45 Day Letter Formal Complaint to the Washington State Public Disclosure Commission, Attorney General Rob McKenna and King County Prosecutor Dan Satterberg Relating to a Candidate for Public Office pursuant to RCW 42.17A.765(A)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the facts set forth in this attached complaint are true and correct to the best of my knowledge.

Name of Candidate: **Jay Inslee**

Address of Candidate: P.O. Box 21067

Candidate's City: Seattle State: Washington Zip Code: 98111

Candidate's Telephone: (206) 533-0575

Candidate's E-mail Address: info@jayinslee.com

Your Signature: _____

Your printed name: Randy Pepple

Street address: PO Box 52866

City, state, and zip code: Bellevue, WA 98015

Telephone number: 425-449-8244

Date signed: August 14, 2012

Place Signed (City and County): Bellevue, Washington

Complaint:

It has come to my attention that the Inslee for Governor Campaign may have violated RCW 42.17A.405 (3) (12) & (14), and RCW 42.17A.205 which state in relevant part:

"(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, or public official in a special purpose district during a recall campaign that in the aggregate exceed nine hundred dollars if for a legislative office, county office, or city office, or one thousand eight hundred dollars if for a special purpose district office or a state office other than a legislative office."

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office

candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

"(14) No person may accept contributions that exceed the contribution limitations provided in this section."

RCW 42.17A.205 Statement of organization by political committees.

(1) Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

RCW 42.17A.005(20) ..."Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

RCW 42.17A.490 Prohibition on use of contributions for a different office.

(1) Except as provided in subsection (2) of this section, a candidate for public office or the candidate's authorized committee may not use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general election for which the candidate is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate or the candidate's authorized committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization. If the contributor does not approve the use of his or her contribution to further the candidacy of the individual for an office other than the office designated on the statement of organization at the time of the contribution, the contribution must be considered surplus funds and disposed of in accordance with RCW 42.17A.430.

BACKGROUND

According to records available for review in July, 2012, the Inslee for Governor ("IFG") campaign has accepted hundreds of thousands of dollars in "transfers" from the Inslee for Congress campaign account ("IFC").

Such transfers of campaign contributions from a federal account to a state account is permissible **only** with a.), the consent of the donors and; b.), provided that the donors may legally contribute to a Washington state office candidate campaign.

In correspondence dated July 29, 2011, the Interim Executive Director of the Public Disclosure Commission ("PDC") wrote to the IFG campaign and informed them that transfers from the IFC campaign would be governed by RCW 42.17, that all such transfers must be attributable to an individual donor who has given permission in writing, and that all such contributions would be subject to limit under RCW 42.17.640. The Director went on to write that "lump sum transfer" would be impermissible. (See Exhibit A attached).

This direction from the PDC is important because it demonstrates that the PDC understands (and has conveyed in writing to the IFG campaign) that each individual contribution being transferred from IFC must meet the requirements of state law, both in terms of the permission, the amount contributed and the eligibility of the individual or entity making the contribution.

While the IFG campaign has allegedly internally identified the donors whose funds were transferred, and for a time permitted the McKenna campaign to examine original transfer authorizations, the IFG campaign refused to permit further inspection of these records during the pre-primary public records viewing period after it was pointed out that there were an inadequate number of authorizations for the contributions listed. (See Exhibit B attached)

Transfers of funds in both federal and state elections are counted in the "FIFO" or "First in First Out" standard. (See WAC 390-17-302(6) and 11 CFR 110.3(c)(4)). (See Exhibit C attached).

For example, this means that if ten donors gave $10 each to IFC, and $50 had been spent by IFC, the remaining $50 would be eligible for transfer to IFG only if the last five donors were eligible to contribute, gave written permission, and each individual transfer would not exceed limits for that donor under Washington state law.

It is clear that for at least eight contributors the transfers made to the IFG from IFC were impermissible under the FIFO standard because the monies contributed to IFC had already been expended and were not available for transfer because they had been made in previous years. (See Exhibit D attached). It is impossible to determine the exact number of potentially illegal contributions, due to a lack of itemization of all donations in the IFC treasury, so these eight are provided as examples that may lead to other transfers not allowed under the FIFO standard.

It is also clear that Congressman Inslee expended funds from the IFC campaign account in furtherance of the IFG campaign as much as six months before the filing of his C1 declaration of candidacy on June 24, 2011.

The IFG campaign appears to have begun at least in January of 2011 when the IFC campaign spent $25,570 on "Research Consulting" with the Feldman Group. The Feldman Group is the Washington DC based polling firm currently used by the IFG campaign (and the apparent cost of statewide polling in Washington state from the Feldman Group is in the neighborhood of $25-35 thousand dollars, see IFG C4 PDC report for "polling" from Feldman Group expense of $30,800.67 on 1/10/12).

Because Congressman Inslee could not know what the contours of his Congressional District would be in January of 2011, as redistricting would not be completed for another year, it seems improbable that IFC would spend over $25,000 for a Congressional re-election poll (indeed the 1st Congressional District changed dramatically with redistricting). IFC went on to spend an additional $12,301 with the Feldman Group on March 18, 2011, presumably for additional polling work related to the IFG campaign.

Additionally, IFC spent $34,609 with New Partners Consulting on April 7, 2011. New Partners Consulting is a well-known "opposition research" firm that has been making numerous public records requests of the Attorney General's Office dating back to 2009. The IFC campaign did not have an opponent in April of 2011 and as such had no need to spend almost $35,000 on opposition research unless it was in furtherance of a campaign for Governor. The fact that New Partners Consulting has made multiple public records requests of the Attorney General's Office seeking information on the activities of Congressman Inslee's ultimate opponent in the governor's race, Rob McKenna, over a period of three years adds further circumstantial evidence that these expenses were clearly for the purpose of assisting and benefiting the unannounced IFG campaign.

Interestingly a single expenditure appears for New Partners Consulting from the IFG campaign on November 17, 2011 for $148.00 as "Mileage Reimbursement". There is no listing of any debt or promise to pay for reimbursement for mileage with New Partners Consulting in any of the IFG filings so it is unclear what contractual relationship the IFG campaign has with New Partners Consulting. It is clear that New Partners Consulting has been conducting opposition research against Mr. Inslee's general election opponent since 2009 and received $35,000 from the Congressional campaign account to do that in April of 2011, over two and half months before Mr. Inslee declared his candidacy. The Washington State Democratic Central Committee has paid tens of thousands of dollars to New Partners Consulting over the past two years for "research" related to the IFG campaign. This pattern suggests a desire on the part of the IFG campaign to conceal from the voters of Washington State its role in early, illegal funding and cooperation with a Washington DC opposition research firm that has been paid to investigate the general election opponent of Mr. Inslee and further the IFG campaign for many years.

If these expenditures were in fact made from the IFC campaign for the purpose of advancing the IFG campaign this would be a violation of multiple provisions of Washington campaign finance laws. In addition to the failure to file a C1 form as required by RCW 42.17A.205 the campaign would have failed to file disclosure forms detailing the expenditures and could have used federal account money illegal to accept under 42.17A.405(12).

COMPLAINT

1. The IFG campaign appears to be transferring funds from IFC that were made starting in 2009, under the FIFO standard discussed above and codified in state and federal law such funds would not be eligible for transfer as they had already been spent.

2. It appears that the IFG failed to timely report authorizations to transfer contributions that were received in the month of July of 2011. The IFG campaign reported no transfers at all for the month but inspection of authorizations indicate that hundreds of such authorizations were received in the month of July. On August 2, 2012, the IFG campaign refused to allow inspection of records of written permission to transfer contributions so we are unable to confirm the accuracy of the IFG campaign reporting of authorizations to transfer. It is possible that the IFG campaign has transferred monies from the IFC without the written permission required by RCW 42.17A.490(2) and/or failed to timely report transferred contributions made in the month of July.

3. The IFG campaign appears to have begun in January of 2011 when the IFC campaign spent $25,570 on "Research Consulting" with the Feldman Group. The IFG campaign

failed to timely file declaration of candidacy and financial disclosure reports required under RCW 42.17A.205. These expenditures may have included funds from the IFC campaign account that would be illegal under RCW 42.17A.405(12) law and the IFC campaign had no consent from its donors to use the funds in furtherance of another office, a violation of RCW 42.17A.490(2).

4. IFC spent $34,609 with New Partners Consulting on April 7, 2011 apparently in furtherance of the IFG campaign and again failed to file the reports required by RCW 42.17A.205. This expenditure may have included funds from the IFC campaign account that would be illegal under RCW 42.17A.405(12) and the IFC campaign had no consent from its donors to use the funds in furtherance of another office, a violation of RCW 42.17A.490(2).

This complaint is a "45 day Letter" being concurrently filed with the Attorney General and King County Prosecutor pursuant to RCW 42.17A.765(4).

Exhibit A

Doug Ellis

From:	Doug Ellis
Sent:	Friday, July 29, 2011 11:47 AM
To:	'Phil@seattlecfo.com'
Cc:	'Suzanne@pas-seattle.com'
Subject:	Transfer of Federal Funds

RECEIVED

AUG 29 2012

Public Disclosure Commission

Dear Phil:

It is my understanding that representatives for Congressman Jay Inslee have made inquiries to staff members of the Public Disclosure Commission concerning the transfer of his leftover federal campaign funds into the current Jay Inslee for Washington gubernatorial campaign. To the extent there was any prior miscommunication, I wanted to confirm the procedures.

First, the PDC does not have jurisdiction over federal campaign contributions (RCW 42.17.030) while they are to be used for a federal campaign. Therefore, the leftover federal funds are not considered "surplus funds" under RCW 42.17.

If Congressman Inslee wants to bring his federal funds into RCW 42.17 by seeking to use them for campaign contributions for a state office he would first need to check with the Federal Election Commission (FEC), if he hasn't already done so, to determine any limitations on using leftover federal campaign funds for a state campaign.

Next, assuming the leftover federal campaign funds can be used for a state campaign, staff advice is that the candidate must seek permission from contributors to confirm they want their money (their federal contributions) now used for the candidate's state campaign (a campaign that is governed by RCW 42.17).

Therefore, PDC staff recommends you use the following procedure after that permission is sought:

Permission granted in writing:

- Funds from those contributors come under RCW 42.17 and therefore are now campaign contributions subject to RCW 42.17.
- Candidate can use the funds for the campaign for a different office (RCW 42.17.790(2)).
- These new funds – contributions coming from persons giving to Jay Inslee for Washington for the first time – are subject to limit under RCW 42.17.640 and attributable to each contributor (no lump sum transfer).

Permission denied or not obtained:

- Funds from those contributors never come under RCW 42.17. Therefore, they are never "contributions" or "surplus funds" under RCW 42.17. They remain federal campaign funds.
- Candidate should dispose of the leftover federal campaign funds pursuant to FEC laws and rules.

If you have any questions concerning this advice please do not hesitate to contact me at (360) 664-2735 or doug.ellis@pdc.wa.gov .

Doug Ellis
Interim Executive Director

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EXHIBIT B

On Wednesday, August 1, while in Phillip Lloyd's office I asked Liz Larter of the Inslee campaign whether we could have a copy of the ledger which recorded every donor who authorized the transfer of their congressional campaign donations to Inslee's gubernatorial campaign during the month of July. That ledger contained the following information:

1. Name
2. Address
3. Amount
4. Date of Authorization
5. Date of transfer

I indicated that if they did not provide us the ledger, we would be coming back the following day to transcribe each of the entries for those donors who authorized the transfer of their congressional campaign donations to Inslee's gubernatorial campaign during the month of July. Larter left the room and came back a few minutes later, indicating they were not going to be giving us a copy. At that time I requested time the following morning for this purpose. They agreed.

The next morning, four McKenna campaign representatives arrived at Mr. Lloyd's office and were told they were no longer going to have access to the ledger.

Dan Brady

EXHIBIT C

WAC 390-17-302

Contributions after the primary election.

(1) Pursuant to RCW 42.17A.405 and 42.17A.410, the date of the primary is the last day for making primary-related contributions unless a candidate subject to contribution limits loses in the primary, that candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary, and the contributions are used to satisfy this outstanding debt.

(2) For purposes of the contribution limit in RCW 42.17A.405 and 42.17A.410, any contribution made up to thirty days after the primary election pursuant to RCW 42.17A.405 and 42.17A.410 is aggregated with contributions made on or before the date of the primary from the same contributor and any person with whom that contributor shares a limit under RCW 42.17A.455 and WAC 390-16-309.

(3) The day following the primary election is considered the first day of the thirty-day period during which contributions may be made to candidates subject to contribution limits who lose in the primary election and who have outstanding primary debts.

(4) For purposes of RCW 42.17A.405 and 42.17A.410, "outstanding primary debts," "outstanding debts" and "debts outstanding" all mean:

(a) Unpaid primary-election related debts incurred on or before the date of the primary by the authorized committee of a candidate who lost the primary election for an office subject to contribution limits; and

(b) Reasonable costs associated with activities of the losing candidate's authorized committee necessary to retire the primary-related debts it incurred on or before the date of the primary. Examples of such reasonable costs include:

(i) Necessary administrative expenses (office space rental, staff wages, taxes, supplies, telephone and computer costs, postage, and the like) for activities actually and directly related to retiring the committee's debt; and

(ii) Necessary expenses actually and directly related to the fund-raising activities undertaken to retire the debt, as long as all persons solicited for contributions are notified that the contributions are subject to that contributor's primary election limit for that losing candidate.

(5) Nothing in this section is to be construed as authorizing contributors to make, or candidates subject to contribution limits who lose the primary to receive, contributions that are used for a purpose not specifically authorized by RCW 42.17A.405 or 42.17A.410, including use for some future election or as surplus funds.

(6) All contributions received in excess of the sum needed to satisfy outstanding primary debts shall be returned to the original contributors *in an amount not to exceed the amount contributed in accordance with the first in, first out accounting principle wherein the most recent contribution received is the first to be returned until all excess funds are returned to contributors.*

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-17-302, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). 10-20-012, § 390-17-302, filed 9/24/10, effective 10/25/10. Statutory Authority: RCW 42.17.370. 07-07-005, § 390-17-302, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370 and 42.17.690. 01-22-050, § 390-17-302, filed 10/31/01, effective 1/1/02.]

(i) The House campaign committee and the national committee of a political party shall have separate limitations on contributions under 11 CFR 110.1 and 110.2.

(ii) The Senate campaign committee and the national committee of a political party shall have separate limitations on contributions, except that contributions to a senatorial candidate made by the Senate campaign committee and the national committee of a political party are subject to a single contribution limitation under 11 CFR 110.2(e).

(3) All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee. This presumption shall not apply if—

(i) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and

(ii) The political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.

(c) *Permissible Transfers.* The contribution limitations of 11 CFR 110.1 and 110.2 shall not limit the transfers set forth below in 11 CFR 110.3(c) (1) through (6)—

(1) Transfers of funds between affiliated committees or between party committees of the same political party whether or not they are affiliated or by collecting agents to a separate segregated fund made pursuant to 11 CFR 102.6;

(2) Transfers of joint fundraising proceeds between organizations or committees participating in the joint fundraising activity provided that no participating committee or organization governed by 11 CFR 102.17 received more than its allocated share of the funds raised;

(3) Transfers of funds between the primary campaign and general election campaign of a candidate of funds unused for the primary;

(4) Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred.

(i) *Previous Federal campaign committee* means a principal campaign committee, or other authorized committee, that was organized to further the candidate's campaign in a Federal election that has already been held.

(ii) *Current Federal campaign committee* means a principal campaign committee, or other authorized committee, organized to further the candidate's campaign in a future Federal election.

(iii) For purposes of the contribution limits, a contribution made after an election has been held, or after an individual ceases to be a candidate in an election, shall be aggregated with other contributions from the same contributor for the next election unless the contribution is designated for the previous election, or is designated for another election, and the candidate has net debts outstanding for the election so designated pursuant to 11 CFR 110.1(b)(3).

(iv) For purposes of this section, an individual ceases to be a candidate in an election as of the earlier of the following dates—

(A) The date on which the candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or

EXHIBIT D

The following donations were transferred from Inslee's Congressional re-election account to his gubernatorial account, but appear to fall outside of the first-in-first-out time window.

Kenneth Annis
Gubernatorial transfer: 9/30/2011, $1,042
Congressional donation: 12/27/2009, $1,000

Brewster Denny
Gubernatorial transfer: 8/30/2011, $1,000
Congressional donation: 12/30/2009, $1,000

Charles Seil
Gubernatorial transfer: 12/30/2011, $1,000
Congressional donation: 12/22/2009, $1,000

Michael Tanksley
Gubernatorial transfer: 8/31/2011, $200
Congressional donation: 10/19/2004, $200

Jared Weaver
Gubernatorial transfer: 6/30/2011, $500
Congressional donation: 11/16/2009, $500

Nancy Worsham
Gubernatorial transfer: 8/31/2011, $250
Congressional donation: 12/31/2009, $250

Patrick Palace
Gubernatorial transfer: 9/30/2011, $500
Congressional donation: 11/12/2009, $500

Robert Afzal
Gubernatorial transfer: 1/31/2012, $250
Congressional donation: 12/21/2009, $250

Kurt Young

From: Kurt Young
Sent: Thursday, April 21, 2011 5:40 PM
To: 'Steve Finley'
Cc: Phil Stutzman
Subject: RE: Questions

Mr. Finley,

Thanks for the e-mail.

The advice provided is based on an unnamed incumbent federal elected official, who is also a candidate registered with the Federal Election Commission (FEC) and seeking re-election to that federal office in 2012. The candidate is also contemplating seeking state office in 2012.

The FEC would govern the permissibility of said federal candidate funds that were raised for a federal office. The requirements for state office candidates seeking written permission are found in RCW 42.17.790. I have included the relevant state statutes below. With regards to your questions:

1. A federal candidate may transfer funds leftover (defined as surplus funds under Washington State law) from a federal race in accordance with FEC laws and rules, to a campaign for state office, if permission is received. The process for transferring those federal leftover or surplus funds to a Washington State campaign would be in accordance with RCW 42.17.790 as follows:

   - Identify the most recent contributors to the 2010 federal race that makes up the leftover or surplus balance in a manner similar to the first-in first-out (FIFO) inventory method (i.e. -$5,000 cash on hand balance, you would determine the most recent contributors until $5,000 is reached);
   - Contact those federal contributors stating you are seeking a Washington State elected office and ask them for written authorization to transfer the funds to the WA state campaign;
   - Transfer federal funds from the federal campaign contributors to the state office only for those contributors who granted written authorization.
   - Report the transfer of federal funds as a lump-sum entry on a Monetary Contributions Report (PDC Form C-3) as a contribution with an entry something like "2010 John Smith Congressional Campaign, Leftover or Surplus Funds, transferred with the permission of donors."

2. Yes, a federal candidate in accordance with RCW 42.17.790, may transfer 2012 federal funds raised for re-election, with permission from contributors to a Washington State campaign. The process for the transfer of those funds would similar to above, but the fourth bullet would be significantly different as follows:

   - Identify the most recent contributors to the 2012 federal race in a manner similar to the FIFO inventory method (i.e. -$5,000 cash on hand balance, you would determine the most recent contributors until $5,000 is reached);
   - Contact those federal contributors stating you are seeking a Washington State elected office and ask them for written authorization to transfer the funds to the state campaign;
   - Transfer federal funds from the federal campaign contributors to the state office for those contributors who granted written authorization.
   - The state campaign would itemize those contributions on a C-3 report with all relevant contributor information including name, address, employer and occupation, etc.. The date received would be the date the funds were transferred from the federal campaign, and the contribution would be disclosed as if

PDC Exhibit # 2
Page 1 of 3

the contributor wrote a campaign check directly to the state campaign. The transferred funds would be subject to Washington State contribution limitations.

3. Currently, the 2012 contributions limits are $1,600 per election for a statewide office, and $800 per election for a legislative office. Active funds for a 2012 federal office transferred with the permission of contribution to a 2012 state campaign would be subject to the 2012 Washington State contribution limitations. A statewide campaign may receive contributions totaling $3,200, but $1,600 of the contribution attributable to the 2012 general election, would need to be segregated and not spent until after the primary election has been held and the candidates name will be appearing on the general election ballot.

Let me know if you have any questions.

Sincerely,

Kurt Young
PDC Compliance Officer

RCW 42.17.020(41) defines public office as follows: "Public office means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office."

RCW 42.17.790 discusses the prohibitions against the use of contributions for a different office as follows: (1) Except as provided in subsection (2) of this section, a candidate for public office or the candidate's political committee may not use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate for public office or the candidate's political committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate for public office is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general elections for which the candidate for public office is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate for public office or the candidate's political committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate for public office or the candidate's political committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization. If the contributor does not approve the use of his or her contribution to further the candidacy of the individual for an office other than the office designated on the statement of organization at the time of the contribution, the contribution must be considered surplus funds and disposed of in accordance with RCW 42.17.095.

From: Steve Finley [mailto:steve_finley@msn.com]
Sent: Wednesday, April 20, 2011 5:54 PM
To: Kurt Young
Subject: Re: Questions

Thank you very much! If you have other pressing things a few more days is fine.

----- Original Message -----
From: Kurt Young
To: steve_finley@msn.com
Sent: Wednesday, April 20, 2011 5:18 PM
Subject: RE: Questions

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Mr. Finley,

Your e-mail was forwarded to me. The PDC will provide you with a written response by the end of business on April 21, 2010.

Sincerely,

Kurt Young
PDC Compliance Officer

From: Steve Finley [mailto:steve_finley@msn.com]
Sent: Wednesday, April 20, 2011 9:07 AM
To: Phil Stutzman
Subject: Questions

I spoke to Chip earlier today and he referred me to you.

Jay Inslee who currently serves in Congress, according to his FEC report has a bout $1.2 million cash on hand. Some of that is money that was raised and not spent in his 2010 reelection and some is money he has raised since November of 2010 for his 2012 reelection. He raised about $250K in the 1st quarter of 2011.

He is thinking about running for governor. Here are my questions:

1. It is my understanding he can roll over the funds from his congressional fund regulated by the FEC to a campaign for governor if he receives permission in writing from the donor and when the transfer is made -- either individually or as a group -- the name of the donor will not be listed. Correct?

2. Can he transfer -- with permission -- both money that was left over from his 2010 reelection as well as money raised for his 2012 reelection? Is there any difference since some money is surplus funds from a past election and some funds are for an upcoming election? Will individual and PAC donors who donated for his 2012 campaign have to be identified on C-3s when the money is transferred?

3. The limit per election for donations to federal candidates -- I believe -- is $2,400 where as the limit per election for a statewide race -- I believe is $1,600. Does this have any effect on transferring of money from an FEC regulated account to a PDC regulated account?

Thank you.

PDC Exhibit # 2
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Doug Ellis

From: Doug Ellis
Sent: Tuesday, August 02, 2011 9:27 AM
To: Philip Lloyd
Subject: RE: Transfer of Federal Funds

Phi:

I'm sorry about the confusion over this issue. You are correct in using the below mentioned methodology.

Doug Ellis

From: Philip Lloyd [mailto:phil@seattlecfo.com]
Sent: Tuesday, August 02, 2011 9:19 AM
To: Doug Ellis
Subject: RE: Transfer of Federal Funds

Thank you for clarifying the procedure for transferring donations from Congressman Inslee's Federal campaign account.

On the day the Congressman became a candidate for Governor, his Federal cash on hand was $1.24million, comprised of $214,000 in a checking account and $1.029 million in six separate bank and investment accounts that contained funds that were never co-mingled with 2012 campaign donations.

Based upon advice from PDC staff, the campaign solicited the donors that comprised the last $1.029 million raised in the 2010 cycle, using the "last in first out" method going backwards from 11/2/2010 (the end of the 2010 Federal election cycle) and received permission from a number of these donors. $191,051 of these donations were transferred to Jay Inslee for Washington on June 30, 2011. Based upon procedures that you outlined below, we understand that we should amend the C3 for this deposit to itemize the contributors who gave permission.

Please confirm that you are comfortable with the methodology that we used to solicit permission from the previous cycle donations so that we may begin gathering the necessary information to amend the C3 report.

Also, with regard to the $214,000 of 2012 Cycle donations in the Federal account, please confirm that a similar "last in first out" methodology going backwards from June 15, 2011 would be appropriate for soliciting the transfer of these funds.

We understand that donations transferred from any of the above accounts would count against the donor's limit for the 2012 Governor campaign.

From: Doug Ellis [mailto:doug.ellis@pdc.wa.gov]
Sent: Friday, July 29, 2011 11:47 AM
To: Philip Lloyd
Cc: Suzanne Naughton
Subject: Transfer of Federal Funds

PDC Exhibit # 3
Page 1 of 2

Dear Phil:

It is my understanding that representatives for Congressman Jay Inslee have made inquiries to staff members of the Public Disclosure Commission concerning the transfer of his leftover federal campaign funds into the current Jay Inslee for Washington gubernatorial campaign. To the extent there was any prior miscommunication, I wanted to confirm the procedures.

First, the PDC does not have jurisdiction over federal campaign contributions (RCW 42.17.030) while they are to be used for a federal campaign. Therefore, the leftover federal funds are not considered "surplus funds" under RCW 42.17.

If Congressman Inslee wants to bring his federal funds into RCW 42.17 by seeking to use them for campaign contributions for a state office he would first need to check with the Federal Election Commission (FEC), if he hasn't already done so, to determine any limitations on using leftover federal campaign funds for a state campaign.

Next, assuming the leftover federal campaign funds can be used for a state campaign, staff advice is that the candidate must seek permission from contributors to confirm they want their money (their federal contributions) now used for the candidate's state campaign (a campaign that is governed by RCW 42.17).

Therefore, PDC staff recommends you use the following procedure after that permission is sought:

Permission granted in writing:

- Funds from those contributors come under RCW 42.17 and therefore are now campaign contributions subject to RCW 42.17.
- Candidate can use the funds for the campaign for a different office (RCW 42.17.790(2)).
- These new funds – contributions coming from persons giving to Jay Inslee for Washington for the first time – are subject to limit under RCW 42.17.640 and attributable to each contributor (no lump sum transfer).

Permission denied or not obtained:

- Funds from those contributors never come under RCW 42.17. Therefore, they are never "contributions" or "surplus funds" under RCW 42.17. They remain federal campaign funds.
- Candidate should dispose of the leftover federal campaign funds pursuant to FEC laws and rules.

If you have any questions concerning this advice please do not hesitate to contact me at (360) 664-2735 or doug.ellis@pdc.wa.gov .

Doug Ellis
Interim Executive Director

PDC Exhibit # 3
Page 2 of 2

Perkins Coie

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September 17, 2012

VIA HAND DELIVERY

Mr. Tony Perkins
Lead Political Finance Specialist
Public Disclosure Commission
711 Capitol Way, Room 206
PO Box 40908
Olympia, WA 98504-0908

Re: Response to 45 Day Formal Complaint Filed by Randy Pepple

Dear Mr. Perkins:

Thank you for providing the Jay Inslee for Washington Campaign ("Inslee for Washington") with an opportunity to respond to the August 14, 2012, 45 Day Letter Formal Complaint ("Complaint") filed by Randy Pepple, the campaign manager for Mr. Inslee's General Election opponent. In his Complaint, Mr. Pepple raises four issues related to Inslee for Washington's compliance with Washington's Public Disclosure Law. With respect to each issue, Inslee for Washington has acted in full compliance with Washington law and, indeed, after consultation with the PDC. Simply put, Mr. Pepple's Complaint appears to simply be an attempt to advance political goals by other means. For the reasons more fully articulated below, I would respectfully submit that the Public Disclosure Commission ("PDC") should dismiss the Complaint against Inslee for Washington in its entirety.

I. Background

A. Inslee for Washington Campaign

Jay Inslee served in the United States House of Representatives for Washington's First Congressional District from 1999 to 2012. Prior to his election to the United States House of Representatives, Mr. Inslee served in the Washington House of Representatives from 1989-1993.

PDC Exhibit # 4
Page 1 of 12

Mr. Inslee also represented the Fourth Congressional District from 1993-1995. Mr. Inslee announced his candidacy for Governor on June 27, 2011.

Throughout his political career and during the course of his gubernatorial campaign, Mr. Inslee has always complied scrupulously with all PDC and other election disclosure requirements. Toward that end, Mr. Inslee's representatives have frequently consulted proactively with the PDC about disclosure requirements before filing forms and before taking certain actions. Mr. Inslee works closely with accountants and lawyers with experience and expertise in election disclosure issues.

B. Issues Raised by Complaint

Mr. Pepple raises four issues in his Complaint. Each is addressed in turn, with the closely-related third and fourth issues discussed together.

1. Issue 1: Inslee for Washington Has Properly Transferred Funds from Mr. Inslee's Federal Congressional Committee Pursuant to a Methodology Expressly Approved by the PDC

The Complaint first asserts that Inslee for Washington "appears" to have improperly transferred funds from Inslee's federal Inslee for Congress committee. Complaint, at 4. Mr. Pepple provides no support for this claim, which is simply meritless and based on assumptions rather than the actual factual record.

a. Relevant Background

In June 2011, Mr. Inslee became a candidate for governor. At the time, Inslee for Congress (Mr. Inslee's federal committee) had $1.24 million in cash on hand. This amount consisted of two basic components. First, Inslee for Congress had on hand $214,000 from contributions made during the 2012 federal election cycle—that is, contributions Mr. Inslee had received after the November 2010 general election to support Mr. Inslee's 2012 reelection campaign that had not yet been expended. Second, Inslee for Congress had on hand $1.029 million in surplus funds from the 2010 federal election cycle—money raised prior to the November 2010 General Election that had not been spent. These surplus funds from the 2010 election cycle were retained in bank and investment accounts that had at all times been kept separate from and never co-mingled with contributions received in the 2012 cycle.

Mr. Inslee was interested in transferring, if possible, money from his federal congressional campaign to his state gubernatorial campaign. Transfer of contributions between campaigns for different offices are governed by RCW 42.17A.490, which provides in relevant part:

> With the written approval of the contributor, a candidate or the candidate's authorized committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization.

Disposition of surplus funds under Washington law is governed by RCW 42.17A.430, which delineates the circumstances in which a candidate may dispose of surplus funds and provides that such disposal "shall not be considered a contribution for purposes" of Washington's Public Disclosure Law.

Wishing to ensure that any transfer of funds complied with Washington law (and as instructed to do by the PDC's 2012 Campaign Disclosure Instructions, at 9), Inslee for Washington representatives spoke with PDC staff on a number of occasions in June and July 2011. From these initial discussions (with Compliance Officer Kurt Young), Inslee for Washington's original understanding was as follows:

- So long as 2010 money had not been commingled with 2012 money, it would be considered "surplus funds" under state law and, with the authorization of individual contributors, surplus funds from the 2010 election cycle could be transferred to Inslee for Washington in a lump sum without filing an itemized Form C3 that included identifying information about particular contributors whose contribution had been transferred. The funds at issue would be identified using the "last in, first out" methodology.

- With the authorization of individual contributors, unspent funds raised during the 2012 election cycle could be transferred to Inslee for Washington. Inslee for Washington would then file an itemized Form C3 that included identifying information about particular contributors whose contribution had been transferred. Again, the funds at issue would be identified using the "last in, first out" methodology.

Based on this understanding, in June 2011, Inslee for Washington began the process of requesting authorization from contributors to Inslee for Congress for the transfer of contributions. Inslee for Washington first made and reported a lump sum transfer from Inslee for Congress on July 10, 2011.

On July 29, 2012, Doug Ellis, then-interim Executive Director of the PDC, sent Inslee for Washington's treasurer, Phillip Lloyd, an email indicating his understanding that representatives of Mr. Inslee had been in contact with the PDC regarding the transfer issue and indicating he wished to clarify the applicable procedures. In essence, Mr. Ellis clarified that the PDC's

position was that 2010 election cycle funds raised by Inslee for Congress were *not* "surplus" funds within the meaning of Washington law and thus were not subject to lump sum transfer.

Mr. Pepple attaches this email as Exhibit A to his Complaint. Notably, Mr. Pepple appears to have strategically omitted the *rest* of this email chain. Inslee for Washington attaches the full email exchange between Mr. Ellis and Mr. Lloyd as Exhibit 1 to this response.

Mr. Lloyd responded to Mr. Ellis' email to request that Mr. Ellis confirm his understanding of the PDC's guidance in various respects. Mr. Lloyd first asked Mr. Ellis to confirm that with respect to 2010 cycle funds that had already been transferred, Inslee for Washington should amend its June 30, 2011 C3 to itemize the transferred contributions by individual contributor (which, consistent with its understanding after previous discussions with the PDC, it had not done). Mr. Lloyd also explained that the last in, first out method had been used to request authorizations from contributors from the 2010 cycle and asked Mr. Ellis to confirm that the PDC approved of the methodology Inslee for Washington had used to solicit permission from contributors to Inslee for Congress to transfer their contributions to Inslee for Washington.

Finally, and of particular significance here, Mr. Lloyd asked that Mr. Ellis "with regard to the $214,000 of 2012 Cycle donations in the Federal account please confirm that a similar 'last in first out' methodology would be appropriate for soliciting the transfer of these funds." *See* Exhibit 1. Mr. Ellis responded by confirming that Mr. Lloyd was "correct in using the below mentioned methodology" and apologized again for the confusion over the issue. *Id.*

Thus, as of early August 2011, the PDC had clearly instructed Inslee for Washington that with respect to leftover 2010 election cycle funds, Inslee for Washington could transfer such funds from Inslee for Congress so long as it (1) used the last in, first out method to work back from November 2, 2010, to identify contributors whose contributions had not yet been spent; (2) obtained authorization from the relevant contributors; (3) properly reported the transferred contributions. *Id.* In response to Mr. Lloyd's follow-up email, the PDC confirmed that Inslee for Washington could separately transfer 2012 funds using the last-in, first out method (working back from June 15, 2011). *Id.*

With that clarification confirmed, Inslee for Washington scrupulously followed the PDC's guidance as set forth in the exchange between Mr. Lloyd and Mr. Ellis. With respect to both 2010 and 2012 cycle money, Inslee for Washington has used the last in, first out methodology set out by Mr. Ellis to identify potentially transferable funds. That is, Inslee for Washington identified the contributors responsible for the "last" $1.029 million contributed to Inslee for Congress during the 2010 cycle, and those contributors responsible for the "last" $214,000 contributed to Inslee for Congress during the 2012 cycle. Prior to transferring any such funds, Inslee for Washington obtained written authorization from each contributor.

As Mr. Ellis stated to The Olympian with respect to the transfer process followed by Inslee for Washington: "There was nothing illegal and nothing inappropriate. In fact, what the Inslee campaign did was appropriate. . . . They came to us to learn what was legal to do before they transferred anything."[1]

b. Inslee for Washington Properly Transferred Funds for the Eight Individuals Identified by Mr. Pepple

In Exhibit D to the Complaint, Mr. Pepple identifies eight individuals whose donations were transferred to Inslee for Washington that Mr. Pepple asserts "appear to fall outside of the first-in-first-out time window."[2] Mr. Pepple does not explain the basis for this assertion—that is, why he believes these contributions fall outside the last in, first out period. Regardless of his reasoning, in any event Mr. Pepple is incorrect.

Using the last in, first out method, Inslee for Washington determined that with respect to the 2010 cycle, the last $1.029 million in funds was comprised of contributions made between November 2, 2009, and November 2, 2010.

Seven of the eight donations identified by Mr. Pepple were made between November 12, 2009 and December 27, 2009. The eighth donation was from Michael Tanksley, who made contributions to Inslee for Congress on January 12, 2010, and September 25, 2010. Exhibit D to Mr. Pepple's Complaint identifies an earlier contribution made by Mr. Tanksley to Inslee for Congress, dated October 19, 2004. It was obviously Mr. Tanksley's later contributions—not this 2004 contribution—that was transferred to Inslee for Washington pursuant to the last in, first out method.

Thus, each of the donations identified by Mr. Pepple was, in fact, subject to transfer under the last in, first out rule. The first issue raised in Mr. Pepple's Complaint is, accordingly, baseless and should be dismissed.

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[1] Brad Shannon, *Inslee campaign says it will continue to follow law*, The Olympian (Aug. 7, 2011), *available at* http://www.theolympian.com/2011/08/07/v-print/1752384/inslee-campaign-says-it-will-continue.html.

[2] Mr. Pepple uses the nomenclature of "first-in, first out" methodology, referencing WAC 390-17-302(6). Despite the difference in terminology, Inslee for Washington and Mr. Pepple appear to refer to the same method—determining which contributions have already been "spent" by taking cash on hand and then working backward from the most recently received contribution. Inslee for Washington uses the phrase "last in, first out," as it more accurately describes the method of determining which contributions are surplus that have not already been "spent" by the campaign.

B. Inslee for Washington's Treatment of Authorization Requests Received During the Month of July Fully Complies with State Law

Mr. Pepple next asserts that, with respect to July 2011, it is "possible" that Inslee for Washington either (1) transferred money from Inslee for Congress without prior written authorization from the relevant contributors or (2) failed to timely report transferred contributions made in the month of July. Complaint, at 4. Again, Mr. Pepple's Complaint is baseless.

1. Relevant Background

During July 2011, Inslee for Washington received written authorization from various contributors to Inslee for Congress to transfer funds between the two committees. Inslee for Washington did *not*, however, transfer any funds from Inslee for Congress during July 2011. This is because of Mr. Ellis' July 29, 2011, email that is discussed above. Inslee for Washington received Mr. Ellis' email shortly *before* it had transferred any contributions from Inslee for Congress and shortly *before* it was to file its monthly C3 report. To ensure all potential transfers and related reports complied with the PDC's clarified guidance, Inslee for Washington spent the time necessary to follow up with Mr. Ellis to verify its understanding of his guidance and to ensure all transfers and reports complied with that advice. As reported in press accounts, the PDC specifically advised Inslee for Washington that there was no "firm deadline" to complete this process.[3] Inslee for Washington completed this work in August.

On August 31, Inslee for Washington transferred contributions from approximately 1,000 contributors who provided written authorization in July or August 2011. Inslee for Washington

[3] *See* Erik Smith, *The race has just started and already money is an issue*, Deer Park Tribune (Aug. 31, 2011), *available at* http://smalltownnews.com/article.php?catname=Economy&pub=Deer%20Park%20Tribune&pid=168pub=Deer%20Park%20Tribune&aid=104751; *see also* The Olympian, note 1 *supra* (Mr. Ellis, stating that he told Inslee for Washington that "it was so early in the process they can (file) it as they get at it" and there was "no firm deadline").

provides these written authorizations attached as Exhibit 2.[4] Inslee for Washington reported all of these transferred contributions on a Form C3 filed with the PDC on September 10, 2011.[5]

2. Inslee for Washington Properly Reported All Transfers Made During the Month of July After Receiving Authorizations From Each Affected Contributor

As discussed above, contrary to Mr. Pepple's assertion, with respect to July 2011, Inslee for Washington received written authorization from each contributor prior to transferring funds from Inslee for Congress. As with all other funds it has transferred, Inslee for Washington fully complied with RCW 42.17A.490 in July 2011.

Mr. Pepple also asserts that Inslee for Washington did not "timely report authorizations to transfer contributions that were received in the month of July 2011." It appears that Mr. Pepple's Complaint on this issue springs from his uncertainty as to whether Inslee for Washington in fact *transferred* funds in July 2011 related to transfer authorizations it obtained that month. Again, it did not. Inslee for Washington did not transfer contributions for which it received transfer authorization in July 2011 until August 31, 2011—after it had received and complied with the additional guidance it received from the PDC.

A campaign must make deposits of contributions it has "received" within 5 business days after receipt. *See* RCW 42A.17.220; *see also* Campaign Manual ("Summary of Campaign Disclosure Reports"); at 4. Deposits are reported on a Form C3. WAC 390-16-031. At all times other than June 1 of the election year through the general election, the C3 is filed on a monthly basis along with the C4. *See* Campaign Manual, at 4. Because Inslee for Washington transferred contributions on August 31 and reported them on a C3 filed on September 10, 2011, Inslee for Congress timely reported the deposit of these contributions pursuant to RCW 42A.17.220.

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[4] In preparing this response, Inslee for Washington determined that it had misplaced four transfer authorization forms it received during July 2011, relating to a total of $250 in contributions. Although its records clearly reflect that it received the forms in question, out of an abundance of caution, Inslee for Washington has contacted the contributors at issue and requested that they re-authorize the transfer of their contribution. Thus far, Inslee for Washington has obtained a declaration from three of those four contributors, indicating that he or she previously authorized the transfer of his or her contribution in July or August 2011 (or, in one case, that the contributor believes he did so and does not object to transfer). *See* Exhibit 3. Inslee for Washington continues its efforts to reach the other contributor. In the event Inslee for Washington is unable to obtain confirmation from this contributor that she previously authorized transfer of her contributions, Inslee for Washington is prepared to refund the contribution or otherwise address the situation as the PDC instructs.

[5] On August 31, 2011, Inslee for Washington transferred contributions of a few contributors who provided authorization in the last few days of June and reported these contributions on the September 10, 2011 C3. These June 2011 authorizations are not included in Exhibit 3 to this letter, as Mr. Pepple's Complaint pertains only to authorizations received in July 2011.

To the extent that Mr. Pepple instead claims that Inslee for Washington was required to report the mere fact that it had received a transfer *authorization* within a particular time period, his claim is baseless. Mr. Pepple provides no citation to legal authority requiring that a campaign disclose transfer authorizations to the PDC. This is because no such authority exists. RCW 42.17A.490, governing transfer of funds between campaigns with the written approval of the contributor, provides in relevant part:

> With the written approval of the contributor, a candidate or the candidate's authorized committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization.

There is no requirement to report receipt of a transfer authorization. It would make little sense if the rule were otherwise. That is because the law does not *require* a campaign to transfer a contribution to another campaign after a contributor has authorized it to do so. Instead, as the use of "may" in RCW 42.17A.490 indicates, the discretion lies with the committee. *In re Guardianship of Johnson*, 112 Wn. App. 384, 387, 48 P.3d 1029 (2002) ("[A] statute that uses 'may' . . . 'conveys the idea of choice, option or discretion. The general rule of statutory construction has long been that the word 'may' when used in a statute or ordinance is permissive and operates to confer discretion") (quoting *State ex rel. Beck v. Carter,* 2 Wn. App. 974, 977, 471 P.2d 127 (1970)). In short, Inslee for Washington was not required to report the fact that it had received transfer authority from particular contributors to Inslee for Congress in the same month in which it received the authorization.

The second issue raised in Mr. Pepple's Complaint has no merit.

C. Inslee Properly and Timely Registered His Candidacy for Governor

In the third and fourth issues raised in the Complaint, Mr. Pepple suggests that payment of certain funds by Inslee for Congress in January and April 2011 triggered the need for Mr. Inslee to register as a candidate for governor. Taking a "kitchen sink" approach, Mr. Pepple also speculates (without any evidence) that these payments may have violated RCW 42.17A.405(12) and RCW 42.17A.490. Again, Mr. Pepple's claims are baseless.

Mr. Pepple alleges that Mr. Inslee became a candidate in January 2011 when the Inslee for Congress campaign spent $25,570 on research consulting with the Feldman Group. Likewise, Mr. Pepple alleges, apparently in the alternative, that Inslee became a candidate on April 7, 2011, when Inslee for Congress spent $34,609 with New Partners Consulting.

The payments that are the subject of Mr. Pepple's third and fourth complaint were undertaken by Inslee for Congress as part of Mr. Inslee's process of evaluating whether to run for reelection to Congress or pursue other opportunities. Mr. Inslee had not determined at this time whether he would run for governor. These were not expenditures undertaken intended to promote a candidacy for governor. As a result, these payments (which were duly reported in federal filings by Inslee for Congress), did not trigger registration requirements for Mr. Inslee under Washington law. The PDC should dismiss Mr. Pepple's Complaint with respect to these issues as well.

1. Legal Framework

RCW 42.17A.005(7) defines candidate to mean an "individual who seeks nomination for election or election to public office." The statute defines the moment at which an individual "seeks nomination" in several alternative ways:

> An individual seeks nomination or election when he or she first:
>
> (a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;
>
> (b) Announces publicly or files for office;
>
> (c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or
>
> (d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

The Washington Supreme Court has determined that this definition is "clear and unambiguous" and that a person becomes a candidate *only* after he or she takes one of these four delineated steps. *Senate Republican Campaign Comm. v. Public Disclosure Comm'n*, 133 Wn.2d 229, 242-43 (1997).

By regulation, the PDC has established several circumstances that give rise to a presumption that an individual is a candidate:

> (1) The existence of a political committee promoting the election of such individual for public office with the knowledge and consent of that individual; or
>
> (2) A public declaration of candidacy by an individual even if the candidacy is conditioned on a future occurrence; or

(3) Meeting the requirements set forth in WAC 390-16-230 (1) or (2).[6]

WAC 390-05-200.

2. Mr. Inslee Properly and Timely Registered His Candidacy for Governor

As Mr. Inslee's PDC filings reflect, on June 16, 2011, and June 24, 2011, respectively, Mr. Inslee received his first contribution and made his first expenditure in conjunction with his gubernatorial bid. Mr. Inslee announced his candidacy for governor on June 27, 2011. Mr. Inslee timely registered as a candidate for governor by filing a Form C1 with the PDC registering as a candidate for governor within two weeks of first receiving a contribution. RCW 42.17A.005(7).

As a potential candidate must, prior to beginning his campaign for governor, Mr. Inslee evaluated whether he should run. In Mr. Inslee's case, he needed to consider whether to continue his bid to seek reelection to the U.S. Congress or, instead, to became a candidate for governor. To ensure that Mr. Inslee's efforts to evaluate his options comported with Washington law, a representative of Inslee for Congress contacted PDC staff member Kurt Young to request guidance on when an individual's exploration of the possibility of running for a particular office triggers registration and reporting requirements. Among other things, Mr. Young was asked whether a person must register as a candidate if he or she commissions a head-to-head poll to gauge possible political support for a candidacy. Mr. Young indicated that the individual would not need to register, so long as the poll was not used with the intent to "promote" the individual's candidacy. That is, if the individual commissioned the poll and kept the results private (i.e., discussing the results only with family, close friends and/or a "kitchen cabinet" circle of close advisors), the poll would not be undertaken with the intent to promote a candidacy and thus would not trigger registration requirements. By contrast, if the individual used the polling results to convince influential citizens or political decision makers to support him/her, then that activity potentially would trigger registration requirements.

After receiving this guidance from the PDC, Inslee for Congress commissioned the poll that is the subject of the third issue raised in Mr. Pepple's complaint. This was a private poll commissioned by Inslee for Congress to determine whether Mr. Inslee should continue his reelection bid or pursue the governorship. At the time the poll was commissioned, Mr. Inslee had not determined whether or not he would run for governor. As a result, the poll was designed to provide him with information to aid his decisionmaking process.

[6] WAC 390-16-230 sets forth provisions governing the use of surplus campaign funds by a candidate who is seeking the same office sought at his or her last election.

Mr. Inslee shared the poll results only with a handful of his key advisors. He did not share the results of the poll externally. The poll was not used to influence others to support an Inslee gubernatorial bid. The poll was intended solely as an evaluation tool to gauge the viability of an Inslee candidacy by evaluating public views of Mr. Inslee and several other individuals who press reports suggested were potential gubernatorial candidates.[7] Again, Mr. Inslee had not at this time declared his candidacy for governor, established a political committee in support of a gubernatorial run, promoted his candidacy for governor in any way, or received contributions to support a gubernatorial run or made expenditures intended to "promote" his "candidacy."

The facts are essentially the same with respect to the fourth issue raised by Mr. Pepple, which appears to be premised on Mr. Pepple's misapprehension of fact. Mr. Pepple assumes that the research in question was "opposition research" against Mr. Inslee's general election opponent. Complaint, at 4. This is incorrect. Instead, as part of Mr. Inslee's process for evaluating his chances for reelection to Congress as compared to mounting a gubernatorial bid, Inslee for Congress commissioned research on Mr. Inslee himself to identify his own potential vulnerabilities in a 2012 campaign for either office. Simply put, the April 7, 2011 payment had nothing to do with Mr. Inslee's general election opponent, and was not made with the intent to "promote" an Inslee candidacy for governor.

In sum, consistent with the guidance it received from the PDC, Inslee for Congress incurred the payment with the understanding that expenses incurred to determine *whether* Mr. Inslee should run for office would not trigger registration requirements as compared to those undertaken with the intent to *promote* a candidacy. Mr. Inslee properly registered as a candidate.

Mr. Pepple's claim that the expenditures violated RCW 42.17A.490 is also baseless. The expenditures were made to help Mr. Inslee determine whether to continue his reelection bid or run for governor—Mr. Inslee was not a candidate for governor at the time, and so the expenditure was not made "in furtherance of another office" as Mr. Pepple claims. In any event, Inslee for Congress is a federal committee that falls outside the purview of Washington law and its activities are not subject to RCW 42.17A.490(2).

Finally, Mr. Pepple is also wrong to the extent he claims that these two payments may have "included" funds that would be "illegal" under RCW 42.17A.405(12), which provides in relevant part that:

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[7] At the time the poll was commissioned, it was widely assumed that Mr. McKenna would pursue a gubernatorial bid and Mr. McKenna had publicly contemplated a gubernatorial bid. *See, e.g.*, http://www.peninsuladailynews.com/article/20100526/news/305269985/mckenna-would-consider-running-for-governor-if-gregoire-quits; http://blog.seattlepi.com/seattlepolitics/2009/05/18/signs-of-a-mckenna-run-for-governor/.

> [N]o political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate.

The basis for Mr. Pepple's claim as to RCW 42.17A.405(12) is unexplained and unclear. But, again, the expenditures at issue were made by Inslee for Congress and Mr. Inslee was not a gubernatorial candidate at the time. (In any event, Inslee for Congress had received contributions of at least ten dollars or more from more than ten persons registered to vote in Washington State during the 180 days preceding each expense.)

In sum, the third and fourth issues raised by Mr. Pepple have no merit.

IV. Conclusion

Inslee for Washington takes its obligation to comply with all disclosure requirements with the utmost seriousness. Inslee for Washington and Mr. Inslee have worked closely with the PDC to ensure that they have, at all times, acted in full compliance with Washington's Public Disclosure Law. None of Mr. Pepple's politically-motivated claims have any merit. Inslee for Congress therefore respectfully requests that the PDC dismiss the Complaint.

Very truly yours,

Perkins Coie LLP

By: _____
For Kevin J. Hamilton

Attachments

cc: Phillip Stutzman, Director of Compliance

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October 3, 2012

VIA EMAIL AND OVERNIGHT MAIL

Mr. Phil Stutzman
Director of Compliance
Washington Public Disclosure Commission
711 Capitol Way, Room 206
PO Box 40908
Olympia, WA 98504-0908

Re: Supplemental Response to 45 Day Formal Complaint Filed by Randy Pepple

Dear Phil:

On September 27, 2012, by telephone conversation and via email, you requested that Inslee for Washington provide additional information in response to the August 14, 2012, 45 Day Letter Formal Complaint filed by Randy Pepple. Inslee for Washington is currently working to collect the requested documentation, and will provide that documentation as soon as it is able to do so. In the spirit of cooperation we will be providing responsive information on a rolling basis, as soon as it becomes available.

A. Supplemental Documentation

Enclosed with this letter (as Exhibit A), as requested, are the transfer authorizations from the following seven individuals identified in Exhibit D to Mr. Pepple's Complaint: Kenneth Annis; Brewster Denny; Charles Seil; Michael Tanksley; Jared Weaver; Patrick Palace; and Robert Afzal.

Also enclosed are two separate lists constituting the cash on hand "universe" for the 2010 cycle and the 2012 cycle, and containing the specific information requested in your September 27, 2012 email. These are attached as Exhibits B and C, respectively. Please note that these lists contain all contributions that comprise the 2010 and 2012 universes, including all contributions that have since been refunded. Please note also that the 2010 spreadsheet contains a reconciling difference of -$75 with respect to the money actually transferred from the 2010 cycle. The

discrepancy is due to minor input errors as Inslee for Washington created the spreadsheet requested by the PDC from the raw electronic data reflecting the money actually transferred from the 2010 cycle.

B. Supplemental Information

In your September 27, 2012, email, you asked Inslee for Washington to respond to four questions regarding transfer of funds from Inslee for Congress to Inslee for Washington. I provide answers to your questions below.

1. **How much money (total) has been transferred to date from Inslee for Congress 2010 and Inslee for Congress 2012 to Inslee for Governor?**

With respect to the 2010 cycle, $518,060.48 has been transferred from Inslee for Congress to Inslee for Washington. With respect to the 2012 cycle, $108,270 has been transferred. In total, $626,330.48 has been transferred from Inslee for Congress to Inslee for Washington.

2. **How many contributors had money transferred?**

In total, there have been 3,285 transfers from Inslee for Congress to Inslee for Washington. Please note that some contributors made donations to Inslee for Congress in both the 2010 and 2012 cycle, and thus the total number of affected contributors is likely somewhat less than the number of total transfers.

3. **How many contributors have declined to have money transferred?**

In total, 24 donors declined to provide authorization to transfer funds from Inslee for Congress to Inslee for Washington. (Note that this number does not include donors who did not respond to requests for authorization and whose contributions therefore were not transferred).

4. **What is the total amount declined?**

Twenty four donors declined to authorize transfer of their donations, totaling $11,685.

We continue to gather information responsive to your other inquiries and will provide supplemental information later this week. If you have questions about this information, please do not hesitate to let me know.

Very truly yours,

Ben Stafford (for Kevin J. Hamilton)

KJH:wbs

Enclosures

cc: Kristin Murphy

The Feldman Group, Inc.

508-510 8th Street., SE
Washington, DC 20003

Invoice

DATE	INVOICE NO.
1/18/2011	8279

BILL TO
Inslee for Congress Joby Shimomura PO Box 33027 Seattle, WA 98133

TERMS
30 days

ITEM	DESCRIPTION	TOTALS COST	BALANCE DUE
Survey	First two-thirds of 600 sample/ 20 minute poll in the field January 18-20th.	36,120.00	24,070.37
Sample cost	Sample cost $1500	1,500.00	1,500.00

TOTAL	$25,570.37
Payments/Credits	$0.00
Balance Due	$25,570.37

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---------- Forwarded message ----------
From: **Diane Feldman** <Diane@thefeldmangroup.com>
Date: Sun, Jan 16, 2011 at 3:02 PM
Subject: RE: Polling
To: Joby Shimomura <jobyshimomura@gmail.com>

Totally. I completely understand.

From: Joby Shimomura [mailto:jobyshimomura@gmail.com]
Sent: Sun 1/16/2011 5:58 PM
To: Diane Feldman
Subject: Polling

Hi Diane,

As you know, Jay has not made a decision to run for Governor. There are a ton of folks encouraging him to take a look at this potential opportunity. If we contract with you to conduct a survey, at this point, it is only for the purpose of using it as a tool to help evaluate Jay's prospects as a candidate. It will not be made public and it will not be used as as a vehicle to influence people or to promote Jay.

I just wanted to make sure we understand the purpose of any potential research.

Thank you,

- Joby Shimomura

Political Director
Inslee for Congress

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CONSULTING AGREEMENT

AGREEMENT between New Partners Consulting, Inc. ("Consultant") and Jay Inslee for Congress ("Client").

W I T N E S S E T H :

WHEREAS, Client desires to avail itself of the expertise and consulting services of Consultant and Consultant desires to make its expertise and consulting services available to Client upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the agreements herein contained, the parties hereto agree as follows:

1. CONSULTING SERVICES. Consultant hereby agrees to perform the following consulting services during the term of this Agreement:

(a) The services described in Attachment A; and

(b) Any other services to which the parties agree in writing.

Consultant shall use reasonable efforts to complete the research reports in a timely manner. This target date may be adjusted, as mutually agreed upon by Consultant and Client. If, for reasons outside the Consultant's control, any of the data cannot be collected in time for inclusion in the final book or analyses, Consultant will alert Client in writing and will produce the data to Client, with accompanying summaries, as supplements on an ongoing basis with all additional documents or information it collects.

Consultant further agrees that it will use reasonable efforts during the performance of such consulting services to promote the interests of Client and to devote to the business and affairs of Client during the term of this Agreement such portion of Consultant's time and energies as is necessary to perform such consulting services.

2. COMPENSATION.

(a) Rate of Compensation. For the services performed pursuant to paragraphs 1(a), Consultant shall receive a total fee of $32,000 to be paid along the following schedule: $10,666.66 Feb 1st, $10,666.66 March 1st and $10,666.67 April 1st, 2011.

(b) Consultant Share of Expenses. Consultant shall be responsible for payment of all ordinary expenses incurred in the performance of the services described in paragraph 1(a), including telephone, fax, internet connection, computer paper, printer ink.

(c) Reimbursement of Expenses. The Client shall be responsible for any expenses related to public record retrieval including: travel expenses, subscription costs, electronic searching fees, copying costs, fees for record retrieval services and other expenses incurred by Consultant to collect of records and data to execute the services described in paragraph 1(a). Client agrees to pay a subscription cost fee of 7% of the total fee ($2,240) for performance of services. Consultant shall include the subscription fee on the monthly invoice in addition to all other line item expenses.

Consultant shall submit an invoice setting forth expenses incurred during the term of this Agreement. The Client will pay such invoice within 10 days of receiving it. Payments more than 30 days past due will be charged interest at a rate of 5% per year.

3. PERIODIC REVIEW.

The parties shall periodically review the services performed under the Agreement. If the scope of the services changes substantially, the parties shall negotiate in good faith to adjust the compensation due to Consultant and/or Consultant's deadlines under this Agreement.

4. TERM OF AGREEMENT.

The term of this Agreement shall begin on February 1, 2011 and terminate on with the completion of the project, or on such date as is otherwise agreed in writing by both parties. Either party may terminate this Agreement at any time for any or no cause, upon thirty days' written notice to the other party.

5. COORDINATION.

(a) Coordination with Client. Consultant shall coordinate all activities as instructed with permanent staff of Client.

(b) Press. Consultant agrees that Consultant is not, directly or indirectly, at any time during the term of this Agreement, and without regard to when or for what reason this Agreement shall terminate, authorized without the prior approval of Client, to communicate with any member of the press, including representatives of both print and electronic media, regarding any aspect of this Agreement, the services performed by Consultant under this Agreement, or any knowledge or information relating to the business of Client obtained as a result of the services performed by Consultant under this Agreement, without the express prior approval of the Client. Consultant shall refer promptly all queries from the press, in whatever form or circumstances they are made, to the Client staff.

6. CONFIDENTIALITY.

(a) Consultant agrees that Consultant will not, directly or indirectly, at any time during the term of this Agreement or thereafter, and without regard to when or for what reason this Agreement shall terminate, divulge, furnish, make accessible, or permit the disclosure to anyone (other than Client or other persons employed or designated by Client) any knowledge or

information of any type whatsoever acquired by Consultant in the course of the consultancy, including (but not limited to) knowledge or information relating to the business or activities of the Client, including business and activities relating to the services rendered under this Agreement, whether disclosed orally or visually to Consultant and whether stored on any tangible medium or memorialized by Consultant ("Confidential Information").

(b) The term Confidential Information includes all originals, recorded and unrecorded copies of such Confidential Information, as well as information derived therefrom and portions thereof. Such Confidential Information also includes, but is not limited to, all written or audio materials obtained, generated, produced or otherwise acquired during the course of the consultancy, including (but not limited to) any notes, charts, lists, computer files, electronic mail messages, phone logs or other memoranda, whether handwritten, typed, or otherwise created. Information shall be Confidential Information even if no legal protection has been obtained or sought for such information under applicable laws and whether or not Consultant has been notified that such information is Confidential Information.

(c) The term Confidential information does not include any information which: (i) at the time of disclosure to Consultant was or thereafter became publicly available or a matter of public knowledge, without a breach of this Agreement by Consultant; (ii) was given to Consultant by a third party who is not obliged to maintain confidentiality; (iii) has been acquired or developed by Consultant outside of the scope of this Agreement; (iv) was in the possession of or known by Consultant prior to this Agreement; or (v) was disclosed to Consultant pursuant to a requirement of law, or in response to a court order, subpoena, or action of governmental authority.

(d) Consultant shall not be liable for disclosure of Confidential Information if such disclosure is pursuant to judicial action or other lawfully compelled disclosure, provided that the Consultant notifies Client, by registered mail, of the need for such disclosure within five (5) days after such need becomes known and gives Client a reasonable opportunity to contest such disclosure.

(e) Upon termination of this Agreement for whatever reason or upon breach of any of the obligations set forth in this Agreement, Consultant shall return all Confidential Information (as defined above) to Client, regardless of the form in which it appears or is stored (including information stored on tapes, computer discs, compact discs or other media).

(f) The obligations set forth in this paragraph shall survive indefinitely the termination of this Agreement.

7. OTHER CONSULTING SERVICES. Client and Consultant agree that Consultant may provide independent consulting services to other individuals or entities.

8. INDEPENDENT CONTRACTOR. Consultant shall perform consulting services pursuant to this Agreement as an independent contractor with respect to Client, and nothing in this Agreement shall create, or be deemed to create, any relationship of employer and employee or of master and servant between Client and Consultant.

9. INDEMNIFICATION.

(a) Client agrees to indemnify and hold harmless Consultant and its officers, employees, and agents against any and all liability, costs, damages, or expenses, including reasonable attorneys' fees, incurred by reason of Consultant's use of information or materials provided by Client.

(b) Client agrees to indemnify and hold harmless Consultant for all costs, damages, or expenses, including reasonable attorneys' fees, incurred by reason of Consultant's assistance with any government inquiry of Client.

(c) Consultant makes no representations about the suitability, reliability, timeliness, and accuracy of the information contained in the research materials, for any purpose. All such information is provided "AS IS" and "AS AVAILABLE" without warranty of any kind. Consultant disclaims all representations and warranties with regard to this information, including all implied warranties and conditions of merchantability, fitness for a particular purpose, title, and non-infringement. No advice or information obtained from Consultant, or from any employee or agent of Consultant, shall create any warranty not expressly stated in this Agreement.

(d) The obligations set forth in this section shall survive indefinitely the termination of this Agreement.

10. ASSIGNMENT. Except as specifically set forth in this Agreement, the rights and interests of Consultant in this Agreement may not be sold, transferred, assigned, pledged or hypothecated. The rights and obligations of Client hereunder shall be binding upon and run in favor of the successors and assigns of Client. In the event of any attempted assignment or transfer of rights hereunder contrary to the provisions hereof, Client shall have no further liability for payments hereunder.

11. GOVERNING LAW; CAPTIONS. This Agreement contains the entire agreement between the parties and shall be governed by the law of the District of Columbia. It may not be changed orally, but only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. Section headings are for convenience of reference only and shall not be considered a part of this Agreement.

12. PRIOR AGREEMENTS. This Agreement supersedes and terminates all prior agreements between the parties relating to the subject matter herein addressed.

13. NOTICES. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed effective when delivered in person or, if mailed, on the date of deposit in the mail, postage prepaid, addressed, in the case of Consultant, to New Partners Consulting, Inc., at 401 9th Street, Suite 725 Washington DC, 20004; and in the case of Client, to it at its offices at PO Box 33027, Seattle, WA 98133 or such other address as shall have been specified in writing by either party to the other.

IN WITNESS WHEREOF, the Client and Consultant each has caused this Agreement to be signed by its duly authorized representative as of the day and year first above written.

Jay Inslee for Congress

By: _____

Date: Feb 1 2011

New Partners Consulting, Inc.

By: _____

Date: 2/9/2011

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Attachment A

SCOPE OF WORK

News Analysis: We will perform a thorough analysis of all available news articles about Inslee. We will pay particular attention to his congressional career as well as attacks used against him during past campaigns and attacks the NRCC launched against Democrats in competitive races. After performing preliminary research, we have determined that Lexis Nexis and NewsBank together maintain thousands of news clips regarding Inslee.

Professional History: We will perform an analysis of Inslee's tenure as an attorney. We will also examine his time as regional director for the Department of Health and Human Services. Through news clips, we will analyze Inslee's specific responsibilities were reported as well as determine any controversial or substantive activities by the Department of Health and Human Services during his tenure.

Congressional Record: In addition to the components above, we will research and summarize key pieces of Inslee's congressional record. Our congressional research will include sections such as: a House vote analysis, issue positions, floor statements, press release, congressional travel and key committee votes.

Campaign Finance: We will review Inslee's campaign finance filings and provide an analysis of top donors and identify vulnerabilities that can be derived from his campaign reports. We will also examine Inslee's personal campaign finance history at the state and federal levels.

Personal Financial Disclosure: We will analyze all available personal financial disclosure statements to identify vulnerabilities derived from his stock holdings or investments.

Personal & Legal Records: We will collect electronically available personal public records on Inslee. Those records that aren't available electronically, we will work with the local office to request them. This will include his voter participation history, court records, property tax payment history, property transfer history, criminal record, degree verification and tax liens.

Candidate Interview: As discussed, we will work with you, Inslee and Trudi to have background conversations to assist our research process. The questions, over email and in person, will help us create a collaborative approach with input from the candidate and those close to him. Our questions will be tailored to help identify Inslee's accomplishments and vulnerabilities.

On the Ground Collection Trip: We will conduct due diligence research on public records pertaining to Inslee. We will write a thorough collection plan and scope out our collection work, including all potential open records requests. Our collection plan would be subject to your approval and review.

{new} partners

MEMORANDUM

To: Joby Shimomura
From: Benjamin Jones
Date: January 31, 2011
Re: Inslee Self-Research

Based on our recent conversations, our firm is prepared to deliver a top-notch political assessment of Rep. Inslee's career as you continue to weigh your options for 2011 and 2012. Our self-research report on Inslee will be designed to meet two goals: to prepare for potential vulnerabilities and to provide positive message frames based on his record.

What follows are our recommendations for the project including the scope of work, price and timing of deliverables. Thank you for the opportunity to work with you and present this plan.

SCOPE OF WORK

News Analysis: We will perform a thorough analysis of all available news articles about Inslee. We will pay particular attention to his congressional career as well as attacks used against him during past campaigns and attacks the NRCC launched against Democrats in competitive races. After performing preliminary research, we have determined that Lexis Nexis and NewsBank together maintain thousands of news clips regarding Inslee.

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On the Ground Collection Trip: We will conduct due diligence research on public records pertaining to Inslee. We will write a thorough collection plan and scope out our collection work, including all potential open records requests. Our collection plan would be subject to your approval and review.

DELIVERABLES

Our research report will be organized into user-friendly documents, categorized by themes, bullet points, and summaries for the campaign team to easily use. Our report will serve as a foundation of factual information to help you plan your message campaign, defend their record, and prepare for any message contrasts.

TIMELINE

Preparing a solid self research report is just the beginning of the research process. While the "book" is a very important first step, we believe it is more important to update the materials as needed and create short memos to support your campaign activities such as fundraising, endorsements, fact checking, earned communications, responding to reporters and dealing with day to day campaign requests.

We will deliver our report 12-14 weeks after executing an agreement. As discussed during our recent meeting, it is our philosophy to be part of your larger message and strategic team over the duration of this race. To that end, we will service our Inslee research report in the following ways:

- Participate on conference calls
- Answer follow up questions regarding report on Inslee
- Fact check paid communications and survey research instruments
- Develop positive and negative message frames for the larger message team to work with
- Develop short accomplishment memos to be use for web content, press releases etc...

FEE

To execute the scope of work outlined above, we propose a flat fee of **$32,000** split into three payments of $10,666.66. If you require an opposition research report or substantially more day to day research support than described above, we will negotiate a separate fee.

EXPENSES

{new} partners

Our firm works to keep expenses low for each client, while still giving our clients access to the premier research tools used today. During the course of each project, we incur expenses for subscription based databases to obtain public records. A sample of our subscriptions include: Lexis Nexis, Westlaw, NewsBank, CQ.com and CQ Moneyline. For each client, we will charge a flat 7% subscription fee based on the overall contract. For this project, the subscription fee is **$2,240**. Any other costs for record collection including travel, photocopying, or local record retrieval will be billed back at cost.

NEXT STEPS

Moving forward, here are the next steps:

- Execute a contract: we will take the lead on drafting one for your review
- Schedule Inslee interview for late February or early March (Trudi as well?)
- Develop a detailed project plan for your review
- Conduct a preliminary conference call with the team to discuss the self research project
- Conduct a collection trip – most likely in March
- Conduct conversations with staffers close to Inslee

Your feedback is welcome and appreciated. We look forward to continuing our work together.

HeraldNet
Everett, Washington

Inslee lets donors know he's eyeing the race for governor

Jerry Cornfield

It's no secret U.S. Rep. Jay Inslee, D-Wa., is mapping out a run for governor in 2012.

And he's making sure donors know too – at least those invited to his scheduled fund raiser in Mukilteo Sunday.

"We know it's early in the cycle, but the Congressman is trying to put some funds in the bank early for his Congressional race and also if there is an opening to run for Governor," read the invitation for the March 20 event sent by Alexa Seidl of Newman Partners in Seattle.

I did a quick check with the state Public Disclosure Commission to see if such wording amounted to an announcement requiring Inslee to begin filing as a candidate.

The answer was no. It's darn close.

Meanwhile, in case you missed it, last week Larry Sabato deemed Washington's 2012 governor's race **a toss-up**. He picks Inslee as the sole Democrat candidate and McKenna, Congressman Dave Reichert and Port of Seattle Commission President Bill Bryant as three possible GOP contenders.

Sabato assumes Gov. Chris Gregoire will retire rather than seek a third term though she insists she's not decided on her plans for 2012.

> MORE HEADLINES

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