



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 1946
WITH RCW 42.17A)	
)	
Mark Nichols)	
)	
)	REPORT OF INVESTIGATION
)	
Respondent.)	
_____)	

I.

BACKGROUND

- 1.1 Mark Nichols is the elected Clallam County Prosecutor. On May 23, 2014, Mr. Nichols filed a Candidate Registration (C-1 report) registering his candidacy for county prosecutor in the 2014 election. He was a first-time candidate in that election.
- 1.2 Mr. Nichols faced incumbent Clallam County Prosecutor William Payne in the August 5, 2014 primary election. Because only two candidates filed for the office of prosecutor in 2014, Mr. Payne and Mr. Nichols appeared on the primary ballot, and both advanced automatically to the November 4, 2014 general election.
- 1.3 Mr. Nichols spent \$47,051 through the end of the 2014 election cycle, as compared to \$18,666 in expenditures by Mr. Payne through the period ending November 30, 2014. Mr. Nichols ended the 2014 election cycle with a balance of \$910 in cash on hand.
- 1.4 Mr. Nichols defeated William Payne in the 2014 primary election, receiving 51.8% of votes cast. Mr. Nichols also defeated Mr. Payne in the 2014 general election, receiving 52.3% of votes cast.
- 1.5 On August 20, 2014, William Payne filed a complaint with the PDC against Mark Nichols. **(Exhibit 1.)**

II.

ALLEGATIONS IN COMPLAINT

2.1 In his August 20, 2014 complaint, Mr. Payne alleged that Mr. Nichols accepted separate \$950 contributions for the primary and general elections from five contributors, and spent the entirety of those contributions for the primary election, an alleged violation of RCW 42.17A.405.

III.

FINDINGS

3.1 PDC staff reviewed C-3 Monetary Contribution reports filed by the 2014 Nichols campaign and found that the campaign received maximum primary and general contributions from five sources prior to the August 5, 2014 primary election. **(Exhibit 2.)** The contributions included \$4,750 designated for the 2014 general election, as follows:

- May 17, 2014: Robert L. Nichols from Chevy Chase, Maryland contributed \$1,800; \$950 for the 2014 primary and general election.
- May 17, 2014: Rebecca Nichols from Chevy Chase, Maryland contributed \$1,800; \$950 for the 2014 primary and general election.
- May 17, 2014: Douglas Nichols from Seattle, Washington contributed \$1,800; \$950 for the 2014 primary and general election.
- May 17, 2014: Merike Nichols from Seattle, Washington contributed \$1,800; \$950 for the 2014 primary and general election.
- June 29, 2014: Kenneth Larish from Nashville, Tennessee contributed \$1,800; \$950 for the 2014 primary and general election.

3.2 Assuming that all expenditures paid by the Nichols campaign on or before the date of the August 5, 2014 primary election were for primary election-related campaign activity, the entire \$4,750 balance of general-designated dollars should have remained on hand as of that date, reserved for spending during the general election campaign. However, according to the campaign's post-primary election C-4 Summary, Full Report of Receipts and Expenditures, timely filed on September 10, 2014 and amended on October 24, 2014, the committee's cash balance as of the primary election was \$1,065.17. **(Exhibit 3.)** This indicated that the campaign may have spent as much as \$3,684.83 in general election-designated contributions for the primary election.

- 3.3 On May 31, 2015, Mark Nichols submitted a response to Mr. Payne's complaint. **(Exhibit 4.)** In his response, Mr. Nichols acknowledged that his campaign spent general-designated dollars before the date of the 2014 primary election. He characterized this spending as an inadvertent mistake. He went on to state the following:

I am extremely embarrassed that this occurred, especially given the lengths to which I went (e.g. hiring a professional campaign treasurer, making frequent calls to PDC Compliance Officer Chip Beatty, consulting with other county elected officials about their experiences running for office and managing campaigns, independently researching election and campaign finance laws, etc.) in an effort to comply with ALL election and campaign finance laws.

I would offer the following considerations not as an excuse, but instead as mitigating circumstances, as the PDC goes about resolving this complaint. First, this matter involves a first-time candidate who is being accused of a first-time violation of highly technical finance rules...Second, this matter involves the premature expenditure of campaign monies raised not from special interests with a specified financial stake in matters before Clallam County government but instead from the candidate's own family and friends, all of whom reside outside of Clallam County. Third, the election involved two candidates in a race for partisan elected office; thus, by operation of state law both candidates were required to and did in fact advance to the General Election regardless of the outcome of the Primary.

- 3.4 On June 15, 2015, Mr. Nichols used surplus campaign funds to issue an \$870 refund to Robert Nichols, one of the five contributors whose general-designated contributions were spent during Mr. Nichols' 2014 primary election campaign. **(Exhibit 5.)** This refund brought to \$3,880 the amount of general-designated contributions that were spent during Mr. Nichols' 2014 primary election campaign, possibly for primary election-related expenses, without a refund to the contributor occurring.
- 3.5 On November 20, 2015, PDC staff analyzed the Nichols campaign's reported expenses up to and including the date of the August 5, 2014 primary election, in an attempt to determine whether all of the relevant expenses were in fact for primary election-related activity. Staff contacted Mr. Nichols that same day, and inquired whether any of the goods or services purchased through these expenses were not used for the primary, but only used during his general election campaign, or alternatively, were used in part for the primary, and in part for the general election.
- 3.6 On December 6, 2015, Mr. Nichols responded to staff's inquiry. In his supplemental response, he indicated in a general sense that many of the expenses his campaign made prior to the August 5, 2014 primary election did benefit both his primary and general election campaigns. **(Exhibit 6.)**

3.7 On December 8, 2015, in response to PDC staff's request for more specific information, Mr. Nichols described three categories of goods or services that were sponsored during his 2014 primary election campaign, but were not used for the primary election. These three categories of expenses, and the estimated portion of each that benefitted only his general election campaign, are described below:

- **Signs and Related Hardware:** *"I specifically recall having signs (yard signs, 4' x 4' signs and 4' x 8' signs) and accompanying sign hardware and materials (iron and wire and wood stakes, lumber, fasteners, etc.) leftover in the aftermath of the primary campaign. These items were purchased in advance of the primary but not used until the general campaign. I would estimate that approximately 20% of the yard signs, 30% of the 4' x 4' signs and 20% of the 4' x 8' signs were reserved in this fashion."*
- **Print Materials:** *"I specifically recall having print materials (RAC cards) leftover in the aftermath of the primary campaign. These print materials were purchased in advance of the primary but not used until the general. I would estimate that approximately 20% of the print materials were reserved in this fashion."*
- **Radio Advertising:** *"I recall having a credit with one of the two radio stations I used to advertise in advance of the primary that I believe was carried over from the primary and not used until the general. My recollection is that this credit was for approximately \$300.00."*

(Exhibit 7.)

3.8 PDC staff analyzed political advertising expenses disclosed in Mr. Nichols' reports, and his estimate of the proportion of those expenses that benefitted his primary and general election campaigns, respectively. Staff's analysis indicates that of the \$3,880¹ in general election-designated contributions that Mr. Nichols spent during his 2014 primary election campaign, approximately \$2,109 of those expenditures sponsored goods and services that were not for the primary election, but were instead used only for the general election.

3.9 Staff's review indicates that the remaining \$1,770 in expenditures from general election-designated contributions did likely sponsor expenses to further Mr. Nichols' campaign during the 2014 primary election. This amount corresponds to less than two of the five alleged over-limit contributions identified in William Payne's complaint.²

¹ As indicated above in paragraph 3.4, following Mr. Nichols' \$870 refund to Robert Nichols on June 15, 2015, the amount of remaining contributions that potentially exceeded limits totaled \$3,880.

² \$950 x 2 = \$1,900.

IV.

SCOPE

4.1 PDC staff reviewed the following documents:

1. Campaign finance reports and data filed by the 2014 Mark Nichols and William Payne campaigns for Clallam County Prosecutor;
2. Surplus Funds reports and data filed by Mark Nichols; and
3. Mark Nichols' May 31, 2015 response to the complaint, and his December 6 and 8, 2015 supplemental responses, submitted at PDC staff's request.

V.

LAW

Under **RCW 42.17A.405**, for the 2014 election, for each election in which the candidate's name appeared on the ballot, candidates for county-wide office were subject to a \$950 limit on contributions from individuals, corporations, unions, and other non-individual entities other than a bona fide political party or a caucus political committee.

WAC 390-17-300(4) requires that contributions for the primary election be accounted for separately from those for the general election, such that campaign records reflect one aggregate contribution total for each contributor giving in the primary election as well as one aggregate contribution total for each contributor giving in the general election.

WAC 390-17-300(5) states that general election contributions shall not be spent for the primary election if to do so would cause the contributor of the general election contribution to exceed that contributor's contribution limit for the primary election.

Respectfully submitted this 22nd day of January, 2016.

T.P.W.

Tony Perkins
PDC Compliance Officer

EXHIBIT LIST

- Exhibit 1** A complaint against Mark Nichols, filed with the PDC on August 20, 2014 by William Payne.
- Exhibit 2** C-3 monetary contributions reports submitted by the Mark Nichols 2014 campaign on June 30, 2014 and September 21, 2014.
- Exhibit 3** An amended post-primary election C-4 Summary, Full Report of Receipts and Expenditures, filed by the Nichols campaign on October 24, 2014.
- Exhibit 4** Mark Nichols' May 31, 2015 response to Mr. Payne's complaint.
- Exhibit 5** A Surplus Funds C-4 report filed by Mark Nichols on July 9, 2015.
- Exhibit 6** December 6, 2015 email to PDC staff from Mark Nichols.
- Exhibit 7** December 8, 2015 email to PDC staff from Mark Nichols.