

General Comments

1) PDC technical glitch re: unmuting participants.

As I've mentioned several times before, there is some sort of a technical issue in the PDC Microsoft Teams meetings. When the meeting administrator announces that a person has been unmuted, the person is not actually able to unmute. This has happened to me several times now, and it has also happened to other treasurers who have tried to speak at PDC meetings. I was finally able to get video that shows what is happening on our end, see link:

<https://youtube.com/shorts/Q84g1heafys?feature=share> .

I would encourage the PDC to look into what is causing this issue and try to fix it. I would also encourage the PDC to reenable the chat function so that participants can communicate with the meeting administrator and the Commissioners to share if they are experiencing technical difficulties. Re-enabling the chat function would also allow members of the public to provide insightful running commentary on the meetings as they happen live.

2) Regarding PDC's "Commissioner Outreach Program" to improve communication/outreach with agency stakeholders.

At last month's meeting, Director Lavallee shared some of the discussions from the November retreat on the subject of the Commissioner Outreach Program. I am responding to the information that he shared.¹

"... we could have as part of our regular meetings, particularly if we have a lighter agenda, perhaps we could devote more time to a back-and-forth discussion on almost an open forum if you will, or again could be targeted to specific ideas." - Director Lavallee

The idea that the Commissioners will engage in a back-and-forth discussion with stakeholders only when there is nothing better to do at a meeting is not a meaningful commitment. How often would the Commissioners say that a given agenda for any month is "light"?

This commitment would be roughly analogous to the teenager who promises to call their great-aunt Gladys saying: "I will call great-aunt Gladys as soon as I'm not so busy". Yet, somehow, as the years drag on, the phone call *never actually happens*.

If the Commission were to adopt the idea that Director Lavallee described, I'd be willing to bet that the proposed back-and-forth discussion *would not happen even a single time*.

In responding to what Director Lavallee described, I wanted to provide two concrete proposals that would largely address the concerns of stakeholders.

- a) On the Wednesday before every Commission meeting, one Commissioner could have a virtual "town hall" style 30-60 minute meeting with stakeholders and/or members of the public who

¹ Regarding the physical location of PDC meetings: I support the idea of holding a meeting in Eastern Washington too, but this does not in any way address the concerns that stakeholders collectively raised with the Commission in our letter last May.

choose to attend. Sean Flynn could also attend. It could be one Commissioner that was designated to attend these meetings, or it could be a rotating position that changes from month to month. This would allow us to relay our concerns in an informal way and have a brief informed discussion relating to that concern in advance of the meeting so that the Commissioner could bring up the concern with the full Commission when appropriate and understand our issues better.

- b) For regular meetings, the Chair could designate five minutes on the agenda immediately following the public comment portion of the meeting. The Commission could use this time to discuss the comments that had been presented orally and in writing, to determine if any actions should be taken in response to the comments, and (when appropriate) to request that staff provide a written response to the commenter.

3) Potential Compromises on PDC request legislation.

Treasurers still take issue with the idea that there is anything wrong with the current reporting calendar. As it stands currently, ballots are mailed out 18 days before the election. The proposed additional C4 report falls well outside the 18-day voting window and wouldn't do anything to provide additional information to people while they are voting. We already file a C4 report at the 21-day pre-election mark, so by the time most people get their ballots, they will be able to access information that is current within 7 days. Asking treasurers to file an additional C4 when voters don't even have their ballots in hand is like asking us to mow the lawn when the grass is not yet high enough to be cut by the blades: all burden and no benefit.

For many candidates, it is very difficult to find capable individuals who are willing to serve as treasurers. This is because it is so difficult to comply with the byzantine rules and regulations that the PDC enforces. If the agency's proposal were to pass in its current form, this shortage of treasurers would likely become even worse.

That being said, if we could reach a potential compromise that helped treasurers out in other areas, we might be willing to accept an additional C4 report at the 34 day mark as a compromise.

These potential ideas might be helpful areas to explore:

- a) Making modifications to the reporting schedule that accomplish the PDC's goal of increased reporting the month before the election but does not increase the overall number of C4 reports that are due.

- i) Rather than filing a C4 report that covers the month of May by June 10, it could be filed 34 days before the primary election instead, covering all activity up to 48 hours before the report is due.

- ii) Rather than filing a C4 report that covers six days before the primary all the way up until the end of August by September 10, it could be filed 34 days before the general election instead, covering all activity up to 48 hours before the report is due.

Written Public Comment for January Regular Meeting of the PDC

By Conner Edwards

January 22, 2023

b) Giving treasurers an additional day to file pre-election C4 reports (3 days). (Keep in mind, most of the year we get 10 full days to prepare and file reports: giving us more time to file reports would reduce the number of amendments and would lead to more accurate reporting).

c) Supporting (as opposed to being neutral on) changes to foreign certification requirements that alleviate the burden on treasurers (such as establishing a \$2500 threshold for when these forms would have to be collected).

d) Explicitly spelling out in law that the agency will adopt new descriptive requirements for expenditures only by following the APA's rulemaking process.

**Response to Sean Flynn's January 20, 2023 Memo
Re: Agency Enforcement Of C4 Filing Requirements**

Foreword

Before the meeting on Thursday, I would encourage the Commissioners to re-read the email responses that I received from other states and the Federal Elections Commission on this same subject.

Agency staff would have you believe that the active and meaningful enforcement of reporting deadlines is somehow an outrageous and unworkable proposition. That is completely false. In fact, our neighboring states (and the FEC) already have programs in place to tackle this issue.

For them, these programs aren't outrageous or unworkable.

To the contrary, these programs are an extremely important part of what these campaign finance agencies do to ensure that members of the public have accurate and timely information on campaign and committee spending.

Washington State should follow their example.

Introduction

Staff's memo is notable for two main reasons. First, because it fails to recognize the massive shortcomings of the PDC's enforcement process as it relates to C4 filings compared to how neighboring states (and the Federal government) handle this issue. Second, while the staff memo attempts to paint the Petition in the most negative light possible, the memo does not say that it would be impossible for the Commission to adopt the proposal, or that the proposal is somehow incompatible with state law.

That being the case, I would urge the Commissioners to learn about the enforcement processes that other states use to make sure that filers are timely filing reports, compare it to the PDC's current laissez-faire system, and reach the conclusion that it is time for meaningful change.

As Sean has previously explained, approval of an APA Rulemaking Petition does not mean that it automatically becomes a rule. Rather, it becomes a first draft in a process that the Commission controls. The Commission can and should make changes to this proposal based on input from staff, stakeholders, and members of the public. To accomplish this, the Commission must first approve the Petition or take some other meaningful concrete action to start the process.

Responding to Specific Passages of Staff Memo

1. *"Beyond the problems with the function of the rule itself, however, the petition is requesting a new agency policy for how to approach enforcement matters."*

This is correct. I am requesting that the agency end its policy of nonenforcement of C4 reporting deadlines, and shift towards a system similar to how the agency handles group enforcement for C1 and F1 filers. State agencies often use rulemaking to address policy matters and to formalize enforcement processes.

As members of the public, we have precious few tools in our toolbox to get state agencies to consider our suggestions. I had hoped that bringing this issue up informally (in written and spoken testimony) might have triggered the Commission into some action on this subject, especially

Response to Sean Flynn's January 20, 2023 Memo
Re: Agency Enforcement Of C4 Filing Requirements

because the November retreat would have been an opportune time to discuss changes to the strategic plan. However, there was no action on this issue, which led to the Petition.

2. *“The proposal is problematic on its face. It would require the PDC to issue automatic penalty warnings for late filed C-4 reports before initiating a case. Penalty warnings would issue even where a campaign did not have to file a report (e.g., where there was no reportable activity), and require a campaign to affirmatively assert such defense to avoid a penalty warning.”*

A penalty warning is exactly (and only) that: a warning. If the filer was able to demonstrate that they didn't have a reporting obligation, they would not have to pay a penalty just because they received a warning.

My understanding is that PDC staff often send late F1 warnings to individuals don't actually have to file F1s (usually because they have left office). The sky doesn't come crashing down when that happens because **it is just a warning, not a final determination.**

3. *“Finally, every penalty, whether agreed by stipulation or not, would be required to be presented to the full Commission.”*

This is not quite accurate.

First, not all cases would reach the full Commission because the Executive Director would still have the ability to dismiss complaints that are initiated under this new process with a warning letter. The only change would be that the Executive Director would first have to receive concurrence from the Commission Chair.¹

Furthermore, as it stands today, stipulations must be referred to the Commission for review, per RCW 42.17A.755(2)(b). This Petition would not (and could not) change that.

4. *“The PDC has considered, and continues to assess, the expansion of the group enforcement process to other areas of reporting; however, there are limitations due to agency resource allocation, existing filing systems, and differences in the law that define the class of filers subject*

¹ I included this change because there have been so many instances where the Executive Director has dismissed complaints of late reporting even when they have been substantiated. Most notably, see cases: 111239 (Militello) & 111940 (Hughes-Ham). In both of those cases, the candidates went over half the campaign cycle without filing a single report, even while they were raising and spending thousands of dollars. Both of these candidates waited until after the primary to disclose months' worth of contributions and expenditures that should have been disclosed before the primary.

Staff were able to confirm these facts, but Executive Director Lavalley still dismissed the complaints. I believe that if these cases were allowed to reach the Commissioners, they would have reached a completely different decision and issued a monetary penalty instead.

Of course, these two cases are only the tip of the iceberg. The big concern here is that agency staff are often dismissing substantiated and serious complaints simply because it is more expedient for them to dismiss a complaint than it is to prosecute it.

**Response to Sean Flynn's January 20, 2023 Memo
Re: Agency Enforcement Of C4 Filing Requirements**

to enforcement. Staff submits that, while such expansion remains an active policy consideration, it is not something that requires or even warrants prescriptive rulemaking to accomplish.”

It is remarkable to hear staff plead “lack of resources” when it comes to enforcing what is one of the most important requirements that the agency has jurisdiction over.²

The question that the Commissioners should be asking of staff is: *“how is it that neighboring states have found resources to prioritize active enforcement of filing requirements and the PDC has not?”*

Even in the State of Idaho (which is not known for giving exorbitant budgets to state agencies) they have been able to create a system that actively and meaningfully enforces campaign finance reporting deadlines.

Washington State should be able to find resources for such an important agency function.

Additional Material in Support of Petition

Before I filed this petition, I submitted 20 complaints against respondents to highlight how the agency has failed to actively and meaningfully enforce C4 reporting deadlines. When I submitted the complaints, my prediction was that nearly all the complaints would be substantiated as accurate and then dismissed with warning letters.

I was mostly right with three exceptions: # 111158, 111938, and 111937 where extremely small penalties of \$150 were assessed. Two of the respondents in those cases (111938-Engle, and 111937-Amenn) went the entire campaign cycle without filing a single report. Even after being penalized, they have not submitted any of the required reports.³

At any rate, I was surprised to read that many of the responses from the people that I filed complaints against actually agreed with me on the suggestion that the PDC send out reminders prior to filing deadlines.

Regardless of the outcome of the rulemaking petition on Thursday, I hope the PDC will at least work towards a) providing filers with automated electronic reminders prior to reports being due, and b) automated electronic notification to filers when they miss a filing deadline.

Testimonials from Complaint Respondents

“I think I have to agree with Conner Edwards. This ORCA program a complicated thing which is a real deterrent to people running for office and so I can understand why Conner is against you making things more difficult. I think you should be looking at how to make it less complicated. I am at a loss as to how to figure this out. This whole ORCA thing is not easy and I kind of just have you shoot me and put me out of my misery...” -Kathryn Lewandowsky, BSN, RN Arlington, WA (Case #112075)

² Also, I will note that this proposal actually has the ability to raise a lot of revenue for the agency through the issuance of monetary penalties.

³ Will PDC staff reach out to these filers to ask them to file their reports now that the election is over? Will they face additional penalties for completely ignoring Washington state's campaign finance laws?

Response to Sean Flynn's January 20, 2023 Memo
Re: Agency Enforcement Of C4 Filing Requirements

“Mr. Edwards insights and possible resolutions do provide some guidance for consideration in the future... ..I can only speak for myself when I say that school director positions are volunteer positions and campaigns for such are often run and reported by the candidate themselves (as was mine). Any of the simple solutions that can provide increased efficiency in reminding and reporting of the requirements would be welcomed especially to campaigns such as mine. As noted in the complaint, I did file the two reports- albeit late by several weeks due to no intentional act of negligence.” – Kevin Morrison (Case # 111344)

*“I’ve looked back at the campaign filings and agree with Mr. Edwards that the C4 was not filed until 12/10 whereas it should have been filed the week prior to the election. This was an unintentional oversight and an honest mistake... .. Lastly, I agree with and thank Mr. Edwards for his comments that the PDC could provide assistance to treasurers through, for example, automated electronic filing reminders when a deadline has been missed. **Had such a reminder existed, the issue would undoubtedly been rectified immediately as I, as treasurer, would have been alerted to the unintentional non-filing. [emphasis added]** Accurate and timely reporting is a pillar to trust in our election systems and I support measures to help treasurers and campaigns report accurately and timely.” - Kevin Smith (Case # 111327)*

“I can appreciate the point that Connor Edwards is making. I also appreciate the reminder emails PDC sends for the C1 and F1 filings. Perhaps there can be a solution that would support transparency but also not make it onerous for candidates running for volunteer positions.” - Melissa Beard (Case # 111244)