

From: [PDC Support](#)
To: [Greer, Jana \(PDC\)](#)
Subject: [TICKET Assigned to Jana] - Written Comment for January 2025 Meeting
Date: Tuesday, January 21, 2025 12:05:35 PM

External Email

Written Comment for January 2025 Meeting

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Commissioners:

Attached, please find my written comment for this Thursday's meeting. If you have the time, I hope you'll give it a read.

Thank you,

Conner Edwards

(425) 533-1677 cell

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Written Comment for January Regular PDC Meeting

Conner Edwards

1) Response to Staff Memo re: Out-of-State Commercial Advertiser APA Petition

The memo prepared by agency staff fails to address the legitimate concerns underlying the rulemaking petition and fails to provide the sort of objective analysis that the Commissioners ought to be able to expect from agency staff.

The commercial advertiser statute (RCW 42.17A.345) gives voters the right to access detailed information about political advertising directly from the entity that produced that information.

This right counts for very little if those that live in Washington state can be forced to travel to another state (or conceivably another country) to access the information which they are entitled to view, merely because that is where the commercial advertiser happens to be physically located and because the commercial advertiser refuses to make the information available digitally.

Staff have identified no legitimate reason for why commercial advertisers should not be required to make their books of account available to voters within the territorial boundaries of Washington State.

Staff's reference to "out-of-state" political committees is a red herring. WAC 390-16-043 (4) specifically refers to the treasurer's location, not the committee's location.¹

For example, the treasurer used by Dave Reichert's 2024 gubernatorial campaign was located in Athens, Georgia. Should WA voters be required to travel to Georgia to exercise their statutory right to inspect Reichert's books of account? Of course not.

So why should WA voters be required to travel out of state to be able to exercise their statutory right to inspect commercial advertising books of account in instances where commercial advertisers refuse to make their books of account available within the state (either digitally or physically)?

Please vote to approve the rulemaking petition or find some other way of addressing the concerns underlying it.

2) Engage in Rulemaking: a) eliminate illegitimate defenses, b) require treasurer training

While most state agencies can engage in rulemaking whenever they want, the PDC has only a narrow window to engage in rulemaking between elections. See RCW 42.17A.110(1). Because of the length of time it takes for rules to become effective under the APA, you should commence the rulemaking process at the January or February meetings.

I would encourage the agency to follow-through on the commitment made back in May of 2024 to examine which factors are appropriate for the staff to consider when justifying the use of

¹ Furthermore, "out-of-state political committee" is a term of art defined by the FCPA, see RCW 42.17A.250. It is entirely possible for a run-of-the-mill political committee to be located out-of-state and simultaneously be required to make its books of account open for public inspection under the FCPA.

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administrative dismissals (warning letters, etc.). Simply placing this issue on the 6-month rulemaking agenda yet again (as staff are proposing) will accomplish nothing.

It is not appropriate for staff to dismiss complaints based on a respondent asserting that they did not know or did not understand what the law required. Similarly, it is not appropriate for staff to dismiss a complaint when the respondent asserts that the violation was an “honest mistake”. Campaign finance laws are strict liability requirements and should be enforced as such. While this may seem harsh at times, the intention is to make sure that members of the public have timely access to campaign finance information. If respondents are continually allowed to assert illegitimate excuses for their violations and avoid meaningful consequences, it largely defeats the purpose for why we have campaign finance disclosure laws.

I would also encourage the Commissioners to adopt rules that require treasurers to view or attend the PDC’s ~35 minute compliance training. Requiring treasurers to do this at the beginning of a campaign will significantly reduce the inadvertent errors that lead to compliance issues which in turn lead to PDC complaints.

Washington State’s campaign finance laws are incredibly complex. Expecting volunteer treasurers to be able to just “jump in” without any sort of basic training is like handing a person an axe and a firesuit and expecting them to be able to put out a forest fire. It is a recipe for failure. Requiring treasurers to view the training is within the agency’s rulemaking authority.

3) Penalty Approaches in Other Jurisdictions

At the January BAP, Commissioner Leach asked for more information about the approaches that other jurisdictions take with respect to calculating appropriate penalties for late filing.

Idaho. This state has adopted a unique approach which has the advantage of being simple to apply. Committees are given a 48-hour grace period after the deadline when they may file the required reports without having to pay a penalty. After the grace period expires, fines begin to accrue at the rate of \$50 a day.²

Oregon. This state utilizes a reporting system which is different from our own. In Oregon, they do not have reports that are due based on fixed deadlines that everyone must adhere to. Instead, each transaction must be disclosed on a rolling basis. Generally, a transaction must be reported within 30 days of when it occurs although in the final ~1.5 months prior to an election, transactions must be reported within 7 days.³ Oregon’s penalty approach⁴ is as follows: when a transaction is filed after the deadline, they take 1/2% of the amount of the transaction and multiply it by the number of days late. The penalties are capped at 10% of the total late disclosed transactions. If the application of the penalty formula in a particular case results in a fine of less than \$50, then they waive the penalties.

² <https://www.pdc.wa.gov/sites/default/files/2023-10/01.10.comment.edwards%2010%2023.pdf> , page 11.

³ <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf> , page 22.

⁴ <https://www.pdc.wa.gov/sites/default/files/2023-10/01.10.comment.edwards%2010%2023.pdf> , page 16.

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Federal. On the federal level, penalties for late reporting are assessed through the FEC’s administrative fine program.⁵ The FEC’s penalty formula takes into account four different factors. The FEC also has a helpful “penalty calculator” on its website. **Election sensitivity:** whether the late-filed report was due immediately before an election (which results in a higher penalty) or whether the late-filed report was due at any other time (which results in a lower penalty). **Late or not filed:** an election sensitive report is considered “late” if it was filed after the deadline but more than four days before the election; this lessens the severity of the penalty. However, an election sensitive report is considered “not-filed” if it is filed after the election or less than four days before the election; this increases the severity of the penalty. **Level of Activity:** the more activity that was required to be disclosed in the report, the higher the penalty is. **Number of Prior Violations:** the more previous violations committed by the respondent, the higher the penalty is.

Application of Different Penalty Formulas

To demonstrate how the different approaches apply, consider the case recently dismissed by agency staff in which a well-resourced, sophisticated PAC failed to timely disclose over \$500,000 worth of expenditures (that were required to be disclosed before the primary) until after the primary was already over.

Different Penalty Approaches to PDC Case No. 159779 (SEIU 775 PAC) by Jurisdiction						
Jurisdiction	Days Late Report #1	Total Late Disclosed Activity Report #1	Days Late Report #2	Total Late Disclosed Activity Report #2	Penalty	Penalty Formula
Washington	22	\$469,777.21	8	\$31,142.39	1st Report: \$0.00 2nd Report: \$0.00 (Case Dismissed Administratively By Staff)	Ostensibly the PDC’s penalty schedule calls for a first time penalty of \$150 for 1st violation and \$300 for 2nd violation, but staff dismissed this case administratively as they do with the vast majority of late reporting cases.
Oregon	22	\$469,777.21	8	\$31,142.39	1st Report: \$49,977.72 2nd Report: \$1,245.70	1/2% of the amount of the transaction multiplied by the number of days late, penalty is capped at 10% of total amount late disclosed.
Idaho	22	\$469,777.21	8	\$31,142.39	1st Report: \$1,000.00 2nd Report: \$300.00	2 day grace period then penalty accrues at \$50/day until report is filed.
Federal	22	\$469,777.21	8	\$31,142.39	1st Report: \$19,450.00 2nd Report: \$2,328.00	See FEC Penalty Matrix/Calculator.

⁵ <https://www.fec.gov/legal-resources/enforcement/administrative-fines/calculating-administrative-fines/>

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My suggestion. I would suggest that the PDC adopt a hybrid of the Idaho approach and the Federal approach. The agency should determine how many days it wants to have as a “grace period” (I would suggest only a one-day grace period) and then fix an appropriate formula based on the 4 factors considered as part of the FEC’s approach.

4) Appeal in PDC Case #159274 – Jim Wilson (exceeding mini-reporting limits)

At Thursday’s meeting, you will hear an appeal involving a case where a campaign exceeded the mini-reporting limits after the campaign had already complied with the substantive conditions for switching to full reporting. If the PDC staff had timely approved the application, there would have been no violation.

This phenomenon is not isolated to this particular respondent. Just this year there was another instance where a judicial candidate found it necessary to exceed mini-reporting limits because PDC staff failed to timely approve her application. This effectively prevented her from being able to run a meaningful campaign for superior court judge in NE WA. See PDC Case No. 157533.

I would encourage you to consider these questions in advance of Thursday’s hearing.

- When a candidate has submitted a completed application to switch to full reporting, what is an appropriate amount of time for staff to wait to approve the switch?
- What interest is served by the PDC penalizing a candidate for exceeding the mini-reporting limits when that candidate had already complied with the substantive requirements for switching to full reporting?
- How is it that the PDC staff believe that it is appropriate to administratively dismiss a case against a well-funded, sophisticated PAC that failed to timely disclose \$500,000⁶ and yet also believe that it is appropriate to prosecute a losing, first-time candidate who committed only a technical violation that did not result in any public harm or loss of transparency?
- Does the Commission have the responsibility to take corrective action when staff misuse their administrative dismissal authority? If so, what is the mechanism by which the Commissioners can exercise this oversight?

⁶ See PDC Case No. 159779 (SEIU 775 PAC), which was also discussed at the December Regular Meeting.