

Public Comment for June PDC Meeting

June 25, 2024

Commissioners:

Of the two statements below, which do you believe most closely reflects the guiding principles followed by agency staff as it relates to enforcement?

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Statement #1 – When we find a violation of state law, we pursue penalties of an amount that establishes an appropriate incentive for members of the regulated community to abide by the requirement at issue.

We do **not** recognize the following excuses as legitimate defenses: the respondent claiming not to have knowledge of the requirement at issue, the respondent claiming that the violation was unintentional, the respondent claiming that it was a “one-time” offense and claiming that they won’t do it again.

OR

Statement #2 – When confronted with a clear violation of state law, our goal is to dismiss the case with a warning letter. However, if dismissing the case would send too clear of a signal to the public that the agency is not doing its job, we will pursue a nominal penalty instead, preferably of \$150 or less.

To help support our goal of dismissing substantiated complaints with warning letters, we will recognize any rationale provided by the respondent that helps justify our decision, including but not limited to: the respondent claiming not to have knowledge of the requirement at issue, the respondent claiming that the violation was unintentional, the respondent claiming that it was a “one-time” offense and claiming that they won’t do it again.

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Neighboring campaign finance jurisdictions like those in Oregon, Idaho, Alaska, Hawaii (and the FEC on the Federal level), have enforcement practices that operate consistent with the first statement.

The PDC has enforcement practices that operate consistent with the second statement.

Consider this example. Many of you will remember from last month’s meeting the series of complaints that were filed against sheriffs who used government resources to appear in a campaign video¹ promoting Dave Reichert’s candidacy for governor.

¹ Despite the saber-rattling that occurred at last month’s PDC meeting, the Reichert campaign has not taken down the video referenced in the now-dismissed complaints. Likely this campaign, like so many others, has recognized how impotent the PDC has become as it relates to enforcement. See link to video:

<https://twitter.com/reichert4gov/status/1762313688730779998>.

Collectively, the respondents advanced the same excuses listed above: they denied having knowledge of the requirement at issue, they claimed that the violation was not intentional, and they claimed that it was a “one-time” offense that would not be repeated.

Based on these excuses, agency staff dismissed all the complaints with warning letters.

Ignorance of the law is no excuse: unless you happen to be a respondent before the PDC.

How do you believe other elected officials interpret the PDC’s actions in these cases? Do you believe that they will be deterred from engaging in the prohibited activity by the prospect of potentially receiving a “warning letter”, which is essentially a dismissal?

Or will other elected officials correctly recognize that the agency has just given them a green light to commit the same type of violation without fear of any meaningful consequences?

Warning Letter Analysis (5/23/24 – 6/20/24)

During this period, the PDC formally resolved 341 cases where the staff investigation found that the respondent had violated state law.

Of those cases: 275(!) cases were dismissed with warning letter, 65 cases resulted in penalties, and 1 case was dismissed as part of a technical correction. During this period, 80% of all substantiated complaints resulted in a warning letter dismissal.

Only 20% of substantiated cases resulted in an actual penalty being imposed.

Of the cases that resulted in penalties, the average non-suspended penalty assessed was \$87.

Below is a summary of each case dismissed with a warning letter.

PDC Case 141455 Eastern WA Voters PAC

In this case, the staff investigation found that the political committee Eastern WA Voters PAC had failed to include the name of a sponsoring entity in the committee’s name as required by law, and had filed multiple C3/C4 reports significantly late.

The committee had already previously received a warning letter in 2019 for failing to file multiple C3/C4 reports on time. See Case # 24432.

After investigating the recent complaint, the investigation found:

(Excerpted From the Report)

Eleven C-4 reports for 2019 were filed 1-96 days late, including the committee’s 21-day pre-Primary, 7-day pre-Primary, post-Primary, 21-day pre-General report, and post-General reports.

Three C-3 reports for 2019 were filed 1-5 days late.

Eleven C-4 reports for 2020 were filed 7-273 days late, including the committee’s June, July and August monthly reports (covering pre- and post-Primary election periods), 21- day pre-General, and 7-day pre-General reports.

Three C-3 reports for 2020 were filed 8-267 days late.

Nine C-4 reports for 2021 were filed 19-243 days late, including the committee's June, July and August monthly reports (covering pre- and post-Primary election periods).

Five C-3 reports for 2021 were filed 2-123 days late.

Eleven C-4 reports for 2022 were filed 7-191 days late, including the committee's June and August monthly reports covering pre- and post-Primary election periods, 21-day pre-General, 7-day pre-General, and post-General reports.

Three C-3 reports for 2022 were filed 96 days late.

Two of the committee's monthly C-4 reports for January and February of 2023 were filed 48-76 days late.

An additional six C-4 reports from 2023 were filed 4-158 days late, including the committee's pre- and post-Primary reports.

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Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee (and even though the committee had previously been warned about the same issues), agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

**PDC Case 151419
Misipati (Semi) Bird**

In this case, the staff investigation found that the gubernatorial candidate Misipati (Semi) Bird failed to file two reports associated with his 2021 campaign for Richland School Board. The missing reports were only filed after the complaint was received.

Previously, this candidate has been the recipient of three other warning letters. See Cases # 115351, 138400, 145404.

The C-4 for the period of October 26, 2021, to November 30, 2021 was not filed until May 10, 2024, approximately 2.5 years after it was due.

The C-4 covering the period of December 1, 2021, to December 31, 2021, was not filed until May 10, 2024, approximately 2.5 years after it was due.

Staff also found that the campaign's final C4 report indicated that the campaign had a negative cash on hand balance, which typically indicates that some activity has not been reported, or misreported. Staff did not require that the Bird campaign address this issue.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a candidate (and even though the candidate has received numerous previous warning letters), agency staff unilaterally dismissed the complaint with a "warning letter", thereby

giving a green light to other candidates to commit the same type of violation without fear of being penalized.

PDC Case 149574

Woodland Citizens for Schools PAC

In this case, the staff investigation found that the political committee Woodland Citizens for Schools PAC had committed a number of violations of state law, including: failure to include the required level of detail for expenditures, and failure to timely file C3/C4 reports.

This committee had previously been subject to a warning letter for failing to allow an inspection of its books prior to the election. See Case # 149175.

Remarkably, the staffer responsible for preparing the warning letter report failed to include details of which reports were not filed on time. This is notable because other warning letter dismissals do address this issue in detail.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee (and even though the committee had previously been warned about similar issues), agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 141449

Lewis County Democratic Central Committee - Non Exempt Account

In this case, the staff investigation found that the political committee Lewis County Democratic Central Committee had failed to timely file C3/C4 reports after it had failed to comply with the requirements of being able to continue to report under the mini-reporting option.

The committee had previously been warned for this same type of issue. See Case #26735.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee (and even though the committee had previously been warned about similar issues), agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 150087

Don Rivers

In this case, the staff investigation found that the gubernatorial candidate Don Rivers filed his F-1 (personal financial affairs statement) 287 days late. The staff investigation also found that the candidate had disclosed the purchase of a website domain 302 days after the deadline for doing so had passed.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a candidate, agency staff unilaterally dismissed the complaint with a "warning

letter”, thereby giving a green light to other candidates to commit the same type of violation without fear of being penalized.

PDC Case 149169

Andreas Koeppen

In this case, the staff investigation found that the individual Andrew Koeppen had created a breakaway/offshoot of the Grant County Republican Party Central Committee and failed to timely register it as a political committee. The committee had raised \$38,066 in contributions and made \$14,722.12 in expenditures between January and April 2024. The committee filed its registration on May 10th and only filed the required reports thereafter, making them late.

Despite the clear evidence of a violation that materially affected the public’s right to know about the funding/finances of a committee, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 149545

39th District Democratic Party Organization

In this case, the staff investigation found that the political committee 39th District Democratic Party Organization had violated state law by failing to timely report the deposit of a \$2000 contribution from the Washington State Democratic Central Committee.

The donation was deposited on 9/5/23 but was not reported until 3/6/24. This makes the disclosure approximately 5 months late.

Despite the clear evidence of a violation that materially affected the public’s right to know about the funding/finances of a committee, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

Warning Letters Dismissals for 264 Respondents²

In these cases, the staff investigations found that the respondent candidates failed to file timely C3/C4 reports as required by state law.

State law requires that, if you select the full reporting option when you submit your candidate registration, you are obligated to file C3 and C4 reports pursuant to the reporting schedule, regardless of the total amount of money that you raise.

This month, agency staff have announced that they are simply not going to enforce this requirement against campaigns that report raising less than \$7000, which is the total amount of money that is allowed to be raised or spent under the mini-reporting option.

² I was unable to read every single warning letter issued against these candidates. My summary for these cases is based on the random sampling I’ve viewed. All these warning letters appear to use the same exact copy-and-paste language and address similar factual scenarios.

Why does this decision matter?

At the beginning of a campaign, candidates are asked to select a reporting option. They can choose mini or full reporting. Each option has certain benefits and drawbacks. With mini reporting, the benefit is that you don't have to file reports, but the drawback is you can only raise \$7000 total. With full reporting, the benefit is that you can raise as much money as you want but you have to file timely and accurate reports pursuant to the filing schedule. The drawbacks and benefits associated with each option are clearly explained to candidates when they file their registration.

Under the precedent that agency staff have set, candidates can reap the benefits of full reporting without having to deal with the drawbacks. Ultimately, I believe that the resolution chosen by staff to address these types of cases will make these types of violations more commonplace. This will lead to more confusion and increase the total number of complaints that the agency will have to process in the long term.

This decision is also premised on the belief that voters don't have an interest in seeing who candidates receive money from if they do not raise more than \$7000. I disagree. I believe that this information is still of interest to voters, particularly in smaller jurisdictions.

PDC Case 145408

No Mega Jail In Ferndale

In this case, the staff investigation found that the political committee No Mega Jail In Ferndale had violated state law by failing to include a complete sponsor ID on its a website, and failed to include any sponsor ID on a handbill flyer, signs, and a mailer.

Despite the clear evidence of a violation that materially affected the public's right to know about the who paid for political advertising, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 141457

Central Valley Citizens for Education PAC

In this case, the staff investigation found that the committee Central Valley Citizens for Education PAC had failed to timely file a number of C3/C4 reports from 2018, 2020, and 2021.

Remarkably, the staffer responsible for preparing the warning letter report failed to include details of which reports were not filed on time. This is notable because other warning letter dismissals do address this issue in detail.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 147904
Auburn Citizens for Schools

In this case, the staff investigation found that the political committee Auburn Citizens for Schools violated state law by filing its 21-day, pre-election C-4 report, covering the period 1/5-1/22/2024, on 1/28/2024. The report was due 1/23/2024, making the report with \$194 in contributions received and \$5,163.14 in expenditures, five days late. Ballots were out and people were voting during this time frame.

Additionally, the staff investigation found that the committee had initially failed to include the required level of detail for expenditure details. The staff investigation also found that the committee had failed to timely file a number of required C3 and C4 reports between the 2020 and 2024 election cycles.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 150852
Whiplash Apparel LLC

In this case, the staff investigation found that the commercial advertiser Whiplash Apparel LLC failed to allow a timely inspection of its commercial advertiser books of account.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding and details of political advertising, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other commercial advertisers to commit the same type of violation without fear of being penalized.