



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 42.17 and RCW 42.17A

Whatcom County Republican Party

Respondent.

PDC Case 4807

Report of Investigation

I. Background

- 1.1 The Whatcom County Republican Party is a bona-fide county political party organization that has been registered with the Public Disclosure Commission (PDC) as a Political Party Committee and filing PDC contribution and expenditure reports since at least 1996.
- 1.2 On February 8, 2012, the Whatcom County Republican Party (WCRP) filed an amended Committee Registration (C-1pc report) for the "Exempt account", selecting the Full Reporting Option and listing Bill Crawford as Chair, and Terry Cox as Treasurer.
- 1.3 On January 7, 2013, the WCRP filed an amended C-1pc report for the "Non-Exempt account" (as designated in Application Extender), selecting the Full Reporting Option and listing Charlie Crabtree as Chair, Terry Cox as Treasurer, and Eileen Sobjack as Vice-Chair.
- 1.4 On September 30, 2013, the PDC received a complaint from Todd Donovan, alleging that the Washington State Republican Party violated RCW 42.17A by receiving contributions from Pacific International Terminals, Inc. and Burlington Northern Santa Fe Railroad, and earmarking those contributions for 2013 local Whatcom County candidates.
- 1.5 Specifically, the complaint alleged that the Washington State Republican Party received monetary contributions which were earmarked for the WCRP, who then made expenditures using the "earmarked" contributions to support or oppose candidates seeking the offices of Whatcom County Council, Bellingham City Council, and Port Commissioner for the Port of Bellingham during 2013.
- 1.6 PDC staff completed the investigation, and dismissed the allegations listed in the Washington State Republican Party complaint concerning the earmarking of contributions received by the party in PDC Case 15-074.

- 1.7 As part of that investigation, staff reviewed the Monetary Contribution reports (C-3 reports) and Campaign Summary Contribution and Expenditures reports (C-4) filed by the WSRP and the WCRP in 2013.

II. Political Party Organization Reporting Requirements and PDC Complaint

- 2.1 Initiative 134, which was approved by Washington State voters in 1992, brought contribution limits to Washington State Executive and Legislative candidates, and increased the influence of political party organization and caucus political committees by allowing them to make much larger contributions to candidates based on a per registered voter basis. For example, a bona-fide political party committee is allowed under PDC laws, regulations and reporting requirements to establish an Exempt (previously referred by the FEC as a soft money account) and Non-Exempt funds account (previously referred by the FEC as a hard money account).

Exempt funds:

- Exempt funds are contributions received by a political party organization that are not subject to the contribution limits when received.
- Exempt funds have restrictions concerning how those funds can be spent, including prohibitions from being used to make monetary or in-kind contributions in support of or opposition to a candidate, ballot propositions or political committees.
- Exempt funds may be spent for organizational costs in running the party and party building activities, all without the coordination or direct association with any individual candidate.
- Exempt funds may be used to make independent expenditures or electioneering communications.

Non-exempt funds:

- Non-exempt funds are contributions received by a political party organization that are subject to the contribution limits, but they are not restricted in how the party organization can spend those funds.
- Non-exempt funds can be used for any purpose, including direct candidate monetary and in-kind contributions.

- 2.2 PDC laws, rules, and the reporting requirements for political party committees, including WAC 390-17-060, requires that separate Exempt and Non-exempt bank accounts be established for each reporting political party organization and to account for those funds separately by filing C-3 and C-4 reports for each account. For calendar year 2013, a political party organization was required to establish separate Exempt and Non- Exempt funds when it receives contributions subject to the restrictions such as:

- Receiving a contribution of more than \$4,500 from a single corporation, union, association or other entity during the 2013 calendar year.

- Receiving Exempt Funds from another political party organization, and the recipient political party organization has already established a Non-Exempt Funds Account.
- 2.3 Once a political party committee has received contributions, the statute, rules and reporting requirements require the party organization to deposit the contributions into separate bank accounts designated for the Exempt and Non-Exempt funds accounts. In addition, the committee is also required to file C-3 and C-4 report reports disclosing contribution and expenditure activities undertaken from both the Exempt and Non-Exempt accounts.
 - 2.4 PDC staff's review of the 2013 C-3 and C-4 reports filed by the WCRP found reporting discrepancies which required a more detailed analysis of the committee's 2013 contribution and expenditure activities.
 - 2.5 During the period of February 1, 2012 through May 31, 2014, no C-3 or C-4 reports were filed by the WCRP for an Exempt funds account. WCRP did file a C-1pc report for an Exempt funds account on February 8, 2012, but no Exempt Funds reports were filed disclosing any contribution or expenditure activities.
 - 2.6 Staff's review, when combined with the facts discovered in staff's investigation of the Washington State Republican Party in PDC Case 15-074, provided reason to believe that the WCRP may have violated RCW 42.17A.405 by exceeding contribution limits for a political party organization by receiving \$34,700 in Exempt funds from the WSRP without establishing and filing C-3 and C-4 reports for an Exempt funds account.
 - 2.7 Based on that information, on April 20, 2016, PDC Executive Director Evelyn Fielding Lopez filed a PDC staff generated complaint and directed staff to open an investigation into the allegations that the Whatcom County Republican Party may have violated chapter 42.17A RCW and WAC 390 by: failing. **Exhibit #1.**

III. Findings

- 3.1 During staff's investigation of the Washington State Republican Party in PDC Case 15-74, Caleb Heimlich, Executive Director stated that he did not have any role in soliciting the contributions on behalf of the party from Pacific International Terminals, Inc. (PITI) or Burlington Northern Santa Fe Railroad (BNSF) during the 2013 election, and that no party staff member or official solicited contributions from the two donors.
- 3.2 Mr. Heimlich stated that the contribution checks received by the state party from BNSF and PITI were through the US Postal Service, and the checks were deposited into the appropriate account and disclosed in compliance with applicable state campaign finance laws. He stated that in late 2012, Kirby Wilbur, former Washington State Republican Party Chairman was approached by officials of the WCRP requesting funds for a new voter engagement program entitled "Building Genuine Relationships."

- 3.3 Mr. Heimlich stated that the 2013 Washington State Republican Party budget included a line item to contribute up to \$75,000 in Exempt funds during the calendar year to pay for proposed party building activities in up to four counties: King County, Kitsap County, Pierce County and Whatcom County. He confirmed that the state party used Exempt funds to make the contributions to the WCRP in 2013 for party building activities, which included voter registration, voter identification and get-out-the-vote efforts (GOTV).
- 3.4 Mr. Heimlich stated that the funds were not intended to be used for direct candidate support, and he recalled the discussions he had with WCRP officials involved the grassroots activities listed above. He stated it was his understanding that the WCRP used the funds to hire individuals and purchase software to assist the party with those grassroots efforts.
- 3.5 Mr. Heimlich stated that the state party does not accept or receive earmarked contributions, and they did not receive earmarked contributions in 2013.

WCRP 2013 Committee activities and C-3, C-4 and C-6 filings:

- 3.6 For calendar year 2013, the WCRP disclosed receiving a total of \$114,321 in monetary and in-kind contributions, and making a total of \$107,611 in expenditures, that included contributions to candidates and independent expenditures or electioneering communications.
- 3.7 For 2013, the WCRP disclosed all contribution and expenditure activities through one committee's set of reports which in accordance with PDC statutes, rules and reporting requirements is the Non-Exempt Funds account, rather than reporting through two accounts.
- 3.8 Staff reviewed the C-3 and C-4 reports filed by the WCRP for calendar year 2013, and found that the activities undertaken were reported under one account, which the PDC classifies as a Non-Exempt funds account. The WCRP failed to file C-3 and C-4 reports for a Exempt funds account to properly account for the contributions received from the Washington State Republican Party in accordance with WAC 390-17-060.
- 3.9 On June 1, 2016, Dan Brady, legal counsel representing the WCRP, sent an email to PDC staff and attached nine pdf documents constituting the official response to the PDC staff generated complaint which included a letter responding to the allegations listed in the PDC staff generated complaint, and answers to PDC staff's questions. **Exhibit #2.** In addition, the WCRP provided the following documents:
- Copies of 2013 Bank Statements for the WCRP from Peoples Bank in Whatcom County covering the period December 31, 2012 through December 31, 2013.
 - Copies of 2013 WCRP cancelled checks, that included copies of four WSRP contribution checks that had been received during CY 2013

- A copy of a 2013 WCRP slate card: The 2013 slate card began by stating at top in large capitalized bolded letters “WHATCOM REPUBLICAN ENDORSEMENTS 2013 General Election” and listed the four Whatcom County Council candidates, two Port of Bellingham Commissioner candidates, and six local City Council candidates.
- 2013 WCRP copies of QuickBooks transaction details.
- May 26, 2016 response letter from Charlie Crabtree, Chair of the WCRP during calendar year 2013.
- WCRP PowerPoint slide show concerning “Building Genuine Relationships.”

WCRP Monetary Contributions and C-3 reports:

- 3.10 The WCRP timely filed all 112 of the C-3 reports submitted for CY 2013, and they timely filed one amended C-3 report. In addition, the WCRP timely deposited the monetary contributions received during 2013 within five business days of receipt. A large majority of the WCRP’s C-3 reports were filed on the same day the contributions had been received and deposited.
- 3.11 For 2013, the WCRP timely filed C-3 reports disclosed \$34,700 in contributions that had received from the Washington State Republican Party (WSRP) Exempt Funds account, as detailed in the chart below.

Contributor	Date	Amount
WSRP Exempt Account	May 16, 2013	\$5,000
WSRP Exempt Account	May 29, 2013	\$5,000
WSRP Exempt Account	August 1, 2013	\$5,000
WSRP Exempt Account	August 8, 2013	\$8,000
WSRP Exempt Account	October 28, 2013	\$4,200
WSRP Exempt Account	November 19, 2013	\$7,500 (*)
Totals		\$34,700

(*) NOTE - the \$7,500 contribution from the WSRP received by the WCRP on November 19, 2013, was received two weeks after the general election had been held.

- 3.12 The \$34,700 in Washington State Republican Party Exempt funds contributed to the WCRP represented 30.4% of the \$114,321 in total WCRP contributions received in 2013.
- 3.13 The 2013 bank statements provided by the WCRP indicated that the party had two separate bank accounts with separate account numbers. One of the accounts, which was identified by the WCRP as the Exempt funds account, listed no activity for CY 2013 and a monthly cash on hand balance of \$67.92.
- 3.14 Staff confirmed that the \$34,700 in monetary contributions received from the WSRP Exempt Funds account were deposited into the account identified by the WCRP as the Non-Exempt Funds account.

WCRP Expenditures and C-4 reports:

- 3.15 The WCRP disclosed making \$107,611 in expenditures during calendar year 2013, that included contributions to candidates, independent expenditures or electioneering communications, and party building activities.
- 3.16 The WCRP timely filed 11 or the 12 C-4 reports filed during CY 2013. The one late filed C-4 report was the 21-day Pre-Primary Election C-4 report covering the period Jun 1 through July 15, 2013, which was required to have been filed on July 16, 2013. The 21-day Pre-Primary Election C-4 report was filed on July 19, 2013, three days late disclosing \$946 in contributions and \$7,734 in expenditures.
- 3.17 The C-4 reports filed by the WCRP for calendar year 2013 disclosed the following expenditures:

\$26,153 for Electioneering Communications (EC)

The \$26,153 in expenditures for EC's represented 24.3% of all expenditures made during 2013, and included \$19,318 in expenditures made for the printing and postage costs for the mailings; \$2,250 for radio advertisements; \$1,928 for newspaper advertising; and \$934 for other advertising. Most of the EC's sponsored by the WCRP were for "slate card" advertisements, that supported the following candidates listed below:

- Whatcom County Council candidates: William Knutzen, Kathleen Kershner, Ben Elenbaas, and Michelle Luke (\$3,098 in EC's for each candidate).
- Port of Bellingham Commissioner candidates: Patrick "Ken" Bell and Daniel Robbins (\$2,536 in EC's for each candidate).
- City Council candidates: City of Bellingham, Jack Petree; City of Ferndale, Brent Goodrich and Jonathon Mutchler; City of Lynden, Rex Dudley and Nick Laninga (\$1,101 in EC's for each candidate).

In addition, some of the EC's also included information about two ballot measures: (1) A "Yes" vote for Initiative 517, which if approved would extend the amount of time to collect signatures for a statewide initiative; and (2) A "No" vote for Initiative 522, which concerned "Genetically Modified Organisms" (GMO's).

\$25, 807 for Management/Consulting

The \$25,807 in expenditures made by the WCRP for management and consulting represented 24% of all expenditures made during 2013, and included more than \$10,340 for management/consulting expenditures incurred between October and November of 2013.

\$22,763 for Fundraising expenses

The \$22,763 in expenditures made by the WCRP for fundraising expenses, represented 21.1% of all expenditures made during 2013.

\$15,209 for General Operations and Overhead

The \$15,209 in expenditures made by the WCRP for general operations and overhead, represented 14.1% of all expenditures made during 2013.

\$9,900 for Candidate Contributions

The \$9,900 in expenditures made by the WCRP for contributions to local Whatcom County candidates represented 9.2% of all expenditures made during 2013, and included the following:

- Whatcom County Council candidates: \$1,800 in monetary contributions to each candidate: William Knutzen, Kathleen Kershner Ben Elenbaas, and Michelle Luke (\$900 for the primary election and \$900 for the general election for each candidate).
- Port of Bellingham Commissioner candidates: \$800 in monetary contributions to each candidate: Patrick "Ken" Bell and Daniel Robbins (\$400 for the primary election and \$400 for the general election for each candidate).

WCRP Independent Expenditures and C-6 reports:

- 3.18 During the 2013 election, the WCRP filed six C-6 reports disclosing \$26,153 in expenditures for Electioneering Communications (EC). The six C-6 reports disclosed 19 separate expenditures made by the WCRP for EC's during the period of September 30 through November 2, 2013.
- 3.19 The C-6 reports disclosed 19 expenditures made by the WCRP for printing and postage for EC direct mail pieces, and EC radio and newspaper advertisements that supported candidates for Whatcom County Councilmembers, Port Commissioners for the Port of Bellingham, and City Council candidates for the cities of Bellingham.
- 3.20 Of the 19 EC expenditures incurred by the WCRP, four of the expenditures totaling \$3,793 were disclosed four to 13 days late, but all prior to the November 8, 2013 general election. The \$3,793 in late reported EC's represented less than four percent of all expenditures made by the WCRP during 2013.
- 3.21 As part of the response, the WCRP provided a copy of a 2013 slate card that stated at top of the advertisement "WHATCOM REPUBLICAN ENDORSEMENTS 2013 General Election" and went on to list 12 local Whatcom County candidates seeking office in 2013. The slate card listed four candidates seeking election to the Whatcom County Council, two Port of Bellingham Commissioner candidates, and six local City Council candidates.

3.22 The slate card which was produced and distributed by the WCRP, identified two 2013 Washington Statewide Initiatives that the party endorsed, which included a "YES" mark for Initiative 517, and a "NO" vote on Initiative 522. After reviewing page seven of the copy of the QuickBooks Transaction Detail by Account provided by the WCRP and speaking with Mr. Brady, it appears that the C-6 reports filed by the WCRP disclosing the EC's undertaken during 2013, were for expenditures made for the slate card advertisements.

WCRP Responses:

3.23 Mr. Brady stated that prior to 2012, the WCRP had maintained both an exempt funds bank account and a non-exempt funds bank account as required by PDC statutes and rules. After receiving the complaint, WCRP officers reviewed the 2013 party filings and determined that all of the contributions received from the WSRP and the subsequent expenditures made using those funds were accurately and timely reported to the PDC.

3.24 While conducting that review, WCRP Chairman Charlie Crabtree and Terry Cox, WCRP Treasurer inadvertently deposited contributions from the WSRP Exempt Funds Account into the WCRP non-exempt account. Mr. Brady stated their misunderstanding was due in part because of the PDC 2013 "*contribution limits*" chart which refers to contributions received from a state political party organization by a county party organization as being "*without limit.*", He stated that was technically "*...accurate in the sense that a state party may contribute unlimited exempt and/or non-exempt funds to a county party.*"

3.25 Mr. Brady noted that the 2013 contribution limits chart did not make clear that exempt contributions received from a state political party committee cannot be deposited into a county political party committee's non-exempt funds account. He stated this was different than the information for contributions from and to political committees, unions, corporations and other entities" and the political party information was listed in "bifurcated columns offered which acknowledge the existence and limits of exempt and non-exempt accounts."

3.26 Mr. Brady stated that Mr. Crabtree was the WCRP official who contacted the WSRP and requested contributions from the WSRP for the 2013 election to be used for a "Building Genuine Relationships" project (BGR). The BGR project was a collective idea developed by WCRP officer and several volunteer that were involved organizing and preparing for 2013 election, that included "...identifying voters and building relationships with registered voters who had not voted in off year elections."

3.27 The BGR project undertaken by the WCRP in 2013 was a grass roots program that included voter registration drives, voter identification activities, and get-out-the-vote (GOTV) efforts through Google services, Facebook and Nation Builder. Mr. Brady stated the WCRP solicited the fund from the WSRP for the "*.... Building Genuine Relationships project and its related voter registration, get-out-the-vote, and outreach programs....*"

3.28 The BGR program expanded as more funds became available from the WSRP and that WCRP officers “...never requested any particular type of funds nor did the WSRP suggest the nature of the funds (exempt vs. nonexempt) that would be provided.”

3.29 Mr. Brady stated that the contributions received by the WCRP from the WSRP were intended to have only been used for exempt fund activities. Mr. Brady went on to state the following:

- The WCRP “separately accounted” for the contributions received from the WSRP exempt funds account, and the corresponding expenditures made using those funds, “...internally in order to ensure program objectives were being met.”
- While the WSRP contributions were not deposited into the WCRP exempt funds account, a second bank account was maintained by the WCRP for all of 2013, although it contained a minimal balance and had no activity during the year. The WSRP contributions were “...accounted for separately by Ms. Cox within her QuickBooks accounts and separated ” from other WCRP contributions received in 2013.
- The contributions received from the WSRP were used by the WCRP to make expenditures that were “...consistent with exempt funds qualified expenditures...” found in RCW 42.17A.405.
- The total WCRP contributions made to candidates in 2013 was less than \$10,000. Due to the WCRP’s “separate, internal accounting practice, and because of the sufficiency of non-exempt funds in that account, no WA-STRP contributions were used for direct candidate expenditures, electioneering communications, or independent expenditures.” (See QuickBooks reports attachment).
- The WCRP “...accepts responsibility for mistakenly depositing the WSRP exempt funds in its non-exempt account and recognizes the purpose of WAC 390-070-16 is to ensure that exempt funds are not used for non-exempt purposes by keeping such funds separate and their disposition transparent.”
- This also explains why the WCRP did not file C-3 and C-4 reports for the WCRP exempt account during the time in question: The WCRP did not have any contributions to or expenditures from the exempt account and therefore didn’t file any reports for that account, though it had and continues to hold an account dedicated to exempt funds.
- Clearly, the WA-STRP contributions and their expenditure on BGR related programs should have been reflected in that account, but the contributions and expenditures were fully and timely disclosed in filings via the nonexempt account.

IV. Scope

4.1 PDC staff reviewed the following documents:

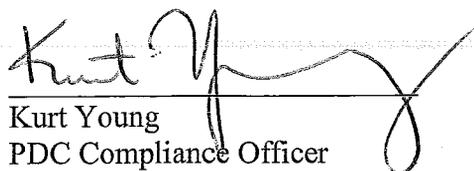
- The PDC staff generated complaint filed on April 21, 2016, by Evelyn Fielding Lopez, PDC Executive Director against the Whatcom County Republican Party.
- Email communications from Charlie Crabtree, Chairman of the Whatcom County Republican Party and PDC staff.
- PDC database for Whatcom County Republican Party contribution and expenditure activities.
- C-1pc, C-3, C-4 and C-6 reports filed by the WSRP for calendar year 2013.
- June 1, 2016, email from Dan Brady, legal counsel representing the WCRP, and the nine pdf documents that he attached.

V. Statute and Rule

5.1 **RCW 42.17A.405(14)** states that: "No person may accept contributions that exceed the contribution limitations provided in this section" and subsection 15 (15) The following contributions are exempt from the contribution limits of this section:
(1) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates; (2) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or (3) An expenditure or contribution for independent expenditures as defined in RCW 42.17A.005 or electioneering communications as defined in RCW 42.17A.005.
WAC 390-17-060(1).

5.2 **WAC 390-17-060(1)(2) and (3)** Defines "Exempt contributions" as contributions made to a political committee that are earmarked for exempt activities as described in RCW 42.17A.405, and requires those activities to be reported in accordance with RCW 42.17A.240. An "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made. Only exempt activities are eligible for payment with exempt contributions.

Respectfully submitted this 19th day of April, 2017.


Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** PDC staff generated complaint filed by Evelyn Fielding Lopez, PDC Executive Director against the Whatcom County Republican Party.
- Exhibit #2** June 1, 2016, email from Dan Brady, legal counsel representing the WCRP in which he attached nine pdf documents constituting the official response to the PDC staff generated complaint which included a letter responding to the allegations listed in the PDC staff generated complaint, and PDC staff questions.

