



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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IN RE COMPLIANCE)	PDC CASE NO: 13-011
WITH RCW 42.17/42.17A)	
)	
JAY INSLEE)	
INSLEE FOR WASHINGTON)	REPORT OF INVESTIGATION
)	
(INSLEE FOR GOVERNOR))	
)	
Respondent.)	

I.
BACKGROUND

- 1.1 Jay Inslee filed a Candidate Registration (form C-1) with the Washington State Public Disclosure Commission (PDC), registering his 2012 campaign for governor, on June 24, 2011. The name of his candidate committee is Inslee for Washington (hereafter referred to as Inslee for Governor). He publicly announced his candidacy on June 27, 2011.
- 1.2 Mr. Inslee previously served as an elected United States Congressman from Washington State. Mr. Inslee was first elected in 1998 and was most recently re-elected in 2010. He resigned from his congressional position on March 20, 2012.
- 1.3 Prior to declaring his candidacy for governor, representatives of Mr. Inslee contacted the PDC for advice regarding the procedures that would apply if Mr. Inslee sought to transfer federal candidate funds to a state candidate campaign. Relevant to this matter, in the spring of 2011, Mr. Inslee maintained two congressional campaign accounts: a 2010 Inslee for Congress account (comprised of six separate bank and investment accounts) and a 2012 Inslee for Congress account.
- 1.4 Randy Pepple, campaign manager for Friends of Rob McKenna (McKenna for Governor), filed a 45-day Citizen Action Letter (Citizen Action Complaint, or complaint) with the King County Prosecutor Attorney on August 24, 2012 and with the Washington State Attorney General's Office on August 27, 2012.

II.
ALLEGATIONS IN COMPLAINT

- 2.1 The Citizen Action Complaint makes four allegations concerning activity by Jay Inslee's gubernatorial campaign, Inslee for Governor. **(See Exhibit 1)**

- 2.1.1 **Ineligible and/or Overlimit Contributions.** The complaint alleged that contributions received in 2009 by Inslee for Congress were not eligible for transfer to Inslee for Governor because the 2009 funds were already spent based on applicable accounting procedures. The complaint cited eight examples of contributors who made contributions to Inslee for Congress in November and December 2009, and earlier, whose contributions were transferred to Inslee for Governor.
- 2.1.2 **Unauthorized Transfers and/or Failure to Timely Report Transfers.** The complaint alleged that Inslee for Governor may have failed to timely report transferred contributions from Inslee for Congress, where authorizations had been received in July 2011. The complaint further alleged that Inslee for Governor may have transferred funds from the congressional campaign account(s) without first receiving permission from the contributors in July 2011.
- 2.1.3 **Failure to Timely File Declaration of Candidacy & Financial Disclosures in January, 2011.** The complaint alleged that Jay Inslee became a candidate for governor in January 2011 when Inslee for Congress spent \$25,570 on research consulting with the Feldman Group. It alleged that Mr. Inslee therefore failed to timely file a form C-1 and a Personal Financial Affairs Statement (form F-1). The complainant stated that the Feldman Group is a Washington D.C. based polling firm currently used by the Inslee for Governor campaign.
- 2.1.4 **Failure to Timely File in April, 2011.** The complaint alleges, in the alternative, that Mr. Inslee became a candidate for governor in April 2011 when Inslee for Congress spent \$34,609 with New Partners Consulting on April 7, 2011. The complainant stated that New Partners is a well-known opposition research firm that has been making numerous public records requests of the Attorney General's office since 2009.¹

III. FINDINGS

Prior Staff Advice

- 3.1 On April 21, 2011, PDC staff answered a question posed by Steve Finley concerning the proper procedure for transferring federal candidate funds to a state candidate's campaign. **(See Exhibit 2)** Mr. Finley's questions were about Jay Inslee and the rules that would apply to him if he chose to run for Governor. The email communication from PDC staff to Mr. Finley outlined staff's understanding of the proper procedures for transferring contributions initially received for a federal campaign to a Washington State statewide office campaign. The advice provided was the same advice PDC staff gives

¹ The complainant later supplemented his complaint with a copy of a March, 21, 2011 blog post and news article which quotes a March 20, 2011 campaign fundraiser invitation as follows: "We know its 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." The article also indicates that PDC staff had previously determined that this did not trigger a candidate registration and reporting requirement by Mr. Inslee. **(See Exhibit 10)**

to candidates for state or local office who want to transfer surplus funds from a campaign that has ended to a campaign for a different state or local office, or who want to transfer contributions from an active campaign to a campaign for a different office.

- 3.2 The advice given to Mr. Finley was that when the funds to be transferred are *surplus funds from a campaign that has ended*, the campaign must properly identify the contributors making up the surplus; then, for those contributors who provide written authorization to transfer their contributions to a new campaign, a lump sum transfer may be made to the new campaign without identifying individual contributors and without attributing the transfer to any contribution limit that might otherwise apply to the contributors.
- 3.3 The advice given to Mr. Finley regarding *the cash-on-hand balance in an active campaign* was that the campaign must:
- Properly identify the contributors whose contributions make up this balance;
 - Obtain written authorization from those contributors to transfer their contributions to a new campaign;
 - Identify each contributor on a Cash Receipts Monetary Contributions report (form C-3); and
 - Apply each contribution that is transferred toward any contribution limit that might otherwise apply to the contributors.
- 3.4 In July 2011, representatives for Jay Inslee spoke with PDC staff and were given the same advice that had been given to Mr. Finley in April 2011. However, on August 2, 2011, then Interim Executive Director Doug Ellis clarified PDC staff advice on the proper procedures for the transfer of funds from Congressman Inslee's 2010 and 2012 campaigns to a 2012 campaign for governor. On August 2, 2011, Mr. Ellis sent an email to Phil Lloyd, treasurer for Inslee for Governor. **(See Exhibit 3)**
- 3.5 In sum, the procedures Mr. Ellis described were as follows:
For a candidate who has received contributions for one office and then decides to run for a different office, the candidate must obtain written authorization from the contributors making up the cash-on-hand balance before transferring those contributions to a new campaign. The process for the transfer of those funds is as follows:
- Identify the most recent contributions to the former campaign that make up the remaining cash-on-hand balance using a method similar to the first-in first-out (FIFO)² inventory method. For example, if the original campaign has a cash-on-hand

² Mr. Inslee's campaign refers to the transfer method as LIFO (last in, first out). Using LIFO to describe the transfer method means that the last contributions received by the original campaign are the first contributions transferred to the new campaign. This has the same meaning as PDC staff's use of the term FIFO (first in, first out) to describe the transfer method. FIFO, as used by PDC staff, means that the first contributions received by the original campaign are the first contributions spent by that campaign, and the contributions that remain for potential transfer to the new campaign are the last contributions received. Whether describing the transfer method as FIFO or LIFO, the process is the same for determining which contributions have already been "spent" and which contributions "remain" for potential transfer. The candidate starts with the cash-on-hand balance

balance of \$5,000, the candidate determines which contributions make up that balance starting with the most recent contribution received and working backward until contributions totaling \$5,000 are identified.

- Contact the contributors who comprise the last, most recent, \$5,000 and ask for written authorization to transfer their contribution.
- Transfer only the funds from the contributors who granted written authorization to transfer to the new campaign.
- Report the transfers by itemizing each contributor on form C-3. The transferred funds are subject to contribution limits for the new campaign.
- For example, if the last \$5,000 was received from five different contributors, but only three of those contributors granted transfer authorization, the funds received from the remaining two contributors would not be eligible for transfer to the new campaign. This means when a campaign is unable to obtain written authorization from the original universe of contributors making up the cash-on-hand balance, the candidate may not continue seeking written authorization from other, earlier contributors.

3.6 Funds potentially eligible for transfer to the Inslee for Governor campaign resided in two federal campaigns, 2010 Inslee for Congress and 2012 Inslee for Congress. 2010 Inslee for Congress had a cash-on-hand balance and was an inactive campaign since the election was over. 2012 Inslee for Congress was an active campaign. Mr. Ellis gave the same advice for transferring contributions from both the 2010 Inslee for Congress campaign and the 2012 Inslee for Congress campaign to the Inslee for Governor campaign.

Inslee for Governor's Contribution Authorization Transfer Method

- 3.7 The Inslee for Governor committee submitted a written response to the Citizen Action Complaint on September 17, 2012, explaining the procedures used to obtain authorizations and transfer contributions from the Inslee for Congress to Inslee for Governor campaigns. **(See Exhibit 4)**
- 3.8 In June 2011, Inslee for Governor began seeking authorizations from the contributors to Mr. Inslee's 2010 and 2012 congressional campaigns to transfer campaign funds to his campaign for governor.
- 3.9 On August 2, 2011, in an email to PDC staff, Mr. Lloyd summarized the method Mr. Inslee used to seek authorization to transfer contributions from the 2010 Inslee for Congress campaign and the 2012 Inslee for Congress campaign to the Inslee for Governor campaign. **(See Exhibit 3)**

from the original campaign, identifies the most recent contribution received, and continues identifying contributions received, in reverse order, until the amount of the cash-on-hand balance has been identified.

3.10 Mr. Lloyd stated *“On the day the Congressman became a candidate for Governor, his Federal cash on hand was \$1.24 million, 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 comingled with the 2012 campaign donations.”*

3.11 For the 2010 cycle congressional campaign funds, Mr. Lloyd stated: *“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.”*

3.12 For the 2012 cycle congressional campaign funds, Mr. Lloyd stated that the campaign used June 15, 2011 as the starting date to solicit transfer authorizations. The Committee identified the contributors who gave the last \$214,000 to 2012 Inslee for Congress.

3.13 On October 3, 2012, Inslee for Governor provided a supplemental response to the Citizen Action Complaint. **(See Exhibit 5)** As part of that response, Inslee for Governor submitted spreadsheets listing the total of contributions solicited for transfer authorization from both 2010 and 2012 Inslee for Congress campaigns. The spreadsheets included the following data:

- contributor’s name;
- date and amount of the original contribution to the congressional campaign;
- date permission to transfer funds to the gubernatorial campaign was granted;
- date and amount of transfer; and
- dates the contributions were reported to the Federal Election Commission (FEC) and the PDC.

The spreadsheets also included individuals who made contributions to the congressional campaigns but whose funds were not transferred to Inslee for Governor because authorization was not granted, either due to denial or because no response was received.

3.14 The following table summarizes the scope of Inslee for Congress funds available and transferred to Inslee for Governor:

	2010 Inslee for Congress	2012 Inslee for Congress	Total
Inslee for Congress funds on hand as of June 2011	\$1,029,000	\$214,000	\$1,243,000
Time period within which remaining funds were originally received by Inslee for Congress	Nov. 12, 2009 through Nov. 2, 2010	April 7, 2011 through June 14, 2011	
Total transferred from Inslee for Congress to Inslee for Governor	\$518,060	\$108,270	\$626,330

- 3.15 Inslee for Governor stated that 3,285 monetary transfers were made from Inslee for Congress to Inslee for Governor. The total number of transfers is slightly higher than the total number of contributors since some gave to Inslee for Congress in both the 2010 and 2012 cycles.
- 3.16 Inslee for Governor stated that, in total, 24 contributors to the Inslee for Congress campaigns declined authorization (\$11,685 in contributions). In addition, several congressional contributors did not respond to the campaign's requests for contribution transfer authorization.
- 3.17 Regarding the eight contributors the Citizen Action Complaint identified as ineligible for transfer due to the funds having been previously spent, all eight contributions were made between November 12, 2009 and November 2, 2010, the timeframe comprising the 2012 Inslee for Congress cash-on-hand balance as of June, 2011.
- 3.18 One of the eight contributors the complaint contended was ineligible for transfer was a \$200 contribution from Michael Tanksley made in 2004. Inslee for Governor stated that this was not the contribution transferred as it was clearly outside the transfer timeframe. Inslee for Governor stated that Mr. Tanksley made additional contributions to Inslee for Congress on January 12, 2010 and September 25, 2010, and that it was these contributions that were transferred to Inslee for Governor.³
- 3.19 Staff's investigation found no evidence that any contributions made to Inslee for Congress before November 12, 2009, were transferred to Inslee for Governor.

Permissions & Timely Reporting For July 2011 Transfers

- 3.20 In its response to the Citizen Action Complaint, Inslee for Governor stated that prior to transferring any funds, the Inslee for Governor committee obtained written authorization from each contributor.
- 3.21 Inslee for Governor reported to the PDC the first set of transfer authorizations as a lump sum transfer made on June 30, 2011. The lump sum transfer was consistent with advice PDC staff provided in April, 2011.
- 3.22 In July 2011, PDC staff contacted the Inslee for Governor campaign and instructed the committee to itemize each contributor whose contribution was transferred from the congressional account, rather than reporting the transfer as a lump-sum.
- 3.23 As a result of the amended instruction from PDC staff, the Inslee for Governor delayed transferring additional authorized congressional contributions until the amended reporting procedures could be implemented, including itemizing each contributor's name

³ Per FEC reporting requirements, contributions less than \$200 are not required to be itemized on contribution reports. Mr. Tanksley's total contribution of \$200 was given on two dates (\$100 on January 12, 2010 and \$100 on September 25, 2010). Accordingly, since each contribution was less than \$200, neither was itemized on an FEC report.

and the amount authorized for transfer. Transfer authorizations received in July and August 2011 were then reported as being deposited into the Inslee for Governor campaign account on August 31, 2011. C-3 reports itemizing each transferred contribution by name and amount were timely filed on September 10, 2011.

- 3.24 Inslee for Governor submitted copies of contribution transfer authorizations from 889 contributors for authorizations received in July and August 2011.⁴

January 2011 Expenditures re: Feldman Group

- 3.25 Inslee for Congress paid The Feldman Group to conduct a 20 minute poll, with a sample size of 600, during January 18 through 20, 2011. The cost of the polling work was \$25,570. **(See Exhibit 6)**

- 3.26 In its response to the Citizen Action Complaint, Inslee for Governor stated, *“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 decision-making process.”* Inslee for Governor further stated, *“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.”*

- 3.27 Inslee for Governor stated that Inslee for Congress and The Feldman Group did not enter into a formal contract for the polling work. In an email exchange on January 16, 2011, between Inslee’s then-political director, Joby Shimomura, and Diane Feldman, Ms. Shimomura stated, *“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 a vehicle to influence people or to promote Jay. I just wanted to make sure we understand the purpose of any potential research.”* **(See Exhibit 7)**

April 2011 Expenditures re: New Partners Consulting

- 3.28 In its response to the Citizen Action Complaint, Inslee for Governor stated *“Inslee for Congress commissioned research on Mr. Inslee himself to identify his own potential vulnerabilities in a 2012 campaign for either office...and was not made with the intent to ‘promote’ an Inslee candidacy for governor.”*

- 3.29 On February 1, 2011, Inslee for Congress entered into a Consulting Agreement with New Partners Consulting, Inc. to conduct research regarding Mr. Inslee. The

⁴In its response to the Citizen Action Complaint, Inslee for Governor acknowledged it had misplaced four transfer authorization forms it received during July 2011, relating to a total of \$250 in contributions, and had subsequently obtained declarations from three of those four contributors indicating they had previously authorized the transfer in July or August 2011 (or, in one case, that the contributor believes he did so and does not object to the transfer).

Agreement stated that the total fee for services would be \$32,000, payable by April, 2011. **(See Exhibit 8)**

- 3.30 The scope of work in the Consulting Agreement described the services to be performed by New Partners. The scope of work described various avenues of research and analysis the firm would undertake concerning Mr. Inslee's personal and professional affairs, including: news analysis, professional history, congressional record, campaign finance, personal financial disclosure, personal and legal records, candidate interviews, and public records research.
- 3.31 Prior to executing the contract, New Partners submitted a memo to Inslee for Congress describing the potential scope of work and other services the firm could provide, if desired. The memo described the project as "Inslee Self-Research." The beginning of the memo stated, *"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."* **(See Exhibit 9)** The memo also proposed to "service the report" by *"developing positive and negative message frames for the larger message team to work with" and by "developing short accomplishment memos to use for web content, press releases, etc."*
- 3.32 Inslee for Governor stated that the only deliverable provided by New Partners to the congressional campaign under its contract was the "self-research" described in the contract's scope of work, and that this deliverable was provided to the congressional campaign before Representative Inslee became a candidate for governor.
- 3.33 Inslee for Governor stated that any additional work New Partners has done related to the *gubernatorial* campaign has been under a separate contract with the Washington State Democratic Party, which in some instances has then made a related in-kind contribution to Representative Inslee's gubernatorial campaign.
- 3.34 Inslee for Governor described both of these expenditures, for The Feldman Group and New Partners Consulting, 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 to promote a candidacy for governor."*
- 3.35 On September 22, 2012, the complainant supplemented the complaint with a copy of a March, 21, 2011, blog post and news article which quotes a March 20, 2011 campaign fundraiser invitation as follows: "We know its 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." The article also indicates that PDC staff had previously determined that this did not trigger a candidate registration and reporting requirement by Mr. Inslee. **(See Exhibit 10)**

IV. SCOPE

- 4.1 Staff reviewed the complaint and supporting information provided with it, including the supplemental information provided by Mr. Pepple on September 22, 2012.
- 4.2 Staff communicated with Ben Stafford and Kevin Hamilton, legal counsel for Inslee for Governor.
- 4.3 Staff reviewed contribution transfer authorizations submitted by Inslee for Governor.
- 4.4 Staff reviewed C-3 reports submitted by Mr. Inslee's campaign for deposits made in June, July, and August 2011.
- 4.5 Staff reviewed spreadsheets containing contribution transfer data.
- 4.6 Staff reviewed email correspondence between Phil Lloyd and PDC staff regarding transfer methodology.
- 4.7 Staff reviewed documents pertaining to expenditures made by Inslee for Congress to Feldman Group and New Partners Consulting.

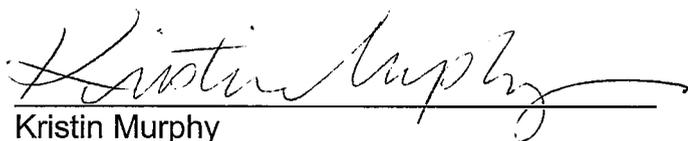
V. LAW

- 5.1 **RCW 42.17.020(7)⁵** (now RCW 42.17A.005) provides: "Candidate" means any individual who seeks nomination for election or election to public office. 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."
- 5.2 **RCW 42.17.040** (now RCW 42.17A.205) requires a candidate to file a Candidate Registration (PDC form C-1) within two weeks of becoming a candidate.
- 5.3 **RCW 42.17.640** (now RCW 42.17A.405) limits contributions to candidates for seeking statewide executive office. For individuals, political committees, unions, corporations, and entities other than bona fide political parties, the limit is \$1,800 per election.
- 5.4 **RCW 42.17.790 (1)** (now RCW 42.17A.490) prohibits the use of contributions for a different office except as provided in subsection 2. **Subsection 2** states: 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

⁵ The Citizen Action Complaint alleges violations of several provisions of chapter 42.17A RCW, which were not in effect until January 1, 2012. This report therefore cites to the relevant provisions of chapter 42.17 RCW, which were in effect during 2011 at the time of the alleged violations.

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 (now RCW 42.17A.430).

Respectfully submitted this 11th day of October, 2012.

A handwritten signature in cursive script that reads "Kristin Murphy". The signature is written in black ink and is positioned above a horizontal line.

Kristin Murphy
Political Finance Specialist

EXHIBIT LIST

- EXHIBIT 1 45-day Citizen Action complaint letter filed by Randy Pepple on August 27, 2012.
- EXHIBIT 2 April 21, 2011 email communications between PDC staff and Steve Finley concerning obtaining permissions and transferring funds from a congressional campaign to a statewide office campaign.
- EXHIBIT 3 August 2, 2011 email communications between PDC staff and Phil Lloyd concerning the method of obtaining permissions and transferring funds from Inslee for Congress to Inslee for Governor. Emails also discuss the amended instructions from PDC staff to itemize transfers rather than report a lump-sum transfer.
- EXHIBIT 4 September 17, 2012 response letter from Inslee for Governor, submitted by Kevin Hamilton, legal counsel for Inslee campaign.
- EXHIBIT 5 October 3, 2012 response letter from Inslee for Governor, submitted by Kevin Hamilton and Ben Stafford, legal counsel for Inslee campaign. The letter provides additional information about contribution transfers made from Inslee for Congress to Inslee for Governor.
- EXHIBIT 6 Invoice to Inslee for Congress from The Feldman Group, Inc., dated January 18, 2011, billing for survey work performed.
- EXHIBIT 7 January 16, 2011 email communication between Inslee for Congress staff and Feldman Group staff, discussing polling project.
- EXHIBIT 8 Consulting Agreement between New Partners Consulting and Inslee for Congress, signed in February 2011, defining the scope of work for research about Jay Inslee to be conducted by the consulting firm.
- EXHIBIT 9 January 31, 2011 memo from New Partners to Inslee for Congress staff regarding "Inslee Self-Research" proposed scope of work and fee. The memo also describes other potential services New Partners could provide.
- EXHIBIT 10 March 21, 2011 Everett Herald blog post by Jerry Cornfield.