

## Written Comment on PDC Proposed Legislation

### 1. Increased C4 Reporting – Bad.

I oppose the agency's proposal to add an additional C4 reporting period before the primary and general elections. This change would significantly add to the workload of treasurers without a corresponding benefit to the voting public. To date, the agency has still offered no substantive evidence of deficiencies or major scandals relating to the current 21 and 7 day pre-election reporting schedule. As I mentioned in the longer letter above, the agency should engage in enforcement of current C4 reporting deadlines before petitioning the Legislature to create new ones.

If the goal is to breakup the reporting period a month before the election, maybe consider changing the schedule so there is a report due at the 14 and 28 day marks. That would work great.

I am opposed to the addition of a C4 reporting period, but the proposal to add a single C4 report would be more viable for us treasurers if each C4 reporting period was staggered out at least 14 days apart. For instance, at the 7 day, 21 day, and 35 day marks. As noted by Jason Bennett last month, vendor billing practices are not as good as they ought to be and it takes time for invoices to get to us.

If the agency does decide to proceed with the proposal to add additional C4s to the filing schedule, it should consider putting that provision in a standalone bill so that it can die on its own merits and not prevent the positive parts of the agency request legislation from passing into law.

### 2. Increased LMC Threshold – Good.

This proposal would be a very positive change for treasurers, thank you for including it. The underlying principle here should be: "no contribution of a normal size should be subjected to LMC requirements". Extra-large contributions of the sort only political parties can make SHOULD be subjected to LMC requirements. My only fear with how last session's language in HB1919 was drafted is that, for statewide races, if a candidate received a \$4000 contribution before the primary (which is acceptable and normal for statewide races), that candidate would have to engage in LMC reporting, which I don't think is the intent of the agency. I hope that the language could be fixed to address that.

### 3. Increased level of detail for digital ad buys – Bad.

I have spent a lot of time corresponding with agency staff on the issue of descriptive requirements over the last 12 months. I have learned that the position of agency staff appears to be that, whenever the mood so strikes them, they can invent new descriptive requirements out of thin air, call it "agency guidance", slap it on the website or in ORCA, and enforce that guidance as if it were every bit as valid as an RCW or WAC. Evidently, they see no need to consult the public, agency stakeholders, or even the Commissioners in this process. The APA, the FCPA, and relevant caselaw appear very much at odds with that position.

So, I was surprised to see the agency express a need to go to the Legislature to get what they are looking for here. This proposal is not concrete enough to provide substantive comment on, but I will say that disclosing extremely detailed information on digital ad buys would be a hardship for campaigns and treasurers because the information the PDC potentially desires here is not readily known by the candidate typically and is also not usually present on invoices. Trying to get ahold of a living, breathing person at Facebook/Google/any other giant tech company to answer our questions about the precise nature of media buys would be extremely difficult and time consuming.

I don't think that the purpose of the FCPA is to force campaigns to disclose strategic decisions to their opponents. That feels like the true purpose of this requirement. Besides, if political operatives want that type of information so badly, they can utilize their statutory rights under RCW 42.17A.345 to get that info themselves and leave us out of it.

#### **4. Giving us an additional day to file 7 and 21 day pre-election reports - Good.**

Currently, treasurers only have one day from the end of the 7 and 21 day pre-election periods to prepare and file C4 reports. For all other C4 reporting periods we get 10 days. These reports take considerable time to compile and to get candidate approval for. Last fall, I brought up the fact that other vote-by-mail states offer more time to compile these types of reports, ranging from 3 days on the low end to something like 15 days on the high end. Giving us 2 days as opposed to 1 to file these reports would bring us more in line with other states and would be a great compromise. The Commission discussed this issue at length last year and voted to give us 2 days. This idea wasn't mentioned in the agency's most recent e-mail on the legislation and I'm hoping that was just an accidental oversight.

At last month's meeting, Commissioner Hayward mentioned the idea of "pieces of candy" or bills that would have widespread agreement in the Legislature and pass easily. This idea would be a great provision to put in a standalone "piece of candy" bill to give to a) a freshman member of the majority party, b) a member of the state government committee, or c) the Chair of the state government committee. It would probably make a lot of sense for the agency to find sponsors in both the House and Senate to increase the chances of passage.

#### **5. Reforming Foreign Contribution Certification Requirements – Good.**

Requiring campaign treasurers to obtain these certifications from contributing entities is likely not accomplishing anything meaningful and is a significant/stressful distraction that pulls us away from our core responsibilities. We have been suffering from this requirement (a requirement we were not even aware was being contemplated until it passed the Legislature) for over 2 years now. Things haven't really been getting better. On a personal level, I will tell you that I feel like an absolute fool for having to ask entities such as a local firefighters union or neighborhood small business to "self-certify" that they are not controlled by the likes of Vladimir Putin, Xi Jinping, Hugo Chavez or Kim Jong-un. Here are a handful of other reasons treasurers are frustrated with this requirement.

- a) **Certification requirement and underlying prohibition against foreign contributions actually doesn't prevent foreign-owned corporations from making contributions.** PDC staff recently confirmed to me in writing that the domestic subsidiaries of foreign corporations ARE allowed to contribute. This is why foreign-owned corporations like Anheuser-Busch (Belgium), Shell Oil Company (England), Cooke Aquaculture (Canada), etc, etc, are still making large contributions. As far as I am aware (and someone please correct me if I am wrong), purely foreign companies (as opposed to the domestic subsidiaries of foreign corporations) have never been the ones making contributions to WA campaigns in the first place. It has always been their domestic subsidiaries. The analogy I would make here is that this certification requirement and the domestic subsidiary exemption is akin to spending millions of dollars to build a perfectly airtight submarine and then, once it's completed, drilling hundreds of holes in it to increase ventilation. This exception completely consumes the underlying rule and defeats much of the significance of the certification requirement and all the work we go through to get folks to sign them.
- b) **Certification requirement does nothing to prevent bad-actors/foreign adversaries from interfering in our elections.** I recently went back and listened to the legislative hearings on the bill that created this requirement. This bill was intended as a response to the Russian interference in the 2016 election. Obviously, any Russian involvement in our elections is appalling and I hope we can all agree on that. But the fact remains that the Russians did not try to intervene in our elections by making direct contributions to campaigns. And, if they had, do we think that asking a foreign adversary or other bad actor to sign a little piece of paper would stop them from contributing to campaigns? Of course, it would not. They would simply lie and sign the form: after all, the forms aren't subjected to audits and neither we nor the PDC have any way to verify the signed form was truthful. The foreign-controlled entity wouldn't throw up their hands when presented with the certification form and say "you got me!".
- c) **Entities feel more comfortable lying to us/filing false documents with us as opposed to when doing the same thing to a state agency (because the latter is illegal).** As stated above, I don't think that these certifications are meaningful at all, but let's say that the agency thinks they are. (By the way, the agency actually signed in "neutral" as opposed to "in support" of this bill when it was pending before the Legislature in 2020.) But let's assume for a second that the act of submitting the certification is somehow meaningful. What stops someone from filing a false document with us? Sadly, it happens all the time: people lie to a dear friend or family member. "Sorry, I can't help you move, I'm actually going to be out of town on that day". For the most part, people feel like they can get away with lying to a private actor, such as a political campaign or a campaign treasurer. That is because there are usually no penalties for doing so. On the other hand, there are real penalties for lying to or filing a false document with a state agency, which has the power to prosecute the person engaging in the deception, because the deception violates state law.

### end of written comment, see appended documents ###