



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Whatcom First

Respondent.

PDC Case No. 14-005

Report of Investigation

I.

Background

- 1.1 On August 13, 2013, Saving Whatcom County dba Save Whatcom (Save Whatcom) filed a Committee Registration (C-1pc report) as a first-time political committee participating in the 2013 elections. Save Whatcom registered with the Public Disclosure Commission (PDC) as an "Other Political Committee" and selected the Full Reporting option. The C-1pc indicated that Save Whatcom registered as a continuing political committee.
- 1.2 On September 16, 2013, Whatcom First filed a C-1pc report as a first-time political committee participating in the 2013 elections. Whatcom First also registered with the PDC as an "Other Political Committee" and selected the Full Reporting option. The C-1pc disclosed Whatcom First registered as a continuing political committee, and that Whatcom First was affiliated with Save Whatcom.
- 1.3 Whatcom First and Save Whatcom both have: (1) The same post office box; (2) Committee bank accounts at the same bank; (3) The same contact information for the records inspection period; and (4) The same treasurer, Orphalee Smith. Ms. Smith is a CPA. She indicated on the C-1pc that she performs only ministerial functions for Save Whatcom, and functions in addition to ministerial functions for Whatcom First.
- 1.4 On October 21, 2013, the Attorney General's Office (AGO) received a 45-day citizen action letter (complaint) in accordance with RCW 42.17A.765(4) from Mike Estes against Save Whatcom and Whatcom First. The complaint alleged that both committees were violating PDC laws by failing to report committee contribution and expenditure activities.

Allegations

- 2.1 The complaint alleged that Save Whatcom and Whatcom First violated RCW 42.17A.235 and .240 by failing to timely file Cash Receipts Monetary Contributions reports (C-3 reports) and Campaign Summary Receipts & Expenditures reports (C-4 reports) disclosing contribution and expenditure activities undertaken by the two committees, and that Save Whatcom failed to file its reports electronically. **(Exhibit #1)**
- 2.2 This report addresses the allegations against Respondent Whatcom First. The allegations concerning Respondent Save Whatcom were investigated under PDC Case No 14-004.

III. Findings

- 3.1 Political committees under the Full Reporting option that registered with the PDC after the 2013 primary election, and participated only in the 2013 general election, were required to file C-3 reports weekly once a C-1pc was filed. For Whatcom First, the weekly C-3 reporting requirement began on September 16, 2013. Whatcom First was also required to file the following C-4 reports:
 - A 21-day pre-general election C-4 report due on October 15, 2013, covering the period September 16 through October 14, 2013;
 - A 7-day pre-general election C-4 report due on October 29, 2013, covering the period October 15 through 28, 2013; and
 - A post-general election C-4 report by December 10, 2013, covering the period October 29 through November 30, 2013.
- 3.2 On November 4, 2013, Chet Dow, Secretary for Whatcom First, submitted a two-page response letter on behalf of Whatcom First and Save Whatcom. **(Exhibit #2)**
- 3.3 On November 18, 2013, Mr. Dow submitted an email in response to staff's November 14, 2013 request for additional information concerning Save Whatcom and Whatcom First. **(Exhibit #3)** Mr. Dow stated in the email:
 - Save Whatcom "*grew out of an informal, ad-hoc group of like-minded individuals.*"
 - On August 5, 2013, the officers and principal decision makers of Save Whatcom first met and discussed their "*...mutual interests in forming an ongoing, locally-focused, independent political committee.*"
 - On August 8, 2013, the group met and decided to form a political committee named Save Whatcom.
 - On Friday, August 9, 2013, the three individuals serving as officers of Save Whatcom executed a resolution documenting these actions and enabling the committee Treasurer to take necessary steps to make Save Whatcom operational.

- There were no Articles of Incorporation.
 - On August 13, 2013, Save Whatcom registered with the PDC after a single bank account was established for Save Whatcom. There continues to be only one bank account.
 - The C-1pc indicated that Save Whatcom was designated as a “*continuing political committee*,” and that Save Whatcom would continue to pursue its mission for an indefinite time-period beyond the 2013 election cycle.
 - Local lobbying and fundraising to support such efforts are among possible future activities for Save Whatcom, but details of any future plans for ongoing programs are still being developed.
- 3.4 Mr. Dow stated that Save Whatcom was created to encourage jobs and business growth in Whatcom County. He said future ongoing programs are still being developed. He said Save Whatcom committee members:
- “...made the decision that it needed to support 2013 candidates for local government office that shared the same principles....It was suggested that we set up a related PAC to handle just the election activity expenses and thereby simplifying reporting and distinguishing the separate mission...”*
- 3.5 Concerning Whatcom First, Mr. Dow said there are no paid staff or committee members and no committee headquarters. He stated the post office box was paid for by the treasurer, Orphalee Smith, and is shared by Whatcom First and Save Whatcom. He said all Whatcom First committee officers and members are volunteers who use their own computers, phones, vehicles, etc. when conducting committee activities. He went on to state:
- “...After review of our records, we realize we missed some orders and expenditures that should have been reported on the C-4. These errors are largely due to our not recognizing that we had to report order dates and not just paid dates on our C-4’s...”*
- 3.6 Mr. Dow stated that after consulting with PDC staff, Save Whatcom registered Whatcom First with the PDC “*...to pay for communication expenses associated with Save Whatcom’s local campaign messaging*.” He stated that since they set up Save Whatcom as a continuing political committee, they decided to set up Whatcom First similarly “*...with the intention to continue activity as long as circumstances warranted.*”
- 3.7 Mr. Dow said that was why Whatcom First did not check the box on the C-1pc indicating they were a single election political committee. If Whatcom First had registered as a single election committee, they would have been required to attach a list of candidates they intended to support or oppose. Mr. Dow stated that Whatcom First adopted an authorizing resolution on September 6, 2013.

- 3.8 Staff found that Whatcom First's only activities were to undertake independent expenditures during the 2013 general election. During the period October 14 through November 10, 2013, Whatcom First received two contributions totaling \$159,000 from Save Whatcom (\$154,000 on October 14, 2013 and \$5,000 on October 28, 2013) and filed 21 Independent Expenditures and Electioneering Communications reports (C-6 reports) and 108 amended C-6 reports disclosing \$151,305 in independent expenditure activities. **(Exhibit #4)**
- 3.9 Whatcom First checked Box No. 2 on its C-6 reports filed for "Independent Expenditure Ads (Appearing within 21-days of an election) - \$1,000 or more." The C-6 reports disclosed Whatcom First made numerous independent expenditures, of which 99 percent supported or opposed eight candidates for four Whatcom County Council races as detailed below. Whatcom First also made several small independent expenditures totaling \$1,563 that supported or opposed four candidates seeking two offices for the Port of Bellingham.

Whatcom County Council, District No. 1: \$35,645 in total independent expenditures

- Kathleen Kershner, Whatcom County Council: Whatcom First spent a total of \$22,303 for independent expenditures in support of Ms. Kershner.
- Barry Buchanan, Whatcom County Council: Whatcom First spent a total of \$13,342 for independent expenditures in opposition to Mr. Buchanan.

Whatcom County Council, District No. 2: \$35,681 in total independent expenditures

- Ben Elenbaas, Whatcom County Council: Whatcom First spent a total \$22,281 for independent expenditures in support of Mr. Elenbaas.
- Ken Mann, Whatcom County Council: Whatcom First spent a total of \$13,400 for independent expenditures in opposition to Mr. Mann.

Whatcom County Council, District No. 3: \$35,602 in total independent expenditures

- Michelle Luke, Whatcom County Council: Whatcom First spent a total of \$22,272 for independent expenditures in support of Ms. Luke.
- Carl Weimar, Whatcom County Council: Whatcom First spent a total of \$13,330 for independent expenditures in opposition to Mr. Weimar.

Whatcom County Council, At-Large District: \$35,742 in total independent expenditures

- William Knutzen, Whatcom County Council: Whatcom First spent a total of \$22,292 for independent expenditures in support of Mr. Knutzen.
- Rutherford Brown, Whatcom County Council: Whatcom First spent a total of \$13,450 for independent expenditures in opposition to Mr. Brown.

Findings regarding the allegation that Whatcom First failed to timely disclose committee expenditure information on the 21-day pre-general election C-4 report

- 3.10 On October 17, 2013, Whatcom First filed its initial C-4 report covering the period September 1 through October 15, 2013, disclosing \$154,190 in monetary contributions received. **(Exhibit #5)** This report, which served as the 21-day pre-general election C-4 report, was filed two days late and did not disclose any committee expenditures, in-kind contributions, or outstanding orders-placed, debts or obligations.
- 3.11 On November 3, 2013, Whatcom First filed an amended 21-day pre-general election C-4 report that included the \$154,190 in monetary contributions, as previously reported, but added \$5,442 in new, previously unreported expenditures, and \$11,839 in previously unreported orders placed. These additional expenditures and orders placed totaled \$17,281 and were reported 19 days late. **(Exhibit #6)** The 21-day pre-general election C-4 reporting period was September 1 through October 14, and by extending the reporting period by one day (to include October 15), Whatcom First reported three orders placed totaling \$5,442 as monetary expenditures on its November 3rd amended C-4 report. The late-reported expenditures totaling \$5,442 included:
- A \$4,290 expenditure to Speedy Automated Mailers for mailing services on October 15, 2013;
 - A \$567 reimbursement expenditure made to Kris Halterman for newspaper advertising on October 15, 2013; and
 - A \$585 expenditure made to the Lynden Tribune for newspaper advertising on October 15, 2013.
- 3.12 The amended 21-day Pre-general election C-4 report disclosed \$11,839 in previously unreported orders placed. These orders placed were confirmed by reviewing Whatcom First invoices provided by the Respondent. **(Exhibit #7)** The orders placed included the following:
- **September 25, 2013:** Order date listed on an invoice from Print and Copy, a Bellingham printer, for a \$9,778 order placed to print 100,000 campaign brochures. The bottom of the invoice contained the following statement: "16 boxes picked up by.... (19,600 postcards) to be inserted into the Lynden Tribune 10/4/13."
 - **September 24, 2013:** Order date listed on an invoice from Print and Copy for a \$1,658 order placed to print 30, four feet by eight feet campaign signs.
 - **September 12, 2013:** Order date listed on an invoice from Print and Copy for a \$403 order placed to print 2,000 committee remittance envelopes.
- 3.13 The combined total of \$17,281 in late-reported expenditures and orders placed were filed 19 days late, and disclosed to the public two days before the general election. The

expenditures represented 12.3 percent of Whatcom First's total campaign expenditures through October 29, 2013.

- 3.14 Orphalee Smith, treasurer for Whatcom First, stated that she believed her paper-filed 21-day pre-general election C-4 report, due October 15th, was timely filed. That paper-filed C-4 report was received two days late on October 17th and did not contain \$17,281 in monetary expenditures and orders placed.
- 3.15 An invoice from Print and Copy showed that on September 12, 2013, Whatcom First placed an order for \$403 to print 2,000 committee remittance envelopes. Therefore, Whatcom First was required to file a C-4 report with its C-1pc, covering the period September 12 through 16, 2013.
- 3.16 On October 29, 2013, Whatcom First timely filed its 7-day pre-general election C-4 report. The report did not include any orders placed, debts or obligations on Schedule B. On November 10, 2013, Whatcom First amended its 7-day pre-general election C-4 report to include \$9,380 in orders placed, debts and obligations. The expenditures were for flyer inserts, printing of mail pieces, and postage. The orders placed, debts and obligations were filed 12 days late and seven days after the general election. **(Exhibit #8)**

Findings regarding the allegation that Whatcom First failed to timely file C-3 reports

- 3.17 Whatcom First filed eight C-3 reports during the 2013 election, which included six original reports and two amendments. The first two C-3 reports were paper-filed. Once the committee began filing its reports electronically on October 17, 2013, it amended its two paper-filed C-3 reports and filed its remaining four C-3 reports electronically. Five of the six original C-3 reports were timely filed, including two reports totaling \$159,000, disclosing the contributions received from Save Whatcom (\$154,000 on October 14, 2013 and \$5,000 on October 28, 2013). One C-3 report was filed late. It was paper-filed seven days late on September 30, 2013. It included \$190 in contributions, made up of two \$50 contributions from individuals and nine small contributions of \$25 or less, totaling \$90. Ms. Smith stated that the bank deposit for the late-filed C-3 report was made by another member of Whatcom First, and she was not aware of the deposit until after it had already been made. **(Exhibit #9)**
- 3.18 Ms. Smith also stated that *"The errors made were not meant in any way to mislead the public. These errors and omissions were the result of me not being as well informed as to the new rules since I had last served as a Treasurer. In no way was it my or the committee's intention to mislead anybody about the sources of our financial support. The two committees were formed in mid-August and activity began immediately; consequently there was not time to establish procedures."*
- 3.19 On October 29, 2013, Whatcom First timely filed its 7-day pre-general election C-4 report covering the period October 16 through 29, 2013, disclosing \$5,425 in new monetary contributions received (\$159,615 in total contributions), and \$134,994 in new expenditures made (\$140,436 in total expenditures). The C-4 report did not contain a checkmark in the appropriate box to indicate that the report included independent expenditures.

3.20 Staff asked Whatcom First why it did not check the box on its C-4 reports to indicate that the report included independent expenditures. In response, Mr. Dow stated that “...*Our treasurer did not see that part of the C-4 form and already believed all independent expenditures were disclosed on C-6 forms. The committee will amend the appropriate C-4's to be more accurate.*” He stated that in addition, Whatcom First would allocate “*the fair market value of Ms. Smith's services*” and report it as an in-kind contribution along with an allocated portion of the post office box rental.

IV. Scope

4.1 PDC staff reviewed the 45-day citizen action letter filed by Mike Estes against Save Whatcom and Whatcom First on October 2, 2013.

4.2 PDC Staff reviewed the following:

- A November 4, 2013, response letter from Chester Dow addressing the allegations in the complaint against Save Whatcom and Whatcom First.
- A November 18, 2013, email from Mr. Dow in response to staff's request for additional information concerning Save Whatcom and Whatcom First.
- An October 28, 2013 response letter from Orphalee Smith on behalf of Save Whatcom and Whatcom First.
- Information, including queries of the PDC database, on the PDC website, concerning campaign finance reports filed by Save Whatcom and Whatcom First.

V. Laws

5.1 **RCW 42.17A.235 and .240** require political committees to file timely, accurate reports of contributions and expenditures, including independent expenditures, orders-placed, debts or obligations. Political committees under the full reporting option are required to file C-4 reports 21 and 7 days before the general election, and a post-election C-4 report in the month following the election, regardless of the level of contribution or expenditure activities.

5.2 **RCW 42.17A.245** requires newly registered political committees that expect to expend five thousand dollars or more in the current year shall file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055.

Respectfully submitted this 25th day of November, 2013.


Kurt Young
Compliance Officer

List of Exhibits

- Exhibit #1** 45-day citizen action letter filed by Mike Estes against Save Whatcom and Whatcom First.
- Exhibit #2** November 4, 2013, two-page response letter from Chet Dow submitted on behalf of Save Whatcom and Whatcom First.
- Exhibit #3** November 18, 2013, two-page response email from Mr. Dow submitted on behalf of Save Whatcom and Whatcom First.
- Exhibit #4** November 10, 2013 C-6 report filed by Whatcom First disclosing the total independent expenditures undertaken for 2013.
- Exhibit #5** 21-day pre-general election C-4 report filed October 17, 2013 by Whatcom First.
- Exhibit #6** Amended 21-day pre-general election C-4 report filed November 3, 2013 by Whatcom First.
- Exhibit #7** Invoices of Whatcom First provided by Mr. Dow on November 4, 2013.
- Exhibit #8** Amended 7-day pre-general election C-4 report filed November 10, 2013 by Whatcom First.
- Exhibit #9** September 30, 2013 C-3 report filed by Whatcom First.