



November 23, 2020

Washington State Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

RE: Proposed Permanent Rules Implementing Substitute Senate Bill 6152

Dear Commissioners:

I am submitting these comments to you as the Commission considers permanent rules for implementing Substitute Senate Bill 6152. As I mentioned in my May 20, 2020 comments to the Commission regarding the then proposed emergency rules, I provide legal counsel to a wide variety of candidates, political committees, party organizations, nonprofits, trade associations and corporations, and I am providing these comments based on that experience. As before, please note that these comments reflect my own opinion and analysis and are not made on behalf of any particular client of mine.

**Proposed WAC 390-16-335
Certification for Contributions from Entities - Prohibited Activity by Foreign Nationals**

Section (1)(b)

The language proposed for this section requires uncertified contributions to be separated from certified contributions using reasonable accounting methods and, unlike the temporary rules, no longer requires sequestration of such contributions in a separate bank account. This is a welcome and practical change from the temporary rules. Just as candidates use reasonable accounting methods to separate primary election contributions from general election contributions within a single bank account, there is no reason the same practice could not be adapted for the certification process.

In addition, the 30 days to obtain a certification from when the contribution is received is a reasonable amount of time for obtaining certifications from contributors.

Recurring Contributions

The PDC website provides the following guidance:

What if our committee receives monthly contributions from the same entities? Do we need to collect a certification each time?

The law requires a committee to collect a certification for each contribution received. If an entity schedules a regularly recurring contribution using the same source of funding, it can provide a single certification to apply to each recurring payment, so long as there are no changes to the amount or timing of the recurring contribution. A new certification will be required if there are any changes to the funding source or decision-making regarding the recurring payments. Committees should obtain a new certification for recurring contributions at least annually.

<https://www.pdc.wa.gov/engage/news/prohibited-foreign-involvement-and-financing-campaigns>

This guidance is a better approach to regularly recurring contributions than requiring a new certification each and every time a contribution is made, and it should be codified in some way to protect filers who follow the PDC suggested practice.

Additionally, it is possible that contributors and recipient committees may have set up formulaic contribution arrangements where a regular contribution is arranged but the amount might be based on some other factor like a variable dues rate. In addition to codification of current PDC guidance on recurring contributions, I also suggest adoption of such language without requiring that these contributions be identical as long as the contributions are:

1. From the same entity,
2. From the same funding source,
3. Regularly recurring, and
4. There is no change to the decision-making regarding the contributions or payments.

As long as the above four factors are met, no foreign influence should be presumed and an administrative burden would be relieved. Toward that end, sample draft language to be added to proposed WAC 390-16-335 might look like the following:

(4) Entities may provide a single certification for scheduled, regularly recurring contributions so long as there are no changes to the source of funding or timing of the recurring contribution.

A new certification is required for the first such contribution of any calendar year and if there are any changes to the funding source or decision-making regarding subsequent recurring payments.

This suggested language very much reflects the guidance that the PDC already has on its website but removes the requirement that all contribution amounts be identical. This suggested language also would require certification with the first recurring contribution in a calendar year rather than just a suggestion to certify annually.

Contributions from Political Committees to Political Committees

It is a fairly common practice for political committees (or PACs) to make contributions to other political committees or candidate committees. Any political or candidate committee that has filed with the PDC must certify no foreign influence as a matter of course with regular reports of bank deposits (Form C-3) and receipt and expenditure summaries (Form C-4). Because any such properly constituted committee will have filed these reports certifying to their accuracy and to no foreign influence, there is simply no point in requiring committees to obtain these certifications from contributors that have filed and are reporting with the PDC as political committees. This requirement is particularly burdensome with contributions between committees with the same sponsor.

Possible rule language to improve this situation might be:

(_) Political committees and candidate committees are not required to obtain certifications from political committees

Washington State Public Disclosure Commission

November 23, 2020

Page 3 of 3

registered with the Washington State Public Disclosure
Commission.

Thank you for the opportunity to provide these comments and I hope this information is useful.

Sincerely,



A handwritten signature in blue ink, appearing to read 'Dan Brady', is written over a horizontal line.

Dan Brady