



18 West Mercer Street, Suite 400  
Seattle WA, 98119  
TEL (800) 238.4231  
FAX (206) 378.4132

DANIELLE FRANCO-MALONE  
Partner  
DIR (206) 257.6011  
franco@workerlaw.com

*Sent via e-mail to pdc@pdc.wa.gov  
and sean.flynn@pdc.wa.gov*

May 22, 2020

Public Disclosure Commission  
711 Capitol Way #206  
PO Box 40908  
Olympia, Washington 98504-0908

RE: Comments Regarding Proposed Emergency Rules re SSB 6152  
Our File No. 3263-288

Dear Commission members,

We are writing to you on behalf of SEIU 775 and OneAmerica concerning the proposed rules you are considering to implement SSB 6152. Please accept the following as our comments on the matter.

Section 9 of SSB 6152 adds a new section to the Fair Campaign Practices Act prohibiting foreign nationals from making political contributions, making expenditures in support of or in opposition to any candidate or ballot measure, or sponsoring political advertising or electioneering communications. Laws of 2020, ch. 152, § 9(1). It further prohibits any person from doing the same things if the contribution, expenditure, political advertising, or electioneering communication is financed in any part by a foreign national, or a foreign national is involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way. *Id.* at § 9(2).<sup>1</sup>

SEIU and OneAmerica have significant concerns about the legislation as passed by the Legislature, particularly in regards to its impact on the ability of immigrants to engage in the political process in Washington State. Putting the onus on political committees and candidates to aggressively track and police the citizenship status of every person involved in a group that makes a contribution is not consistent with the values of our state and will further discourage political engagement by those that are already largely excluded from participation.

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<sup>1</sup> The law contains several related changes effectuating these prohibitions. Section 3 of SSB 6152 adds a new requirement that political committees include in their PDC reports a statement that the candidate or political committee has received a certification from any partnership, association, corporation, organization, or other combination of persons making a contribution that the contribution is not financed in any part by a foreign national, and foreign nationals are not involved in making decisions regarding the contribution. *Id.* at § 3(5). The same requirement applies to out of state political committees, *Id.* at § 4(1). The law requires the same representation to be made on C-6 forms when reporting independent expenditures, *Id.* at § 5(5), and political advertising, *Id.* at § 6(3) and § 8(1). Recipients of last minute contributions must make the same representation on Last Minute Contribution (LMC) reports. *Id.* at § 7(7).

The PDC has proposed draft emergency rules to implement SSB 6152. As currently drafted, the rules create several problems which we respectfully request the Commission to consider.

### **Requirement to Obtain Certification Prior to Making a Deposit**

The proposed emergency rules require that the candidate or political committee to include in the above-referenced certification an attestation by an individual agent authorized to make the contribution for the entity and to represent or bind the entity. The rules provide that the certification be received in writing by the candidate or committee *before* the contribution is deposited, pursuant to RCW 42.17A.220. Yet, the same statute mandates that all contributions be deposited within five business days of receipt of the contribution.

The five-day window for obtaining a certification and attestation is unworkable. Most political candidates receive several hundred contributions, with many in the final weeks leading up to an election. About half of those contributions are received in the final weeks leading up to an election. Many contributions are submitted unsolicited and without accompanying information about how to contact the donor. Candidates and PACs will almost certainly be unable to procure the requisite certification within the five-business day period in which they are required to deposit contributions. This will result in candidates and committees being left with no choice but to 1) violate the FCPA or 2) return contributions to donors and not giving effect to their intent to participate in the political process. The net result will greatly inhibit the free exercise of the First Amendment right to participate in the political process.

The PDC's draft emergency rule should be modified to remove the requirement that candidates or political committees obtain the certification and attestation before depositing the contribution. Nowhere does SSB 6152 purport to impose such a compressed timeframe. Instead, that law provides that the certifications be obtained prior to filing certain reports with the PDC. *See e.g.* SSB 6152 Sections 3(5), 4(1), 5(5), 6(3), 7(7) and 8(1). The Commission should remove from the proposed rules the requirement that a certification and attestation be obtained before a contribution can be deposited.

Additionally, the proposed rules do not address how a candidate or committee should navigate these juxtaposing obligations when they conflict. For instance, if a person mails a check to a committee, but does not include the required certification, and the committee is unable to obtain the certification from the contributor within five business days, the committee has no way of complying both with RCW 42.17A.220 and the proposed rule. The committee can either falsify an attestation, refrain from depositing the contribution within the requisite five business days in violation of RCW 42.17A.220, or return the contribution. Eliminating the requirement to obtain certification prior to depositing contributions would help address this problem. Alternatively, the rules should include a mechanism to allow a candidate or committee to cure what would otherwise be a violation. For instance, a candidate or committee that has deposited a contribution and is subsequently unable to obtain a certification and attestation within a reasonable time should be able to then refund the contribution.

### **Attestation Requirement**

The proposed rules require not only that a candidate or PAC affirm that it has received a certification affirming that the contribution is not financed by foreign nationals and that foreign nationals are not involved in making decisions regarding the contribution, as SSB 6152 requires. The proposed rules additionally require that a candidate or political committee obtain the attestation from the *specific* individual authorized to make the contribution and capable of binding the entity. But SSB 6152 does not specify who may make the certification, and there is no reason that the certification must come from the specific individual authorized to make the contribution and capable of binding the organization. Any individual capable of confirming that the contribution is not financed by or directed by foreign nationals should be allowed to make the certification. This onerous requirement to obtain certification and attestation from a specific person exacerbates the problem discussed above of creating a five-day window in which a candidate or committee must either obtain an attestation/certification or return the contribution.

### **Requiring Organizations to Segregate Subsidies from Foreign Nationals and Prohibiting Contributing Entities from Being Financed in Any Part by a Foreign National**

The proposed rules require that any subsidy received by an entity from a foreign national be segregated from any funding source used to finance a political contribution, expenditure, advertisement, or communication. This requirement has no basis in SSB 6152. The proposed rules do not define a “subsidy,” creating the potential for this requirement to intrude into the internal affairs of groups that may participate in politics in a way that is not necessary to effectuate SSB 6152. For instance, a union which makes political contributions may have members who are undocumented and who pay membership dues to the union. The PDC’s proposed rules could potentially require the union to inquire as to the citizenship status of every single worker, and segregate the dues of undocumented members into a separate account, so as to ensure that undocumented workers’ dues were not comingled with other dues which may ultimately be used to make political expenditures. The final rule should make clear that any payments received as dues or for membership in a not-for-profit corporation are not “subsidies.”

Section 3(d) of the proposed rules go even further, requiring contributing entities to attest that the entity is “not financed in any part by a foreign national.” Such a rule goes far beyond SSB 6152 and could have sweeping consequences, including preventing a union or not-for-profit organization from making political contributions if it receives *any* funding from a foreign national, regardless of whether those funds are used for political purposes. The final rule should eliminate this requirement for the attestation entirely, or make clear that it does not apply to membership dues received by foreign nationals. Additionally, it should make clear that a union’s affiliated PAC is not “financed in any part by a foreign national” where the union receives dues monies from undocumented persons, but funds its political committee exclusively from the general fund and not from any particular individuals who might meet the definition of a foreign national.

Thank you for your attention to these concerns. We would be happy to provide further information upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Franco-Malone". The signature is fluid and cursive, with the first name being the most prominent.

Danielle Franco-Malone  
Dmitri Iglitzin  
*Counsel for SEIU 775 & OneAmerica*

cc: Adam Glickman  
Rich Stolz