislative hot line or information directing the public to contact their legislator. An excerpt from the email states:

*“...Today, the Washington State House of Representatives is holding a public hearing on HB 1314, a bill that would hold Washington’s largest polluters accountable. This is our opportunity. We need to prove that Washington has what it takes to lead this transition to a clean energy economy. That’s why activists with Washington Conservation Voters are stepping up and joining me to show their support for this bill. Will you join us and show that Washington is ready to take this important step?”*

**Stand with Washington Conservation Voters and me and sign on in support of our historic Carbon Pollution Accountability Act Ahead of today’s hearing.”**

At the bottom of this email is a black out block with white letters asking recipients to “SIGN ON”. Also at the bottom of the email is a box on the right side of the page stating: “Paid for by Jay Inslee for Washington PO Box 21067 Seattle, WA 98111”. The reader is given access to a web page titled: **Support the Carbon Pollution Accountability Act**. The website asks for an individual’s name, email address and zip code, even though the email address and zip code were all that was required to submit the form. **(EXHIBIT 1)**.

- 2.3 Email dated February 16, 2015, Subject Line: “Yes, Yes, Yes” In this email there are four questions asked which pertain to right to fair pay, minimum wage and sick leave. In this email this discussion is about two bills before the Washington State House of Representatives. There is no bill number listed, legislative hot line or information directing the public to contact their legislator. An excerpt from the email

*“...the Washington state House is hearing bills on both guaranteeing Paid sick leave and raising the minimum wage.*

*Workers shouldn’t have to choose between their health – and their families’ health – and food on the table. That’s why guaranteeing that most employers provide paid sick leave is the right thing to do.*

*Raising the minimum wage is fair to workers, and it’ll boost our state’s economy as whole --- workers have more money to spend, local businesses across the state benefit. Raising the minimum wage to \$12 an hour is not only fair – it’s smart.*

*While these two bills are being heard in the House, it's critical that we build up public support ---a Washington economy that work for all. Washington is the best place in the country to work. Let's keep leading by supporting these two bills. Will you sign on Today?*

**Join me in supporting a Washington that works for all, and sign on in support of paid sick leave and raising the minimum wage."**

At the bottom of this email is a black out block with white letters asking recipients to "TAKE ACTION". Also at the bottom of the email is a box on the right side of the page stating: "Paid for by Jay Inslee for Washington PO Box 21067 Seattle, WA 98111". The reader is given access to a web page titled: **A Washington economy for all**. The website asks for an individual's name, email address and zip code, even though the email address and zip code were all that was required to submit the form. **(EXHIBIT 2)**.

2.4 Email dated March 5, 2015, Subject Line: "What's the only thing left?" This email discusses the successes and what still needs to be done in the legislature. There is no bill number listed, legislative hot line or information directing the public to contact their legislator. An excerpt from the email:

*"...On Tuesday, the Washington House passed a package of bills that raises the minimum wage and guarantees paid sick and safe leave.*

*These are policies that lift up all Washingtonians, and that's why the public supports them. That's why the Washington House supports them.*

*Now it's up to the Washington Senate to support them – but I need your help to convince them.*

*The Senate needs to hear from you. Will you take a stand for a Washington that works for all today?*

**Add your name now, and urge the Washington Senate to Pass paid sick and safe leave and minimum wage!"**

At the bottom of this email is a black out block with white letters asking recipients to "TAKE ACTION". Also at the bottom of the email is a box on the right side of the page stating: "Paid for by Jay Inslee for Washington PO Box 21067 Seattle, WA 98111". **(EXHIBIT 3)**. On the website the last paragraph reads:

*"Will you sign my petition to urge the Washington Senate To pass paid sick and safe leave and minimum wage?"*

The website asks for an individual's name, email address and zip code, even though the email address and zip code were all that was required to submit the form.

2.5 On June 24, 2015, the Public Disclosure Commission received an addendum to the initial 45-Day Citizen Action Complaint. The addendum 45-Day Citizen's complaint came from Caleb Heimlich, Executive Director, Washington State Republican Party. The complaint has additional allegations that the Jay Inslee for Washington – 2016 Campaign has allegedly violated provisions from RCW 42.17A and WAC 390-16. Four emails and linked Web pages were included with the addendum and are listed below as Exhibits 4 - 12:

2.6 Email dated December 7, 2014 with "Our Roads and bridges are too Important" The recipient of the email is asked on two occasions to support a comprehensive, sustainable transportation package during the next legislative session by clicking on any of the three links in the email (**EXHIBIT 4**). There is no bill number listed, legislative hot line or information directing the public to contact their legislator. These links are:

*"Do you want a transportation plan that works for Washington to be a top priority in the next legislative session? Click here to show your support."*

*"Help me make Washington roads and bridges safe and create new jobs for workers. Click here to declare that you believe Washington needs a comprehensive transportation plan now."*

At the bottom of the email there is a blacked out box with white letters asking the recipient to "TAKE ACTION". Each of the links goes to a web page identified at the top and bottom as being affiliated with Jay Inslee for Washington (**EXHIBIT 5**). The website asks for an individual's name, email address and zip code, even though the email address and zip code were all that was required to submit the form. The header on the website is titled "**Support a transportation plan that puts Washington to work**" The header at the top of the website states "Jay Inslee Democrat for Governor" at the bottom of the website "Paid for by Jay Inslee for Washington (D)".

2.7 Email dated December 16, 2014, with "Do it for the Kids" in the subject proposed education plan during the next legislative session by clicking on any of two links in the email. (**EXHIBIT 6**). A disclaimer on the email states it is paid for by Jay Inslee for Washington. There is no bill number listed, legislative hot line or information directing the public to contact their legislator. These links are:

*"Do you believe Washington students deserve real action on education in the upcoming legislative session? Click here to learn more about my plan and show your support."*

*"Help me pass a plan that puts Washington students first and prepares them for the jobs of the future. Click here to read more"*

*about my plan to improve education, and declare your support.”*

Each link in the email goes to a web page identified at the top and bottom as being affiliated with Jay Inslee for Washington. The heading on the page is titled **“Support my plan to make education a top priority in Washington” (EXHIBIT 7)**. The page asks supporters to sign up to support Governor Inslee’s education plan in the upcoming session. The web page asks for an individual’s name, email address and zip code, even though the email address and zip code were all that was required to submit the form.

- 2.8 Email dated December 18, 2014, with “Reinvesting in Washington” in the subject line. Recipients are asked on two occasions to support Governor Inslee’s budget proposal by clicking on any of two links in the email. **(EXHIBIT 8)**. A disclaimer on the email states it is paid for by Jay Inslee for Washington. There is no bill number listed, legislative hot line or information directing the public to contact their legislator. These links are:

*“Are you ready to take a stand for a working Washington?  
Click here to declare your support for my 2015 budget plan.”*

*“Help me pass a budget that reinvests in the future of Washington.  
Click here to declare your support.”*

Each link in the email goes to a web page identified at the top and bottom as being affiliated with Jay Inslee for Washington. The header on the page is titled **“Support my plan to reinvest in the future of Washington”** Below the header “Jay Inslee Democrat for Governor” at the bottom of the page “Paid for by Jay Inslee for Washington (D)”. The website asks for an individual’s name, email address and zip code, even though the email address and zip code were all that was required to submit the form. **(EXHIBIT 9)**

- 2.9 Email dated May 7, 2015, with “My priorities” in the subject line. Recipient is asked to support Governor Inslee’s “legislative priorities” in the “special session” including approving a budget, passing a transportation funding package, and to take action on reducing carbon pollution by clicking on any of two links in the email. **(EXHIBIT 10)**. A disclaimer on the email states it is paid for by Jay Inslee, Democrat for Governor. There is no bill number listed, legislative hot line or information directing the public to contact their legislator. These links are:

*“Add your name: Sign on in support of my legislative priorities  
Today, as the special session gets under way.”*

Each link goes to a web page identified at the top and bottom as being affiliated with Jay Inslee, Democrat for Governor. The header on these pages are titled: **“Support Jay’s Priorities in the Special Session”** Below

the header “Jay Inslee Democrat for Governor” at the bottom of the page “Paid for by Jay Inslee for Washington (D)”. The website asks for an individual’s name, email address and zip code, even though the email address and zip code were all that was required to submit the form. **(EXHIBIT 11)**. The second document is located at [www.jayinslee.com/home](http://www.jayinslee.com/home) and discusses the following:

*Inslee signs \$5.1B transportation bill, touts Cheney rail project – 06/12*  
*Inslee uses Puyallup bridge visit to highlight state infrastructure needs – 05/27*  
*Gov. Inslee donating raise to school fundraising site – 05/19*  
*Inslee signs tougher oil-train law, calls on feds to act – 05/14*

At the header on this document is Jay Inslee, Democrat for Governor and at the bottom of the page “Paid for by Jay Inslee for Washington (D), P.O. Box 21067 Seattle WA 98111. **(EXHIBIT 12)**

### III. FINDINGS

- 3.1 On June 16, 2015, the PDC staff received a response to the complaint from Attorney Kevin J. Hamilton, of PerkinsCoie Law Firm on behalf of the Jay Inslee for Washington - 2016 Campaign. Mr. Hamilton states that the complaint is meritless and list RCW 42.17A.445 and WAC 390-16-238. Mr. Hamilton discussed the two issues raised by Ms. Hutchinson in her complaint.
- 3.2 First issue: All Expenditures made by Jay Inslee for Washington have been made for the Purpose of Reelecting Governor Inslee. In Mr. Hamilton’s June 6, 2015 response he cites RCW 42.17A.445 and WAC 390-16-238 claiming Ms. Hutchison’s allegations are meritless. Mr. Hamilton goes on to state:

*“It perhaps need not be said that none of these examples of “personal use” are even remotely similar to the political literature that is at issue here. The rule against personal use of campaign funds to defray personal expenses unconnected to politics. That is a far cry from the expenditures at issue here.*

*Any incumbent who, like Governor Inslee, is running for reelection faces a basic challenge-maintaining the supporter base that helped him get reelected. There are limited ways to do so in “off-years” during the incumbent’s term in office, particularly during the Session Freeze when funds cannot be solicited. One way that an incumbent can keep his supporters engaged is to remain in regular contact with them over his term. And one obvious means of maintaining their support is to demonstrate that the candidate is using his time in office to pursue the goals the candidate and his supporters share.*

*In short, communicating a candidate's position to the public on important political issues of the day and asking for support is a type of political communication that is obviously of benefit to an incumbent running for reelection. At the risk of stating the obvious, the Governor maintains regular communication with his supporters because doing so helps to maintain and build his supporter base, which is vitally important to his re-election."*

3.3 On June 23, 2015, PDC staff sent questions by email to the Inslee for Governor campaign, seeking to determine 1) what Governor Inslee or his campaign did with the responses to the email and Web communications, 2) whether the responses led to a petition or similar message being presented to state legislative officials, and 3) whether state legislative officials were informed of the responses in any other way. On July 6, 2015, Mr. Hamilton responded as follows:

*"To the extent that individuals who received the communications responded, the names and contact information of such individuals were entered into the Campaign's campaign contact database. The Campaign did not use the responses to present a petition or similar message to state legislators. None of the names of the responding individuals were presented to state legislative officials, nor were the state legislative officials informed of the responses in any other way."*

3.4 Second issue: Jay Inslee for Washington is a Candidate Committee, Properly Reported all Expenditures on C-4 Forms, and was not required to file L-6 Forms as a Grassroots Lobbying Campaign. Mr. Hamilton goes on to state:

*"Ms. Hutchison also alleges that Jay Inslee for Washington "engaged In an unreported grassroots lobbying campaign" in violation of RCW 42.17A.640. This allegation is similarly meritless.*

*Reporting requirements apply when a person spends a certain amount Of money "in presenting a program to the public, a substantial portion Of which is intended, designed, or calculated primarily to influence Legislation." RCW 42.17A.640. But by its express terms, and for Obvious reasons, the statute does not apply to expenditures made By candidates and political committees. See RCW 42.17A.640 ("Any Person who has made expenditures, not reported by a...candidate Or political committee under RCW 43.17A.225 or 42.17A.235,...shall Register and report, as provided in subsection (2) of this section, as A sponsor of a grass roots lobbying campaign." (emphasis added). Grassroots lobbying expenditures are reported on an L-6 form.*

*Here, all expenditures related to the communications at issue in Ms. Hutchinson's Complaint were made by Governor Inslee's reelection committee, Jay Inslee for Washington. As explained above, these expenditures were fully and properly reported by Jay Inslee for Washington on the applicable Form C=4.*

*By the plain language of the governing statute, RCW 42.17A.640, Jay Inslee for Washington was certainly not required to also report the same expenditures on an L-6 form. Ms. Hutchinson's allegation that "Jay Inslee for Washington has engaged in an unreported grassroots lobbying campaign" is simply wrong."*

3.5 In the July 6, 2015, paragraph 5 of the response from Attorney Hamilton on behalf of the Inslee campaign. The following excerpt pertaining to the Washington Conservation Voters:

*"Washington Conservation Voters shares Governor Inslee's concerns about carbon pollution. Accordingly, Washington Conservation Voters expressed its support for the substance of the January 27 communication by partnering with the Campaign to have Washington Conservation Voters' name appear on that particular communication. The Campaign did not provide its own list of contacts to Washington Conservation Voters. Nor did the Campaign provide the names or email addresses of individuals who responded to the January 27 communications, although its understanding is that Washington Conservation Voters was apprised of the identities of those who responded to the communication by Trilogy. The Campaign further understands that Washington Conservation Voters did not present names or contacts to state legislative officials, nor were the state legislative officials informed of the responsive contacts by Washington Conservation Voters in any other way."*

The Inslee Campaign was paying Trilogy Interaction LLC, to promote Governor Inslee's campaign for re-election. The Washington Conservation Voters did not paid to have their logo on the House Bill 1314 emails, on the websites or pay for the listing of individuals who responded to the Jay Inslee campaign which was provided to the Washington Conservation Voters by Trilogy Interactive LLC.

3.6 HB 1314 "Implementing a carbon pollution market program to reduce greenhouse gas emissions" Governor Inslee was the "Requestor".

3.7 HB 1355 "Increasing the minimum hourly wage to twelve dollars over four years".

3.8 HB 1356 "Establishing minimum standards for sick and safe leave from employment" were requested by Governor Inslee.

3.9 On June 30, 2015 at approximately 0930 hours, I telephonically interviewed Mr. Jacob Lipson, Staffer with the Washington State Legislature. Mr. Lipson stated that if a petition was sent to a specific committee it would go directly to one of the committee members. The only information staffers receive and keep pertains to the individuals who testify before the committee.

#### IV. SCOPE

##### 4.1 Staff reviewed the following documents:

- A complaint against Jay Inslee for Washington – 2016 Campaign, submitted by Susan Hutchison, Chair, Washington State Republican Party, dated May 27, 2015.
- Response received from Mr. Kevin Hamilton, Attorney with the law firm of PerkinsCoie on behalf of the Jay Inslee for Washington – 2016 Campaign, dated June 16, 2015, July 6, 2015, and July 8, 2015.
- Reviewed RCW 42.17A.445 Personal use of contributions – When Permitted
- Reviewed RCW 42.17A.640 Grass Roots lobbying campaigns
- Reviewed WAC 390.16.238 Personal use of contributions – Standard.
- 4.2 On June 23, 2015, staff sent an email to Attorney Hamilton requesting clarification
- House bill (HB) 1314 “Implementing a carbon pollution market program to reduce greenhouse gas emissions”.
- HB 1355 “Increasing the minimum hourly wage to twelve dollars over four years”
- HB 1356 “Establishing minimum standards for sick and safe leave from employment”.
- On June 30, 2015 telephonic interview with Mr. Jacob Lipson, Staffer with the Washington State Legislature.

#### V. LAW

##### **RCW 42.17A.445**

Contributions received and reported in accordance with RCW 42.17A.220 through 42.17A.240 and 42.17A.425 may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances (Excerpts of each of the qualifying forms of reimbursement):

- (1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee.
- (2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual.
- (3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW 42.17A.240.

#### **RCW 42.17A.640**

- (1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17A.615 or by a candidate or political committee under RCW 42.17A.225 or 42.17A.235, exceeding \*one thousand dollars in the aggregate within any three-month period or exceeding \*five hundred dollars in the aggregate within any one-month period in presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

#### **WAC 390-16-238 (Excerpts from the WAC)**

- (1) Except as specifically allowed by chapter 42.17A RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17A.445.
- (2) An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.
- (4) Examples of expenditures presumed to be for personal use include, but are not limited to:
  - (a) Mortgage, rent, utility or maintenance expenses for personal living accommodations;
  - (b) Clothing purchases and maintenance expenses not related to the campaign;
  - (c) Automobile expenses not related to the campaign;
  - (d) Travel expenses not related to the campaign;
  - (e) Household food items;
  - (f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;
  - (g) Tuition payments not related to the campaign;
  - (h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;
  - (i) Country club membership fees, dues and payments;
  - (j) Health club or recreational facility membership fees, dues and payments;
  - (k) Social, civic, fraternal, or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is

required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;  
(l) Home or business internet service provider costs;  
(m) Home or business newspaper and periodical subscriptions;  
(n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

Respectfully submitted this 16th day of July, 2015.



William A. Lemp III  
Lead Political Financial Investigator

#### EXHIBIT LIST

- Exhibit 1** – Initial 45-Day Citizen Action Compliant, dated June 2, 2015
- Exhibit 2** - Support Carbon Pollution Accountability Act
- Exhibit 3** – A Washington Economy for All
- Exhibit 4** – Pass Paid Sick and Safe Leave and Minimum Wage.
- Exhibit 5** – Email dated December 7, 2014 Titled “Our Roads and bridges are too Important”
- Exhibit 6** – Web page titled “Support a transportation plan that puts Washington to work”
- Exhibit 7** – Email dated December 16, 2014 Titled “Do it for the Kids”
- Exhibit 8** – Web page titled “Support my plan to make education a top priority in Washington”
- Exhibit 9** – Email dated December 18, 2014 Titled “Reinvesting in Washington”
- Exhibit 10** – Web page titled “Support my plan to reinvest in the future of Washington”
- Exhibit 11** – Email dated May 7, 2015 titled “My priorities”
- Exhibit 12** – Web page titled “Support Jay’s Priorities in the Special Session”
- Exhibit 13** – Web page ([www.jayinslee.com/home](http://www.jayinslee.com/home)) with four projects listed
- Exhibit 14** – HB 1105 – Making 2015 supplemental operating appropriations  
Sponsored by Governor Inslee
- Exhibit 15** – HB 1106 – Making 2015-2017 operating appropriations. Revised for 2<sup>nd</sup> Substitute: Making 2015 fiscal year and 2015-2017 fiscal biennium operating appropriations. Sponsored by Governor Inslee
- Exhibit 16** – 1115 – Concerning the Capital Budget – Sponsored by Governor Inslee
- Exhibit 17** – 1299 – Making transportation appropriates for the 2015-2017 fiscal biennium. Revised for 1<sup>st</sup> Substitute: Making transportation

appropriations for the 2013-2015 and 2015-2017 fiscal biennia. –  
Sponsored by Governor Inslee.

- Exhibit 18** - HB 1314 – Implementing a carbon pollution market program to reduce greenhouse gas emissions. – Sponsored by Governor Inslee
- Exhibit 19** – Response from Perkin Coie Law Firm (Attorney Hamilton) on behalf of the Jay Inslee for Washington – 2016 Campaign, dated June 16, 2015
- Exhibit 20** – Response from Perkin Coie Law Firm (Attorney Hamilton) on behalf of the Jay Inslee for Washington – 2016 Campaign, dated July 6, 2015.
- Exhibit 21** – Response from Perkin Coie Law Firm (Attorney Hamilton) on behalf of the Jay Inslee for Washington – 2016 Campaign, dated July 8, 2015.
- Exhibit 22** – C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 12-10-2014
- Exhibit 23** - C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 01-08-2015.
- Exhibit 24** – C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 02-05-2015.
- Exhibit 25** – C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 03-09-2015.
- Exhibit 26** – C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 04-08-2015.
- Exhibit 27** – C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 05-08-2015.
- Exhibit 28** – C-4 Summary, Full Report Receipts and Expenditures, received at the PDC on 06-04-2015.