

[Phil](#) (Wed, 3 Jan at 5:01 PM)

to : pdcc@pdcc.wa.gov

Thank you for the additional time to research and to prepare our response to the above referenced complaint by Glen Morgan. We are addressing each point in Mr. Morgan's complaint below, but please know that we take compliance with PDC rules very seriously and have strong financial systems and controls in place. Any potential errors were minor, inadvertent, unintended and a very small percentage of the nearly \$1.4 million raised for Attorney General Bob Ferguson's re-election. We are prepared to adopt additional reporting procedures and amend any reports that PDC staff recommends.

1) Regarding the payment to the Eastside Democrats, this check was prepared but was never delivered to the committee. We will void the check in our system and amend the necessary C4 reports to show that the check was never delivered. The King County Bar Association payment was related to Bob Ferguson's role at WA Attorney General and was therefore a permissible use of Surplus Funds.

2) Regarding the alleged late C3 and C4 reports, our review shows that these are routine amendments to previously filed reports where the original reports were filed timely. The last two (100718701 and 100718703) were filed on the day following the Labor Day holiday and so we believe that these were not filed late.

3) Regarding the allegation of failing to file an accurate report of debts and obligations, we researched the listing provided and found that the overwhelming majority were not reportable as debts because they were either prepayments of expenses or incurred in the current period. Below we discuss the expenditures that either do not fall in either of these categories, or deserve further elaboration. Even if the issues below should have been reported as obligations, the public was never deprived of this information for more than a short period of time. There was no material impact to the public, even if an error was made.

a) A few debts were reported timely on the May 2016 C4, but were inadvertently left off the amended C4 filed on July 19, 2016, after those debts had already been reported as expenditures. Because this information was never withheld from the public, we do not believe this is a violation, but please let us know if you think the public would benefit from our filing an amended C4 that includes these debts and we will do so.

b) The December, 2016 C4 report did not list the normal recurring operating expenditures as debts because it was the final report for the 2016 election cycle. It seemed at the time that this report should not carry-over any debts (though it had sufficient cash to cover them) so that it can show a zero on line 20. Please advise if the final report should be amended to include these debts.

c) The committee began reporting payroll taxes as debts in October 2016. Prior to that, these small, regular payments were reported the following month when they were requested from the US Treasury and paid by the committee. If this was an error, it was inadvertent. We notice that it is not standard practice for committees to report their payroll taxes as debt, nor have we seen specific PDC guidance or WACs on reporting payroll taxes. Bob Ferguson did not have serious

opposition in the 2016 campaign. He won all 39 counties in the August primary. In the November election he won 37 of 39 Washington counties against his only opponent, a Libertarian candidate. He stood to gain nothing from concealing these modest payments. If anyone was paying attention to Attorney General Ferguson's reports, these payments were regular, consistent, and predictable. Please let us know if the PDC believes the public would benefit from us filing amended C4s for these months and we will gladly do so.

d) The committee began reporting the estimated credit card processing payment as debt in July 2017. We will continue to do so. We notice that it is not standard industry practice to report the estimated credit card processing payments as debt. In fact, we are not aware of any other candidate committee that began doing this before Bob Ferguson's.

We are not aware of any specific PDC guidance or WACs regarding whether and how to report the estimated credit card processing payment. Again, these payments were regular and predictable for anyone scrutinizing Mr. Ferguson's reports, and he stood to gain nothing by withholding this information. To the degree the public had an interest in knowing that Mr. Ferguson's committee was paying payroll taxes and credit card processing fees monthly, that information was readily available on his reports.

e) The committee reported a \$12,000 debt to Corr Cronin Baumgardner Fogg & Moore from the period covering 9/1-10/17. The following C4 reported a payment of \$10,540 to the firm on 10/25. All of Corr Cronin's legal work for the committee was done between 9/1-11/4, including a motion to dismiss filed on 9/23, a reply brief filed on 10/24, and a hearing on 11/4, in which the court granted our motion to dismiss.

Due to a miscommunication, the committee believed that the payment on 10/25 represented the final payment covering all legal work, including work to be done leading up to the hearing, and failed to report the \$1,460 debt in the November and December reports. As soon as the committee realized it had this obligation in January, it paid the sum and reported the payment on the next report.

Obviously, a committee cannot report debt it does not in good faith believe it has. The committee demonstrated it was engaged in a good faith effort to comply with the law by transparently reporting the full amount of the obligation as debt in October. There was clearly no willful effort to conceal, nor any reason to do so. Regardless, if the PDC would like the committee to amend these reports, we are happy to do so.

f) There were two isolated payments to Overnight Printing for thank you postcards and holiday cards that occurred when the invoices were misdirected by the vendor. One was dated 11/10/15 and the other 12/16/15. Both were paid in January 2016 and reported on the January C4, more than 10 months before the election. Both should have been reported as estimated debt earlier.

The committee apologizes for this inadvertent oversight. Together these two payments constitute just over \$1,000 in expenditures - approximately 0.2% of the total expenditures made and reported by the committee during this period. We would gladly amend these reports, but both

expenditures have been disclosed to the public for nearly two years now. If the PDC would like us to go back and amend old reports to show debt that has subsequently been disclosed as expenditures, we are happy to do that.

4) Regarding the allegation that the committee did not properly break down expenditures, we reviewed the list provided and did observe that there were three expenditures to Mandate Media for media deposits where we did not subsequently amend the report after the media placement was made. This vendor received advance payments where the sub-vendors were not immediately known and we would subsequently amend the report after we received the placement details. We are in the process of confirming the sub-vendor amounts and amending these reports.

Regarding the reporting of contribution refunds, we followed past practice of listing these as disbursements and welcome guidance from the PDC as to how and whether to report these differently. The number of C3 and C4 reports that would require amendments seems to be impractical.

None of the refunds in question involved overlimit contributions. Bob Ferguson has a policy of not accepting contributions from entities or individuals under investigation by the Attorney General's Office. In 2017, he expanded his policy to include all large corporate contributions. Sometimes this policy requires returning contributions. (Some of these contributions were refunded upon the request of the contributor, and did not have anything to do with this policy.) In all cases, Bob Ferguson could have lawfully kept these contributions, but chose to refund them.

Regarding the other disbursements that the complainant claims do not list sub-vendors: we don't read WAC 390-16-505 as requiring sub-vendors for every payment, but rather only "...any person agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate's or committee's efforts...".

Regarding not listing the quantities printed, we are happy to amend reports as needed to include this information, but we have observed for many years of PDC reporting that this level of detail is not normally reported.

5) Regarding the allegation that the committee received contributions from businesses not doing business in Washington: our brief review indicates that Apollo Education Group is the parent company of University of Phoenix, which has a campus in Tukwila. The other business listed are large national law and PR firms. It seems unlikely that any of these entities conduct no business at all in Washington. Purchasing software services from Microsoft, or supplies from Amazon.com could constitute sufficient business in Washington to comply. If you believe that further inquiry is needed please let us know.

6) Regarding allegations 6, 7 and 8: only Bob Ferguson and Philip Lloyd are authorized to make expenditures on behalf of the committee. The committee's C-1 filing is current.

7) See 6) above

8) See 6) above

9) Mr. Morgan claims “On information and belief” that the committee does not maintain records. This statement is untrue. The committee does maintain the required records.

10) Mr. Morgan claims “On information and belief” that the committee illegally reimbursed employees for mileage. This statement is untrue. Each of these payments was adequately documented.

With regards to the payments for a cellphone: the committee pays for a phone that Mr. Ferguson uses for political calls for which he cannot use his official phone. This phone is a necessary campaign expense. If there is personal use of this phone, we look forward to any guidance from the PDC as to whether any allocation for personal use is required.

11) Mr. Morgan claims that the committee “illegally failed to include sponsor ID on numerous pieces of political advertising”, but only lists his Facebook page as an example. We would appreciate any guidance that the PDC would have on this, but we would note that the committee does not pay for Mr. Ferguson’s Facebook page, which is free. Furthermore, Mr. Ferguson’s Facebook page, and online political advertising done by his campaign, comply with the PDC’s requirements for “small online advertising” in WAC 390-18-030. It providing a link to Mr. Ferguson’s website that appears with the advertising, “automatically [taking] the reader directly to the required disclosures upon being clicked once,” since Mr. Ferguson’s campaign website does have the proper sponsor ID. WAC 390-18-030

12) Mr. Morgan again “on information and belief” states that someone other than the treasurer is depositing checks into the committee’s account, but offers nothing else to support this allegation. The treasurer (or in some cases an authorized designee from his office) makes deposits of checks.

13) Mr. Morgan again “on information and belief” states that Bob Ferguson failed to submit an accurate F-1. He offers nothing else to support this allegation. We are not aware of any deficiencies on his F-1 filings.

14) Mr. Morgan again “on information and belief” states that Bob Ferguson has failed to certify his filings. He offers nothing else to support this allegation. Regarding the transmittal of PDC reports, these reports are circulated as drafts prior to filing, approved by Bob Ferguson, and then filed using software that requires both passwords to be entered simultaneously. We are not aware of an option that allows the reports to be filed and certified separately by the candidate and the treasurer.

As stated earlier, we are happy to work with PDC staff to improve our reporting practices. We hope that you will also consider the following circumstances if you believe that any inadvertent errors rose to the level of a violation:

- a) When the requirements of the law are unclear, the committee acted consistent with standard industry practice. For example, we are not aware of any PDC Guidance or WACs regarding how to report payroll taxes and credit card processing payments. We believe the way the campaign

reported these payments is consistent with industry practice, and we are not aware of any PDC enforcement actions on this issue. Historically, the PDC has not singled out one committee for an enforcement when that committee's actions were consistent with standard industry practice. (See WAC 390-37-182(k,o))

- b) The committee demonstrated proactive steps to be as transparent as possible. For example, the committee began reporting payroll taxes and credit card processing payments as debts before ever receiving a complaint, going beyond what we believe the law requires. We will continue this practice. (See WAC 390-37-182(l))
- c) If there were minor errors in the disclosure of debts and obligations, there was no material impact to the public. Mr. Ferguson was not engaged in a competitive campaign at any point during the time in question. (See WAC 390-17-182(b))
- d) The issues above do not concern time-sensitive filing periods. Most of the reports in question were not close to any general election. Most were more than a year from any election. Some were as much as four years away. (See WAC 390-37-182(b))
- e) Attorney General Bob Ferguson's committee raised nearly \$800,000 during these period in questions and expended over \$500,000. This constitutes significant financial activity. (See WAC 390-37-182(d))
- f) If any of these issues were errors, they were not made willfully or in bad faith. (See WAC 390-37-182(e))
- g) Attorney General Ferguson did not stand to gain anything from concealing any expenditures. (See WAC 390-37-182(g))
- h) The committee is willing to comply with any requests from the PDC to amend reports. (See WAC 390-37-182(n))

Again, thank you for the opportunity to respond to the complaint. Please let us know if you have questions or require additional information.

Sincerely,

Philip Lloyd, Treasurer
Friends of Bob Ferguson