



State of Washington PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcca.wa.gov

To: Members, Washington State Public Disclosure Commission
From: Evelyn Fielding Lopez, Executive Director
Penny L. Allen, Senior Counsel, Attorney General's Office
Date: March 17, 2016
Re: AUTO Petition for Rulemaking

On February 1, 2016, the Automotive United Trades Organization (AUTO) filed a petition for rulemaking (AUTO Petition) via email and fax to the PDC office. The petition, which was submitted by AUTO Executive Director Tim Hamilton, seeks a new agency rule to prohibit candidates, campaigns, and political committees from accepting contributions from Tribal Governments under the theory that such contributions are public funds.

Administrative Procedure Act and PDC Rule on Petitions for Rulemaking

The Administrative Procedure Act (APA) at RCW 34.05.330(1) provides that within sixty days after submission of a petition for rulemaking, the agency shall either (a) deny the petition in writing, stating its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320. The PDC rule on petitions for rulemaking at WAC 390-12-255 provides that any person may submit a petition requesting the adoption, amendment or repeal of any rule by the commission, pursuant to RCW 34.05.330 [Administrative Procedure Act] and the uniform rules adopted by the office of financial management.

Petition Request—Political Contributions from Tribal Governments are Contributions of Public Funds

As explained in the AUTO Petition:

The subject (or purpose) of this rule is: Clarify the prohibition against the use of public funds by political action committees, political parties, and candidates for state wide, legislative, judicial or local office or in support of or opposition of a measure on the ballot (RCW 42.17A.550 and/or others).

The rule is needed because: The source of funding for tribal governments are taxes and other forms of public funds derived directly from taxing non-tribal citizens or indirectly by actions of the Legislature or the Governor's Office. The tribal governments are providing millions of dollars in political contributions in WA.

The new rule would affect the following people or groups: Candidates, political action committees, and political parties receiving contributions of public funds from a tribal government and the citizens providing the funds.

AUTO Petition, page 1.

The petition did not provide suggested language for a new rule, but after a March 10, 2016 meeting with Mr. Hamilton and his legal counsel, Phil Talmadge, they submitted this proposed rule to the PDC:

WAC 390-05-____. Definition of Public Office or Agency for Purposes of
RCW 42.17A.550-.555

For purposes of RCW 42.17A.550 and RCW 42.17A.555, "public office" as defined in RCW 42.17.005(39) includes a federally-recognized Native American tribal government, and official agencies of such government, and "public funds" include moneys from such federally-recognized Native American tribal governments.

Attachment to email from Tim Hamilton, March 11, 2016.

Process and Public Comments

After the February PDC meeting, we contacted the Governor's Tribal Office and spoke with Craig Bill about the question of whether funds held by Tribal Governments should be considered "public funds." Mr. Bill agreed to forward the petition to interested Tribes who may wish to have input on the issue.

On March 1, 2016, we met with attorneys Kelly Croman, Office of Tribal Attorney for the Confederated Tribes of the Chehalis Reservation, and Aubrey Seffernick, Miller Nash/Graham & Dunn. We discussed the AUTO Petition and the theory that all funds held by Tribal Governments were "public funds" subject to RCW 42.17A.550. Ms. Croman and Ms. Seffernick agreed to provide information about Tribal funds.

On March 10, 2016, as noted above, we met with Tim Hamilton and Phil Talmadge. They clarified that the requested rule would not prohibit members of a Tribe from making political contributions, and would not prohibit businesses operating within Tribal lands from making political contributions—the only prohibition would apply to the funds

of Tribal Governments. They also emphasized that the rule should prohibit candidates, campaigns, and committees from accepting contributions from Tribal Governments, rather than attempt to prohibit Tribal Governments from any actions. They offered to provide a draft rule, and followed up with proposed language on March 11, 2016.

The AUTO Petition was also provided to the PDC stakeholder list on March 9, 2016 and was referenced on PDC's Facebook page. As a result, the PDC received comments and several individuals indicated that they would attend the March 24, 2016 PDC meeting. Copies of the comments are attached.

PDC Authority and Capacity

There are legal issues, budget issues, and workload considerations raised by this petition at this time. You will receive a separate legal memorandum concerning advice from the Attorney General's Office, but the general issues will also be outlined here.

The AUTO Petition requests the PDC to adopt a rule that will have the effect of impacting candidates, campaigns, and committees that may receive contributions from Tribal Governments, and it will also impair the ability of Tribes to make contributions and thereby participate in the campaign and electoral process—which has implications for their freedom of expression and association as protected by the First Amendment.

In deciding whether to undertake rulemaking, an agency may consider budget constraints and other priorities. *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 393-4, 932 P.2d 139 (1997) (acknowledging that limited resources and choices among agency priorities are legitimate reasons for agency inaction and does not make an action arbitrary and capricious.) An agency may also consider alternatives which would achieve similar goals, or whether the requested rulemaking is within its statutory authority. RCW 34.05.330.

Here, the PDC has received a petition for rulemaking from the Automotive United Trades Organization (AUTO) requesting that the PDC adopt a rule which defines "public office" to include any federally recognized Tribal Government and any official agencies of such government. The proposed rule would also define "public funds" as any money from such federally recognized Tribal Governments. Adoption of the proposed rule would mean that federally recognized tribes would be unable to contribute to political campaigns under RCW 42.17A.550. Further under RCW 42.17A.555 federally recognized tribes could not use their facilities to assist a campaign.

Administrative Authority

The agency is authorized to make administrative rules regarding its procedures, and to interpret the statutes that it administers. The first legal question for the PDC is whether it has the authority to make a rule prohibiting candidates, campaigns, and committees from accepting Tribal Government contributions on the theory that such contributions are made with "public funds."

RCW 42.17A.550 provides: "Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or school district office. A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection."

The term "public funds" is not defined further in statute, but in a review of other statutes the term "public funds" is used for public sector retirement and pension funds, state and local government bond investments, funds held and managed by the state treasurer and the state investment board, and funds audited by the state auditor—none of those funds would include funds held and managed by Tribes. Therefore, we are concerned that the PDC does not have sufficient legal authority to make a rule that would define Tribal Government monies as public funds—the Legislature would need to take action to create that legal determination.

The AUTO proposed rule also would add to the statutory definition of "public office" in RCW 42.17A.005(39), which provides: "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office." Adding "federally-recognized Native American tribal government, and official agencies of such government" to the definition is a substantive change, and should be made by the Legislature. This is beyond the scope for agency rulemaking.

Agency Budget and Workload Capacity

As you are aware from our other discussions, the PDC is significantly overspent in its allotment for legal services due to litigation and numerous citizen complaints. At this time we are projected to have spent our two year allotment for legal services by July 2016, and careful budgeting will be required to manage legal costs through June 2017. The AUTO proposed rule is controversial and likely to be challenged—the agency is not currently in a position to take on this additional workload and legal expense.

The mission of the PDC is to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures and the personal financial affairs of public officials, and equitable enforcement of Washington's disclosure and campaign finance laws. In making the decision whether to go forward with rulemaking or to deny the petition, the PDC needs to consider how to best meets its mission by weighing whether the proposed rule would assist the PDC, and whether the PDC's limited resources are best used in rulemaking or in other activities.

Considering AUTO's request in the most favorable light, and assuming the agency has the authority to make this rule, AUTO's proposed rule does not significantly add to the

PDC's mission. As established by AUTO's petition, the amount spent by the tribes is currently being disclosed in a timely manner. There is no allegation of concealment, non-reporting or other violation of Washington campaign finance laws. While AUTO complains about the influence that the tribes allegedly gain through their expenditures, as the Tribes appear to be adhering to campaign contribution limits and campaign finance laws, this is the same influence that any other contributor would have. With regard to PAC or political party contributions, the Tribes' influence, if any, would be akin to other large businesses making similar contributions. Furthermore, campaign influence is outside the mission of the PDC, except to the extent such influence is obtained through violation of the Washington's campaign finance laws.

Larger Legal Issues

As noted above, the end result of AUTO's proposed rule would be that Tribes would not be able to participate in campaigns and elections the way that other businesses and organizations can participate. There are significant First Amendment and other Constitutional issues implicated in such an outcome. Given our time constraints on reviewing a petition for rulemaking, we have not provided a detailed analysis of the Constitutional issues in this review. However, we are confident that if the PDC were to approve AUTO's proposed rule, there would be significant litigation that would not resolve short of the state Supreme Court, and possibly the U.S. Supreme Court.

Staff Recommendation

Based upon our review of the legal issues and the comments received from stakeholders, Staff and Legal Counsel recommend that the PDC deny AUTO's request for rulemaking.

Attachments

From: [Kiran Asher](#)
To: [Lori Anderson](#)
Subject: AUTO petition. Please move forward with this request
Date: Thursday, March 17, 2016 5:35:42 PM

Ms Lori,

We respectfully ask the public disclosure commission to move forward on the auto petition regarding tribal contributions.

Kiran Asher

From: [Tim Hamilton](#)
To: [Ross Barkhurst](#); [Lori Anderson](#)
Subject: Re: Auto United Trades Organization
Date: Monday, March 21, 2016 12:00:53 PM

did you send this in to Lori Anderson <landerson@pdc.wa.gov>

Tim

On 3/21/16 11:43 AM, Ross Barkhurst wrote:

I agree with this petition to prohibit tribal governments from contributing to politicians. This is an example where a good and obviously essential law is bypassed, frequently to the detriment of the citizen taxpayers of Washinton. The improper custom of allowing taxpayer dollars to be cycled right back to our politicians explains preferential treatment we are seeing. It must be stopped.

Sent from my Windows Phone

From: sboerner@wildblue.net
To: [Lori Anderson](#)
Subject: Tribal Funding
Date: Sunday, March 20, 2016 7:29:49 PM

We support a WAC rule that would prohibit political committees from receiving Tribal Funding coming from Tribal governments.

We, also, would like to support the Fish and Wildlife Commission's policy regarding Willapa Bay's Salmon Policy.

Sincerely,

Steve and Alice Boerner
105 Artic Road
Cosmopolis, WA 98537
(360) 593-0401

From: [Marlene Dawson](#)
To: [Lori Anderson](#)
Subject: tribal campaign donations
Date: Wednesday, March 16, 2016 8:46:41 PM

Dear Lori,

I understand that the PDC has received a petition requesting that tribal governments be put into the same classification as other governments when it comes to the prohibition against making campaign donations. The limitation should also include direct campaigning and use of government resources. I was defeated at the ballot box due to the Lummi involvement in the elective process. I was running for office at the same time that Senator Gorton was defeated. At the time of my election, people were still traveling to the poll place. The Lummis had a bus that picked up their members. They provided them a list of people to vote for and the persons running against me had received substantial financial help from the Lummis. The Indian groups claim to be a government in one breath and a business in the next. I compared myself to being Alice in Wonderland the way they manipulate words. There is no way to distinguish one from the other.

Regards,

Marlene Dawson

From: [dressagequeen2](#)
To: [Lori Anderson](#)
Subject: Political contributions by tribal entities
Date: Thursday, March 17, 2016 10:29:34 PM

Please seriously take action against political contributions by WA tribes.
Marlisa Williams Dugan

Sent from my Verizon Wireless 4G LTE smartphone

From: [Randy Fox](#)
To: [Lori Anderson](#)
Subject: AUTO's petition
Date: Tuesday, March 22, 2016 12:01:10 PM

March 22, 2016

Lori Peterson
Washington Public Disclosure Commission
Olympia, WA 98504

Re: AUTO's Petition For Rule Making

Our names are Randy A. Fox, Karen R. Fox, Nicolas A. Fox, and Angela M. Fox. We have been active members of the Kitsap Poggie Club. The Kitsap Poggie Club is a duly recognized 501 (c) (7) Washington based non-profit organization. Our goals are to promote recreational fishing and conservation in Washington State for both today and into the future. We were founded in the late 1940's and have been active within our Kitsap community and state as volunteers promoting fishing and other outdoor recreation and conservation activities. We started the chinook rearing ponds at Gorst in the late 1960's, sponsor annual kid's fishing events, provide fishing opportunities for the blind and our residents at the Veterans Retsil home and sponsor Salmon In The Classroom projects for two of our local elementary schools.

I support the 1976 Boldt decision as the 'law of the state'. However, I believe the political influence granted tribal governments from Tribal campaign contributions is inappropriate and has created an adverse climate in Washington Department of Fish & Wildlife who are supposed to be managing resources for the benefit of all the citizens, both tribal and non-tribal. I believe that the taking of political contributions from tribal governments should be viewed in the same arena as it is for another state, county or city government. Tribal governments that exercise the level of influence over both state and federal government that is found today in WA state is unhealthy for all the citizens of Washington State.

I endorse AUTO's petition and asks the PDC Commissioners to move forward into the rule making process so a solution can be developed and adopted that protects our democratic elections and the rights of all citizens, tribal and non-tribal.

Sincerely,

Randy A. Fox
Karen R. Fox
Nicolas A. fox
Angela M. fox

From: [Charles Gauthier](#)
To: [Lori Anderson](#)
Cc: "[M.Carter](#)"; "[Jerome Twogood](#)"; "[Ken Rathbun](#)"; "[Jeff Hall](#)"
Subject: Tribal contributions to Wa State gov
Date: Tuesday, March 22, 2016 1:54:18 PM

March 22, 2016

Lori Peterson
Washington Public Disclosure Commission
Olympia, WA 98504

Re: AUTO's Petition For Rule Making

The Kitsap Poggie Club is a duly recognized 501 (c) (7) Washington based non-profit organization. Our goals are to promote recreational fishing and conservation in Washington State for both today and into the future. We were founded in the late 1940's and have been active within our Kitsap community and state as volunteers promoting fishing and other outdoor recreation and conservation activities. We started the chinook rearing ponds at Gorst in the late 1960's, sponsor annual kid's fishing events, provide fishing opportunities for the blind and our residents at the Veterans Retsil home and sponsor Salmon In The Classroom projects for two of our local elementary schools.

I support the 1976 Boldt decision as the 'law of the state'. However, I believe the political influence granted tribal governments from Tribal campaign contributions is inappropriate and has created an adverse climate in Washington Department of Fish & Wildlife who are supposed to be managing resources for the benefit of all the citizens, both tribal and non-tribal. I believe that the taking of political contributions from tribal governments should be viewed in the same arena as it is for another state, county or city government. Tribal governments that exercise the level of influence over both state and federal government that is found today in WA state is unhealthy for all the citizens of Washington State.

I endorse AUTO's petition and asks the PDC Commissioners to move forward into the rule making process so a solution can be developed and adopted that protects our democratic elections and the rights of all citizens, tribal and non-tribal.

Sincerely,

Charles Gauthier
Member Coastal Conservation Assoc. Kitsap Chap
Member Kitsap Poggie Club

From: [Loren Gee](#)
To: [Lori Anderson](#)
Subject: Contributions to political candidates from Tribal governments
Date: Friday, March 18, 2016 9:23:46 AM

I think these contributions should be outlawed. I don't believe these are in our state's best interests. Particularly since they come from different "nations".

Loren Gee

From: [Manya Gorman-Knutson](#)
To: [Lori Anderson](#)
Subject: Please don't allow AUTO to impede the rights of tribal groups in the political process
Date: Friday, March 11, 2016 2:24:21 PM

Dear Lori,

In this day and age, it is unfathomable that any organization would be so blatantly racist as to seek to deny an entire ethnic group from participation in the political process. But here we have Automotive United Trades Organization seeking to do exactly that.

It is clear to me that AUTO is upset that they haven't gotten their way in regards to gas stations on tribal lands, and their response is to completely ban Tribes from making political contributions. This is an abomination of the political process, an abdominal waste of PDC time, and an absolutely outrageous unconstitutional act.

Please deny AUTO's request for a rule change, with prejudice.

Best regards,

Manya A. Gorman-Knutson
Seattle, WA 98112

From: [Granite Service](#)
To: [Lori Anderson](#)
Subject: block tribal contributions
Date: Friday, March 18, 2016 11:38:10 AM

Please move forward with the Auto petition. Edward Stone, 1610 Roland Ave, Port Orchard WA 98366. Thank you!

From: grygorcewicz@comcast.net
To: [Lori Anderson](#)
Subject: Ruling on Political Contributions
Date: Tuesday, March 22, 2016 9:30:55 AM

I see another conflict of interest with politicians granting governing tribes additional political power by accepting millions of dollars in campaign contributions. I would encourage a ruling that would prohibit candidates from receiving any tribal government contributions which have a severe effect on our management of natural resources.

Sincerely,
Frank Grygorcewicz

From: [Hasegawa, Sen. Bob](#)
To: [Lori Anderson](#)
Cc: [Saeteurn, Chio](#); [Nelson, Sen. Sharon](#)
Subject: RE: FYI...FW: PDC solicits comment - ADDITIONAL INFO
Date: Wednesday, March 16, 2016 3:54:27 PM

Hi Lori,

Thanks for the message. It seems like that same argument could be made for all corporations that are claiming tax exemptions. If the tribes are being considered for exclusion, I'd request all corporations claiming a tax exemption also be excluded. Thanks.

-Bob

Bob Hasegawa
Washington State Senator, 11th District
Legislative Assistant: Chio Saeteurn
District Office: (206) 858-8041
Olympia Office: (360) 786-7616
bob.hasegawa@leg.wa.gov
Bob's Senate webpage<<http://www.leg.wa.gov/senate/senators/pages/hasegawa.aspx>>

From: Saeteurn, Chio
Sent: Tuesday, March 15, 2016 1:51 PM
To: Hasegawa, Sen. Bob
Subject: FYI...FW: PDC solicits comment - ADDITIONAL INFO

From: Lori Anderson [<mailto:lori.anderson@pdc.wa.gov>]
Sent: Friday, March 11, 2016 4:33 PM
Subject: FW: PDC solicits comment - ADDITIONAL INFO

Today, petitioner Automotive Trade United Organization supplemented its petition with the attached proposed rule.

Lori

From: Lori Anderson
Sent: Wednesday, March 09, 2016 7:18 PM
Subject: PDC solicits comment

The Public Disclosure has been petitioned to adopt a rule that would prohibit candidates, campaigns, and political committees from receiving any contributions from Tribal governments. Petitioner Automotive Trade Organization contends that a contribution from a Tribal government results in the use of "public funds" for political purposes, which is prohibited under the provisions of law enforced by the Public Disclosure Commission. Read the petition here<<http://www.pdc.wa.gov/archive/home/stakeholders/AUTO.rulemaking.petition.pdf>>.

The Commission must decide, when it meets Thursday, March 24, 2016, whether to initiate rule making or deny the petition. If you wish to offer input, respond to this email with your comments on or before March 23. All comments received before the meeting will be shared with the Commission.

Lori Anderson
[cid:image002.jpg@01D17A38.5BE92BA0]
P O Box 40908, Olympia, WA 98504-0908
Phone: (360) 664-2737 or 1-877-601-2828
Fax: (360) 753-1112
Follow the PDC on Facebook<<http://www.facebook.com/pages/Washington-State-Public-Disclosure->

[Commission/176667902376847](#)>!

From: [Sheli Potmesil and Troy Hatler](#)
To: [Lori Anderson](#)
Subject: Rule on Tribal contributions
Date: Tuesday, March 22, 2016 11:19:56 AM

The Public Disclosure has been petitioned to adopt a rule that would prohibit candidates, campaigns, and political committees from receiving any contributions from Tribal governments. Petitioner Automotive Trade Organization contends that a contribution from a Tribal government results in the use of "public funds" for political purposes, which is prohibited under the provisions of law enforced by the Public Disclosure Commission. I support the adoption of this rule as I believe I have witnessed undue influence in the politics of fish in this State and that it is due to Tribal campaign contributions.

Thanks

***Troy Hatler
6831 Bentley Cir NE
Bremerton WA 98311
206-930-3091***

From: cashme327@comcast.net
To: [Lori Anderson](#)
Subject: AUTO Petition to Request Banning of Tribal Contributions to Elections
Date: Friday, March 11, 2016 10:17:05 PM

I write to ask that the PDC reject the Automotive United Trades Organization's petition filed with PDC last month, which asks you to prohibit donation of tribal funds to election campaigns. AUTO is an oil marketing group, not a trade union organization as its name would seem to indicate to most people's understanding. They are filing this petition, in my opinion, because, to a large extent, tribal contributions have been given to Democratic party candidates who are opposed to some of the practices of the oil products industry. This is, therefore, a petition with a partisan bias.

Furthermore, public moneys are given to presidential campaigns via the IRS dollar writeoff. If use of public money is allowed in federal elections, why not in contests within Washington state?

I oppose this attempt by the petroleum products industry to restrict participation by Native Americans in the political process. Please deny this petition.

Marian Hennings
327 E. Broad Ave.
Spokane, WA 99207
(509) 482-2649

From: [Cindi Laws](#)
To: [Lori Anderson](#)
Subject: KILL AUTO TRADES REQUEST
Date: Friday, March 11, 2016 11:40:41 AM

Dear Lori,

In this day and age, it is unfathomable that any organization would be so blatantly racist as to seek to deny an entire ethnic group from participation in the political process. But here we have Automotive United Trades Organization seeking to do exactly that.

It is clear to me that AUTO is upset that they haven't gotten their way in regards to gas stations on tribal lands, and their response is to completely ban Tribes from making political contributions. This is an abomination of the political process, an abdominal waste of PDC time, and an absolutely outrageous unconstitutional act.

Please deny AUTO's request for a rule change, with prejudice.

Cindi Laws
(206) 790-4232

Goodbye for now, *Slán go fóill, shlahn goh foihll (Irish-Gaelic)*

From: [David Magee](#)
To: [Lori Anderson](#)
Subject: Tribal camapaign contributions
Date: Monday, March 21, 2016 10:35:00 AM

I am in support of disallowing political campaign contributions from Tribal governments. I appreciate your efforts on this subject.

David Magee
Home: 360-705-3647
Mobile: 360-584-6161
dave.magee77@hotmail.com

From: [Hal Michael](#)
To: [Lori Anderson](#)
Cc: [Tim Hamilton](#)
Subject: Re: Tribal campaign contributions
Date: Thursday, March 17, 2016 7:42:17 PM

Ms Anderson

I wish to register my support for rule making designed to ensure that Washington's Treaty Indian Tribes are considered as governments the same as other state, county, or city governments and as such are prohibited from making donations to candidates and parties as requested by AUTO.

Hal Michael
Science Outreach Director, Sustainable Fisheries Foundation
Olympia WA
360-459-4005
360-791-7702 (C)
ucd880@comcast.net

From: [David Ducharme](#)
To: [Lori Anderson](#)
Cc: "[Lea Wilson](#)"; [Steve Clark](#)
Subject: Petition for Rulemaking Re: Tribal Political Contributions
Date: Tuesday, March 22, 2016 11:14:58 AM

Dear Ms. Anderson,

The Washington Oil Marketers Association (WOMA) respectfully requests the Washington Public Disclosure Commission (PDC) commence rulemaking proceedings pursuant to the petition for adoption of administrative rule submitted by Automotive United Trades Organization (AUTO) dated February 1, 2016.

WOMA is a non-profit trade organization whose members supply over 80 percent of the petroleum products sold in Washington State. In addition to wholesale fuel suppliers, WOMA also represents numerous retail fuel stations, most of which are multi-generational family businesses.

WOMA submits that rulemaking is appropriate in this case based upon the AUTO petition dated February 1, 2016, incorporated herein by reference, as well as for the following propositions:

- Washington law prohibits the use of public funds for political purposes "...whether derived through taxes, fees, penalties or any other sources...." RCW 42.17A.550.
- Tribes receive public funds through taxation of tribal and non-tribal members as well as gas taxes remitted to specific tribes from the State Motor Vehicle Fund pursuant to tribal fuel tax compacts with the State.
- Tribal governments are treated similarly to local governments (cities and counties) under several sections of state law.
- There is no expressed right in treaty or state law allowing tribal governments to influence non-tribal state or local elections.

Based on the foregoing it is certainly unclear whether tribes are legally authorized to influence non-tribal elections through political contributions. This is particularly the case given there is no express authorization for such activity under state law, yet there exists express prohibition for such activity as it pertains to the use of public funds at the same time substantial tribal political contributions are occurring and well documented.

Thank you for your consideration.

Sincerely,

David Ducharme, Attorney at Law
Washington Oil Marketers Association

From: [FRED PRIBBERNOW](#)
To: [Lori Anderson](#)
Subject: AUTO Petition to block tribal political contributions
Date: Friday, March 18, 2016 7:04:53 AM

Hello my name is Fred Pribbernow owner of Old Bellevue Services a chevron station in Bellevue and i ask you move forward on AUTO'S petition in regards to blocking tribal contributions. thankyou Fred Pribbernow

From: [Zachary Pullin](#)
To: [Lori Anderson](#)
Subject: STRONG OPPOSITION TO RULE CHANGE
Date: Friday, March 11, 2016 1:59:02 PM

Hello Lori:

Please, please, please oppose the request by a special interest group to prevent Native American Tribes from participating in the political process.

If approved, the new rule would prohibit Tribes from contributing to political candidates, political action committees, and political parties.

This would be an unprecedented violation of my native peoples right to participate equally in the political process.

Oppose the request!

Gratefully,
Zachary R. Pullin
President
Capitol Hill Community Council
Commissioner, Seattle Housing Authority
360-550-7075
zacharypullin@gmail.com

Read my latest article in Native Peoples Magazine: <http://bit.ly/1jo9igI> and my recent interview with NPR's #nextgenradio project: <http://ow.ly/DtG6p>

From: [Dorothy Reinhardt](#)
To: [Lori Anderson](#)
Subject: Comments: AUTO's Petition for Rule Making
Date: Tuesday, March 22, 2016 12:08:30 PM

Lori Peterson

Washington Public Disclosure Commission

Olympia, WA 98504

Re: AUTO's Petition For Rule Making

My name is Dorothy Reinhardt and I am a Kitsap County resident and sports recreation participant and member of the Kitsap Poggie Club. We are duly recognized 501 (c) (7) Washington based non-profit organization. Our goals are to promote recreational fishing and conservation in Washington State for both today and into the future. We were founded in the late 1940's and have been active within our Kitsap community and state as volunteers promoting fishing and other outdoor recreation and conservation activities. We started the chinook rearing ponds at Gorst in the late 1960's, sponsor annual kid's fishing events, provide fishing opportunities for the blind and our residents at the Veterans Retsil home and sponsor 'Salmon In The Classroom' projects for two of our local elementary schools.

We support the 1976 Boldt decision as the 'law of the state'. However, I believe the political influence granted tribal governments from Tribal campaign contributions is inappropriate and has created an adverse climate within Washington Department of Fish & Wildlife who are supposed to be managing resources for the benefit of all the citizens, both tribal and non-tribal. I believe that the taking of political contributions from tribal governments should be viewed in the same arena as it is for another state, county or city government. Tribal governments that exercise the level of influence over both state and federal government that is found today in WA state is unhealthy for all the citizens of Washington State.

I endorse AUTO's petition and asks the PDC Commissioners to move forward into the rule making process so a solution can be developed and adopted that protects our democratic elections and the rights of all citizens, tribal and non-tribal.

Sincerely,

Dorothy Reinhardt

From: [Norman Reinhardt](#)
To: [Lori Anderson](#)
Subject: AUTO Petition
Date: Tuesday, March 22, 2016 11:22:06 AM

March 22, 2016

Lori Peterson
Washington Public Disclosure Commission
Olympia, WA 98504

Re: AUTO's Petition For Rule Making

My name is Norman Reinhardt and I am the president of the Kitsap Poggie Club. The Kitsap Poggie Club is a duly recognized 501 (c) (7) Washington based non-profit organization. Our goals are to promote recreational fishing and conservation in Washington State for both today and into the future. We were founded in the late 1940's and have been active within our Kitsap community and state as volunteers promoting fishing and other outdoor recreation and conservation activities. We started the chinook rearing ponds at Gorst in the late 1960's, sponsor annual kid's fishing events, provide fishing opportunities for the blind and our residents at the Veterans Retsil home and sponsor Salmon In The Classroom projects for two of our local elementary schools.

I support the 1976 Boldt decision as the 'law of the state'. However, I believe the political influence granted tribal governments from Tribal campaign contributions is inappropriate and has created an adverse climate in Washington Department of Fish & Wildlife who are supposed to be managing resources for the benefit of all the citizens, both tribal and non-tribal. I believe that the taking of political contributions from tribal governments should be viewed in the same arena as it is for another state, county or city government. Tribal governments that exercise the level of influence over both state and federal government that is found today in WA state is unhealthy for all the citizens of Washington State.

I endorse AUTO's petition and asks the PDC Commissioners to move forward into the rule making process so a solution can be developed and adopted that protects our democratic elections and the rights of all citizens, tribal and non-tribal.

Sincerely,

Norman Reinhardt

From: [Doug Smith](#)
To: [Lori Anderson](#)
Subject: AUTO
Date: Friday, March 18, 2016 9:13:21 AM

Dear Ms. Anderson,

I support AUTO's petition regarding tribal contributions and hope the PDC will move forward on a rule process regarding this topic.

Sincerely,

Doug Smith
RH Smith Dist Co Inc
(509) 882-3377 x107

From: [Rod Smith](#)
To: [Lori Anderson](#)
Cc: ["Rod Smith"](#)
Subject: Re: AUTO Petition
Date: Monday, March 21, 2016 11:33:00 AM

Dear Ms. Anderson,

My name is Rod Smith, Vice President of RH Smith Distributing, a family owned, second generation petroleum fuel marketer operating throughout Eastern Washington. I am 100% supporting AUTO's petition to the PDC. What is happening in our great State is nothing short of a takeover of our elected government by 2% of the State's citizens. Personally I have nothing against our Native American brothers & sisters but this cycle of influence starting with tribal gambling and continuing with tribal fuel stations paying almost none of today's \$0.445 State fuel tax has got to stop. If the Native American influence is allowed to continue then Washington will no longer be able to collect enough tax revenue to sustain itself. We will no longer be one the United States of American!

Sincerely,
Rod Smith
R. H. Smith Dist. Co., Inc.

From: [Brian Sonntag](#)
To: [Lori Anderson](#)
Subject: Tribal contributions
Date: Friday, March 18, 2016 1:32:54 PM

I hope you'll consider rule making regarding this practice. Thank you.

Sent from my iPhone

From: [Joe Szilagyi](#)
To: [Lori Anderson](#)
Subject: Proposed rules change to prevent Native tribes using tribal funds for PDC work
Date: Friday, March 11, 2016 11:36:51 AM

I am writing to advise PDC and all relevant bodies to oppose this:

<http://www.pdc.wa.gov/archive/home/stakeholders/AUTO.rulemaking.petition.pdf>

Joe Szilagyi



Twin Harbors Fish & Wildlife Advocacy

PO Box 179
McCleary, WA 9855
THFWA@comcast.net



February 18, 2014

Lori Peterson

Washington Public Disclosure Commission
711 Capitol Way S., # 206
Olympia, WA 98504

via fax: (1) page total

Re: AUTO's Petition For Rule Making

The Twin Harbors Fish & Wildlife Advocacy is a duly recognized 501 (c) (3) Washington based non-profit organization dedicated to the preservation of fish, wildlife, and natural resources for the benefit of the state's citizens and the future generations that will follow (<http://thfwa.org/>). The Advocacy's members and their family and neighbors have been active volunteers in fisheries management processes and enhancement projects in Grays Harbor and the Chehalis River Basin for over 30 years.

We believe the political influence granted tribal governments from historical campaign contributions has created a state of "political polarization" for management personnel in Washington Department of Fish & Wildlife who are supposed to be managing resources for the benefit of all the citizens, tribal and non-tribal alike. For tribal governments to exercise the level of influence over state government that is found today in WA state is inappropriate and unhealthy for our democratic process.

The Advocacy endorses AUTO's petition and asks the PDC Commissioners to move forward into the rule making process so a solution can be developed and adopted that protects our democratic elections and the rights of all citizens, tribal and non-tribal.

Sincerely,

Art Holman
Vice-President
Aberdeen, WA

Ron Schweitzer
Secretary/Treasurer
Elma, WA

From: [Cindy Waters](#)
To: [Lori Anderson](#)
Subject: AUTO Petion
Date: Thursday, March 17, 2016 7:41:56 PM

My name is Cynthia Waters, please proceed with the Petition on behalf of AUTO.. Thank you. 206-250-4714 if you need to get a hold of me.

Sent from my iPad

From: [Jeanne Whitley](#)
To: [Lori Anderson](#)
Subject: AUTO" petition
Date: Friday, March 18, 2016 12:23:59 PM

We ask that you move forward on Auto's petition as we feel that the tribes should be treated as any other government. At some point they need to play by the same rules as the rest of us.

Thank you for your consideration,
Jeanne Whitley

From: [Loyd Williamson](#)
To: [Lori Anderson](#)
Subject: Tribal campaign contributions
Date: Thursday, March 17, 2016 7:52:53 PM

I understand that AUTO has filed a petition regarding the tribal governments contributing to campaigns in the state of Washington. I am writing to express my support of this petition. My name is Loyd Williamson, I live in Anacortes, and am a business owner. Thank you. Loyd

From: [Lea Wilson, WOMA](#)
To: [Lori Anderson](#)
Subject: PDC Petition
Date: Friday, March 18, 2016 9:57:35 AM

Hi Lori:

On behalf of all the member company of the Washington Oil Marketers Association, we kindly ask that you move forward with AUTO's petition to prohibit contributions to our state legislators from tribal entities. Fairness and equality is always the best policy.

Very kindly,

Lea Wilson, Executive Director
Washington Oil Marketers Association
206-7187662

From: SRWYRSCH@aol.com
To: [Lori Anderson](#)
Subject: Re: AUTO's Petition to block tribal campaign contributions
Date: Thursday, March 17, 2016 7:57:27 PM

I wish to offer my support for the proposed WAC to prohibit tribal contributions to our elected officials.

We have two tribes, which operate casino and hotel operations, here in Snoqualmie Valley. It always amazes me how the tribes can influence building, zoning and business conditions on members of the community even though the same citizens have no influence upon tribal governance or operations.

I am a service station owner who suffers due to the marketing advantage given to the tribal service stations by State of Washington which refunds over \$1,000,000 to each tribal service station. Money that should go to public roads. For these reasons I hope you will consider the petition put forward by AUTO.

Sincerely,

George Wyrsh
PO Box 990
North Bend, WA 98045
425-922-2279
srwyrsh@aol.com

From: "W Ron. Allen" <rallen@jamestowntribe.org>
Date: Mon, Mar 14, 2016 at 5:47 PM -0700
Subject: Political contributions by Sovereign Indian Tribes
To: "Evelyn Lopez" <evelyn.lopez@pdc.wa.gov>
Cc: "christine.masse@millernash.com" <christine.masse@millernash.com>, "Seffernick, Aubrey" <aubrey.seffernick@millernash.com>, "Diane Gange" <dgange@jamestowntribe.org>

Director Lopez,

Thank you for your thoughtful consideration of the problems associated with the AUTO petition to define tribal revenues as "public funds" under state law. As you know, Tribes retain the right of a unique sovereign government within the United States rooted in our US Constitution and subsequent Supreme Court decision and various federal statutes to make our own laws and to govern ourselves in the absence of clear and explicit cession of such rights.

Among these rights is the right to determine the use of tribal revenues for any purpose in accordance with tribal law, tradition, and custom except to the extent of any federal law or contractual term to the contrary. As such, the state does not have authority to regulate tribes without express federal delegation. Currently, state law definitions of "public funds" clearly recognizes that only revenues controlled by the state are included in the definition of "public funds" (e.g. RCW 43.350.010(8); RCW 39.58.010(16)). Tribes are not controlled, nor are subdivisions of the state. Tribal revenues are not and may not be included in this definition.

As background, you've asked how tribal governments are funded. The attached is a broad list of common sources of tribal funds, not meant to be exhaustive of all sources of funds, which are subject only to tribal law restrictions except to the extent funded through contracts or grants. This list is intended to illustrate the varied

scope of tribal government revenue and the unique nature of tribal revenues compared to most other governmental entities.

I hope this information is useful in your deliberations and trust that if you have any questions or clarification, I or our team cc'd in this e-mail would be delighted to assist.

Thanks, Ron

W. Ron Allen, Tribal Chairman/CEO

Jamestown S'Klallam Tribe

(360) 681-4621 (Direct)

(206) 369-6699 (Cell)

OVERVIEW OF TRIBAL REVENUE SOURCES

Category	Notes	Restrictions on Use of Revenues
Federal Contracts/Grants	Federal contracts (to carry out federal trust responsibilities) and grants.	Restrictions and audit requirements in accordance with federal law, as specified in contract or grant documents.
Federal Purchases	Purchases of goods and services from tribally-owned industries, including 8(a) companies. Includes construction, janitorial, manufactured items, etc.	Purchase contract may include federal law requirements and restrictions applicable to the goods or services provided (e.g. drug free work place, non-discrimination, etc.), but not to the use of profits.
State Compact Dollars	Refunds paid to tribes pursuant to compacts authorized by statute.	Refunds are not public funds of the state, but may be subject to contractual obligations or restrictions on use.
	Tribal taxes collected by tribes in lieu of state taxes pursuant to compacts authorized by statute.	These are tribal dollars, not state taxes, but may be subject to contractual obligations or restrictions on use.
State/Local Grants	Various grant programs.	Subject to restrictions applicable to non-tribal recipients.
State/Local Purchases	Purchases of goods and services from tribally-owned industries. Includes professional search services, meeting room rents, etc.	Purchase contract may include state/local law requirements and restrictions applicable to the goods or services provided (e.g. drug free work place, non-discrimination, etc.), but not to the use of profits.
Private Funding	Grants, donations, and other revenues from non-profit organizations, foundations, and private individuals. May be subject to restrictions depending on the funding source.	Donor may, but does not always, restrict use of funds.
Timber Sales & other natural resources	Sales of tribally-owned timber or other tribal natural resources (fishing, etc.).	Only if Tribal law so provides.
Lease Revenues	Lease of tribally-owned industrial, commercial, agricultural, residential, and aquatic lands; residential leases.	Only if Tribal law so provides.
Other Land Revenues	Right-of-way royalties, easements, temporary access uses, facility rentals; etc.	Only if Tribal law so provides.

Category	Notes	Restrictions on Use of Revenues
Gaming Revenues	Revenues of Tribal gaming operations.	Under the Indian Gaming Regulatory Act, certain tribal gaming revenue distributions require approval of a Revenue Allocation Plan by the National Indian Gaming Commission.
Enterprise Revenues	Revenues of enterprises wholly-owned by tribes or owned in partnership with individual tribal members, tribal member owned business entities, individual non-Indians, and/or non-tribal business entities. Includes: casinos; hotels; golf courses; convention facilities; restaurants; construction; water parks; gas stations; convenience stores; health care facilities; child care facilities; cigarette manufacturing; cigarette distribution; fish and shellfish aquaculture, wholesale, retail, and processing; timber processing; museums; amphitheaters/entertainment venues; professional search services; management services; fireworks sales; and others.	Subject only to Tribal law and the terms of any financing agreement or agreements with partners.
Utilities	Revenues of tribally-operated water, sewer, and other utilities.	Subject only to Tribal law and the terms of any financing agreement or agreements with partners.
Program Revenue	Revenues of tribally-operated programs.	If federally or grant funded, may be subject to the terms of the relevant contract or grant; otherwise, subject only to Tribal law.
Taxes	Tribal tax revenues on tribal operations, tribal members, and non-Indian individuals and entities. Includes sales, cigarette, fuel, liquor, marijuana, fish/shellfish, timber, hotel occupancy, leasehold excise, and other taxes.	Subject only to Tribal law except to the extent collected under a state-tribal compact, in which case contractual obligations may apply.
Investment Income	Income from active and passive investments. Includes stocks, bonds, mutual funds, partnerships, interest on loans, and other investments.	Subject only to Tribal law.

From: Tim Hamilton [<mailto:tim@autowa.org>]
Sent: Friday, March 11, 2016 3:11 PM
To: Evelyn Lopez <evelyn.lopez@pdc.wa.gov>
Subject: Request for Rule/proposed rule language

March 11, 2016

Evelyn Fielding Lopez
Executive Director
Washington Public Disclosure Commission

Ms. Lopez:

First, I appreciate the recent meeting wherein you allowed Phil Talmadge and I an opportunity to express AUTO and its members position on the request for rule making.

I offer some followup comments related to our belief that all funding in control of a tribal government rises to the definition of "public funds". We discussed how use of public property and offices, etc. were not to be used for campaign purposes. In our minds, its not just a case wherein government facilities are not to be used for campaign purposes though the PDC clearly has a position such would not be acceptable and might rely upon this position to include funding held by persons in government occupying said facilities to likewise be prohibited. It is our position that the funds, proceeds, or profits coming from the government operating businesses utilizing government owned and controlled real estate or facilities rise to the prohibition as well.

It is noteworthy to recognize that the casinos, buildings, facilities, etc. owned by a tribal government and used by said government to operate businesses or to provide services for tribal members are typically located on "trust land". Trust land is property deeded to the United States Government and held in trust by the federal government for use by the tribal government (<http://www.bia.gov/FAQs/>). It can include lands inside or outside the reservation either acquired for the first time or reacquired by a tribal government (<http://www.bia.gov/WhoWeAre/BIA/OTS/FTT/index.htm>).

Here's an example of fee property within a reservation that was acquired by the Squaxin Tribe off HR 108 near the casino. The tribe bought, requested trust status and transferred the title onto the federal government for use by the tribal government (<http://property.co.mason.wa.us/Taxsifter/Assessor.aspx?keyId=3279697&parcelNumber=31919-10-00000&typeID=1>)

Another example is when the Squaxin Tribe bought an existing gasoline station off the reservation back towards Olympia in Thurston County. "Steamboat Trading Post" is located at 6610 Sexton Dr NW, Olympia, WA 98502. Since it was well off the reservation and not part of a tribal government sovereign land at the point of acquisition, the tribe transferred the property to the federal government as trust land held for the use by a tribal government (<http://tcproperty.co.thurston.wa.us/propsql/basic.asp?pn=09260024000>). As a result, the location was

added to the list of stations shown in the motor fuel compact with the state to be operated by the tribe and eligible for a payment to the tribal government from the account holding the state's motor fuel taxes.

The business operation at the above location is a tribal government operating on publicly held land (U.S.) under a subsidiary titled Island Enterprises, Inc. which is a wholly owned and controlled subsidiary of the tribal government. Its address posted on the tribal website is shown on the assessor's website as a parcel acquired by the tribal government and subsequently held in trust by the federal government for activities of the tribal government. (

<http://property.co.mason.wa.us/Taxsifter/Assessor.aspx?keyId=3279780&parcelNumber=31920-22-00130&typeID=1>) I return to the motor fuel compact between the tribe and the state of WA wherein the state recognizes this location is being operated by a tribal government under a "government-to-government" compact agreement that sends 75% of the motor fuel taxes collected earlier from other taxpayers back to the tribal government. Similar conditions exist with the compacts between the two on alcoholic beverages and tobacco sold at such a location. In other words, the state recognizes the retailer Island Enterprises is in fact the tribal government as its compacts are with the tribal government and not Island. It is also important to note that tribal government also recognizes Island as an arm of its own government on its website as follows: "*The Tribe created Island Enterprises, Inc. to carry out economic development functions for job creation and to generate revenues to support essential government programs and services. Subsidiaries and related businesses now include several Trading Post gas stations and convenience stores, Salish Seafoods, the Ta-Qwo-Ma Business Development Center, Skookum Creek Tobacco Company, Skookum Creek Distributing, SI Distribution, and Island Search & Consulting.*"

The other type of real estate ownership is the tribal government holding title in its own name. As a government, the land with title held by the tribal government directly is typically not taxed by the state or its subdivisions under the exemption provision for government entities. As a further example, the Squaxin Island Tribe holds title to parcel #21902-00-6000 in Mason County inside the reservation boundary. It carries a DOR Code of 76- Recreation - Parks though the address aligns with the location of the tribal offices. It is also tax exempt due to the ownership by the tribal government (<http://property.co.mason.wa.us/Taxsifter/Assessor.aspx?keyId=3261146&parcelNumber=21902-00-60000&typeID=1>) just as it would be if owned by a city, county, or other subdivision of the state.

Finally we come to the issue of casinos. I believe a continuing review of the Squaxins will look comparable to the other tribal governments operating casinos. Returning to the Mason County parcel search engine, one finds the location of the Little Creek Casino and its recently opened golf course is on property held in trust by the

U.S. (<http://property.co.mason.wa.us/Taxsifter/Assessor.aspx?keyId=3279676&parcelNumber=31918-43-60040&typeID=1>). It is also relevant to recognize that tribal governments are the only entities that can operate casinos of the nature seen today in WA state. "*No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.*" [[25 U.S. Code § 2710 - Tribal gaming ordinances](#)] Further, the federal codes limit use of proceeds from gambling to specific measures for supporting tribal government services and does not include campaign contributions in its list of acceptable uses. As a result of the above, proceeds from casinos likewise rise to the definition of

public funds.

In closing, we continue to urge the PDC Commission to move forward to the rule making process. We are confident a solution to these problems can be developed and adopted during said process. As we committed during the recent meeting, attached is a word file of a proposed rule drafted by Mr. Talmadge that would be one means to accomplish the task.

Respectfully,

Tim Hamilton
Executive Director
AUTO

WAC 390-05-____. Definition of Public Office or Agency for Purposes of
RCW 42.17A.550-.555

For purposes of RCW 42.17A.550 and RCW 42.17A.555, “public office” as defined in RCW 42.17.005(39) includes a federally-recognized Native American tribal government, and official agencies of such government, and “public funds” include moneys from such federally-recognized Native American tribal governments.

Received 2/1/2016



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at http://apps.leg.wa.gov/wac/default.aspx?cite=82-05.

CONTACT INFORMATION (please type or print)

Petitioner's Name Timothy A. Hamilton
Name of Organization Automotive United Trades Organization
Mailing Address PO Box 1420
City McCleary State WA Zip Code 98557
Telephone 360.495.4941 Email tim@autowa.org

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
Provide relevant examples.
Include suggested language for a rule, if possible.
Attach additional pages, if needed.
Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Public Disclosure Commission

1. NEW RULE - I am requesting the agency to adopt a new rule.

Clarify the prohibition against the use of public funds by political action committees, political parties, and candidates for state wide, legislative, judicial or local office or in

The subject (or purpose) of this rule is: support or opposition of a measure on the ballot (RCW 42.17A.550 and/or others).

The source of funding for tribal governments are taxes and other forms of public funds derived directly from taxing non-tribal citizens or indirectly by actions of the Legislature or the Governor's

The rule is needed because: Office. The tribal governments are providing millions of dollars in political contributions in WA.

Candidates, political action committees, and political parties receiving contributions of public funds from a tribal

The new rule would affect the following people or groups: government and, the citizens providing the funds.

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: (UNKNOWN)

I am requesting the following change: Existing rules or policies could be contrary to the new rule requested above. A review of existing rules and policies is therefore requested and adoption of amendments needed to align existing rules with the new rule is requested.

This change is needed because: To insure clarity and constancy in rules adopted by the PDC. Any existing rule or policy that enables a candidate, PAC, political party or other entity to receive contributions from a tribal government is contrary to RCW 42.17A.550 and/or other statutes.

The effect of this rule change will be: Align existing rules and policies with the new rule being proposed.

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: (Review of existing rules and policies requested)

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: Any WAC or policy that enables a candidate, PAC, political party or other entity to receive contributions from public funds heel tribal government is contrary to RCW 42.17A.550 and/or other statutes.

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____



PO Box 1420 McCleary, WA 98557
(360) 495-4941 • Fax: (360) 637-3525 • Email: tim@autowa.org
www.autowa.org

"Keeping the Wheels Rolling in Washington State"

February 1, 2016

Via email and fax (8) pages total

Evelyn Fielding Lopez, Executive Director
Washington State Public Disclosure Commission
711 Capitol Way, Rm. 206
P. O. Box 40908
Olympia, WA 98504-0908

RE: Request For Adoption Of Rule

Dear Ms. Lopez:

The Automotive United Trades Organization (AUTO) is a duly filed and recognized Washington corporation that is a nonprofit trade association representing small businesses that market and distribute motor fuel in the state. In my role as Executive Director, I am the contact person for the organization.

Attached for submission is an executed form created by the Secretary of State wherein AUTO requests adoption of a rule by the Washington Public Disclosure Commission (PDC). The issue is the receipt of contributions from tribal government entities by candidates, political action committees, political parties and others involved in elections within the state. AUTO's position is the treasuries of these contributing tribal governments contain public funds created by taxes collected by the tribal governments from non-tribal citizens and transfers from state or other public treasuries through actions of the legislative or executive branches of state government. A contribution from a tribal government therefor results in the use of "public funds" for political purposes. State law prohibits use of public funds for political purposes "...whether derived through taxes, fees, penalties or any other sources...." ¹

This letter is an addendum to the previously referenced form and intended to further explain AUTO's position and request. Additionally, AUTO intends to provide extensive documentation to the record during the rule making process in accordance with the procedures set forth in the Administrative Procedures Act².

Tribal sovereignty, tribal rights under historical treaties, and the state citizen rights of tribal members are unaffected by AUTO's request for rule making. The request is directed toward receipt of campaign contributions from a tribal government by those in support or opposition of a candidate or ballot initiative during an election held within the state of Washington. The request is therefore fully within the parameters of authority and duties of the PDC.

The magnitude of the political contributions received from tribal governments

Review of the data base maintained by the PDC show tens of millions of dollars have flowed

¹ RCW 42.17A

² RCW 34.05

out of tribal government accounts into political parties and political action committees (pacs). Recipients include pacs supporting or opposing candidates for statewide office (governor, attorney general, supreme court, etc), legislative districts, and measures appearing on the ballot. As an example, from 2004-2010 tribal governments issued political contributions approaching \$10 million. A political action committee titled "Campaign For Tribal Self Reliance" of the Washington Indian Gaming Association funded by tribal governments and managed by tribal officials provided \$382,645 in contributions during 2009-2010.³

TRIBE	2004	2005	2006	2007	2008	2009	2010
Chehalis	\$ 170,450	\$ 1,500	\$ 9,300	\$ -	\$ 7,800	\$ 1,000	\$ 11,100
Coleville	\$ 20,700	\$ 2,750	\$ 8,050	\$ 85,050	\$ 19,950	\$ 2,700	\$ 18,300
Cowlitz	\$ 500	\$ -	\$ 750	\$ -	\$ 800	\$ -	\$ -
Jamestown S'Klallam	\$ 135,025	\$ 4,100	\$ 3,325	\$ 4,345	\$ 8,600	\$ 7,850	\$ 12,452
Lummi	\$ 112,300	\$ 5,550	\$ 4,050	\$ 6,000	\$ 9,100	\$ 17,750	\$ 13,150
Hoh	\$ -	\$ -	\$ -	\$ -	\$ 3,200	\$ 3,600	\$ 2,400
Kalispel	\$ 270,753	\$ 2,668	\$ 34,618	\$ 1,194	\$ 98,499	\$ 10,205	\$ 32,636
Lower Elwha Klallam	\$ 30,162	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500
Makah	\$ 31,700	\$ 675	\$ -	\$ -	\$ 50	\$ -	\$ 500
Muckleshoot	\$ 1,722,959	\$ 20,800	\$ 146,400	\$ 77,351	\$ 299,507	\$ 78,314	\$ 201,483
Nisqually	\$ 188,506	\$ 15,450	\$ 35,175	\$ 28,300	\$ 50,540	\$ 25,890	\$ 58,789
Nooksack	\$ 10,000	\$ 5,000	\$ 950	\$ 8,800	\$ 4,500	\$ -	\$ -
Port Gamble S'Klallam	\$ 26,250	\$ -	\$ 2,150	\$ 500	\$ 9,400	\$ 5,600	\$ 9,500
Puyallup	\$ 1,793,979	\$ 58,450	\$ 149,825	\$ 69,800	\$ 143,344	\$ 1,600	\$ 121,700
Quileute	\$ 10,000	\$ -	\$ 1,700	\$ -	\$ -	\$ -	\$ 1,500
Quinalt	\$ 31,685	\$ -	\$ 2,225	\$ 36	\$ 2,050	\$ -	\$ 10,250
Samish	\$ 29,150	\$ 9,100	\$ 8,075	\$ -	\$ 48,000	\$ 5,400	\$ 24,000
Sauk-Suiattle	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500	\$ 2,000
Snoqualmie	\$ -	\$ -	\$ -	\$ -	\$ 191	\$ 547	\$ 260
Shoalwater Bay	\$ 15,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suquamish	\$ 118,050	\$ 2,000	\$ 11,650	\$ 5,205	\$ 10,150	\$ 2,500	\$ 13,050
Skokomish	\$ -	\$ 320	\$ 5,075	\$ -	\$ 1,000	\$ -	\$ -
Spokane	\$ 500	\$ 2,000	\$ -	\$ 2,700	\$ -	\$ 200	\$ 2,120
Squaxin	\$ 108,445	\$ 3,300	\$ 9,150	\$ 4,550	\$ 5,000	\$ 250	\$ 6,100
Stillaguamish	\$ -	\$ -	\$ -	\$ 2,500	\$ -	\$ -	\$ 1,200
Swinomish	\$ 303,375	\$ -	\$ 12,725	\$ 5,250	\$ 65,450	\$ 9,100	\$ 29,820
Tulalip	\$ 1,550,951	\$ 61,866	\$ 194,117	\$ 107,605	\$ 320,539	\$ 17,443	\$ 33,600
Upper Skagit	\$ 55,850	\$ 1,350	\$ 6,200	\$ 3,000	\$ -	\$ 8,800	\$ 1,300
Yakama	\$ -	\$ -	\$ -	\$ -	\$ 4,800	\$ -	\$ 1,600
TOTAL	\$ 6,736,789	\$ 196,879	\$ 645,510	\$ 412,186	\$ 1,112,470	\$ 200,249	\$ 609,310

2004-2010 GRAND TOTAL \$ 9,913,393

All data downloaded from WA State Public Disclosure Commission website and current as of 1/6/2011

As additional examples of the continuous flow of tribal government contributions, in 2013-2014 contributions to Governor Jay R. Inslee exceeded \$42,000. Attorney General Robert W. Ferguson received \$21,400 and Representative Derek C Stanford received \$9,250. As the legislature was set to convene, the Washington State Democratic Central Committee received \$50,000 from the Puyallup Tribe and \$25,000 from the Muckleshoot Tribe. The Harry S Truman Fund (House Democrats) received \$105,000 from different tribal governments. The Kennedy Fund (Senate Democrats) received \$155,500. In 2014, the Senate Republican Campaign Committee received \$950 from the Nisqually and \$500 from the Swinomish.

Political contributions from tribal governments utilize taxes and other public funds

A tribal government receives its funding in numerous fashions. First, in the form of taxes passed by tribal government and collected primarily from non-tribal citizens (many tribes exempt their members from paying tribal taxes). Similar to a visitor to Seattle attending a

3 <https://www.pdc.wa.gov/rptimg/default.aspx?batchnumber=100586792>

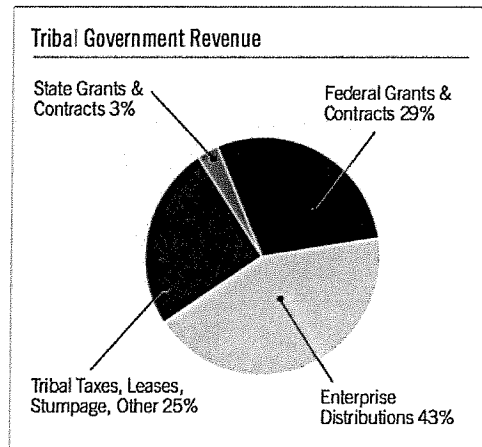
Seahawks game, non-tribal citizens pay taxes to tribal government enterprises located on a reservation operated directly by a tribal government or under a license agreement with the tribe. As an example, the visitor staying at the lodging facility near a casino will often see a “motel/hotel” tax on the bill. Same with a visit to a convenience store or restaurant. While many citizens assume the label of “tax” means it is a Washington state or city tax, the amount on the billing is typically a tax imposed by the tribal government.

“While individual Indians clearly pay taxes, tribes do not; they are governments. Tribes levy taxes. For example, the Squaxin Island Tribe charges a 10% tax on its hotel patrons.” [washingtonindiangaming.org](http://www.washingtonindiangaming.org)

Additional revenue sources for tribal governments are the contribution to the tribal governments by the state and federal governments. As an example, under compacts entered into with the Department of Licensing, a tribal government operating a retail motor fuel outlet receives a contribution equal to 75% of the state tax rate collected from the motor fuel supplier prior to the delivery to a tribal station location⁴. Since 2005, tribal governments have received approximately \$275 million dollars from the Motor Vehicle Fund where the state fuel taxes and vehicle license fees are deposited. The latest fuel tax rate increase passed by the Legislature in 2015 will increase the payments to the tribal governments in accordance with 75% of rate component in the compacts. Former State Auditor Brian Sonntag estimated the flow of public funds from the Motor Vehicle Fund to tribal governments will rise to over \$40 million dollars per year and could reach or exceed \$354 million over the next decade.⁵ Sonntag earlier reviewed the compacts and determined the state has no ability to independently verify where these tens of millions of public funds were spent.⁶

A third source is proceeds derived from enterprises operated directly by tribal governments. Revenue from a tribe’s gaming or other type enterprise is taxation that flows public funds into the tribal government similar to the Washington State Lotto. The tribal governments do not pay federal income taxes on “net profits” of tribal enterprises though the tribal governments reimburse state and federal government for regulatory services provided to its gaming enterprises. *“Every dollar earned from tribal gaming is invested in public purposes – to improve people’s lives, Indian and non-Indian alike, in communities throughout Washington. Gaming revenue is tax revenue for tribal governments.”*⁷

When one recognizes all reported revenue streams flowing into a tribal government rise to the definition of public funds, the source into the tribal government is somewhat irrelevant. Receipt of a contribution from a tribal government is contrary to the intent and expressed language of the state statute forbidding use of public funds for political purposes.



Source: <http://www.washingtonindiangaming.org>

4 <http://www.dol.wa.gov/about/docs/2014-11-tribal-fuel-tax-rpt.pdf>

5 “Fuel Tax Update.PDF” (Sonntag, July 23, 2015)

6 Sonntag Compacts Report, March 18, 2014 (http://autowa.org/pdf/2014/Sonntag_Compacts_Report.pdf)

7 <http://www.washingtonindiangaming.org/images/content/FINAL%20CIR%20WEB%20VERSION.pdf>

Tribal governments are considered similarly to a city or county government with the notable exception of utilizing public funds to providing political contributions

An example of the recognition that tribal governments are considered in the same fashion as a city or county is the ability of a tribal government to enter into interlocal government agreements⁸. RCW 39.34 grants a “public agency” the ability to enter into said agreements.

(1) “Public agency” means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (underline added for emphasis).

Tribal governments have sought out and received authority to act as an agent of the state in similar fashion to a city or county. One example is tribal law enforcement officers can seek out and arrest non-tribal citizens for violations of state law.⁹

(1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.

The prohibition against using public funds in elections is clearly intended to prevent a government with taxing authority and control of a treasury from utilizing its treasury to provide political contributions. The statute does not exclude a tribal government. Neither is the prohibition limited in application to just the state or its subdivisions. The intent and purpose of the statute creates a prohibition applicable to a tribal government in the same manner the PDC would view a contribution from the state of Oregon or the City of Portland.

Tribal governments do not hold an expressed right to influence non-tribal state or local elections

The federal government “recognizes” the sovereign treaty rights of certain tribes that have adopted constitutions and forms of governmental in accordance with federal guidelines¹⁰. Tribal sovereignty effectively prevents state or local government from influencing elections held by a tribal governments. AUTO could locate no authority or right under federal or state statute or any provision set forth in a historical treaty that grants tribal governments in Washington an affirmative right to influence the elections of non-tribal governments. While citizens who are also a member of a tribe do hold this affirmative same as all other citizens of the state, such is not the case for a tribal government holding public funds.

A tribal government is considered similar to a state under federal policies

While some tribal and non-tribal citizens consider an “Indian Nation” to be similar to a

8 <http://www.cityofanacortes.org/docs/Contracts/SamishMOU.pdf>

9 RCW 10.92.020

10 US Code: 25-INDIANS

foreign nation, the federal government and our system of laws do not. The US Constitution recognizes four sovereigns, the federal government, state governments, tribal governments, and foreign governments.

A tribal government is an entity that is aligned similar to a state. Federal laws apply to a tribal government but state laws are not enforceable on tribal land same as WA law is not enforceable in the state of OR or ID.

The same holds if one incorrectly considers a tribal government to be a

“sovereign nation” outside of US jurisdiction. *“The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.”*¹¹

The WA State Auditor’s Office can not typically detect an improper use of public funds by a tribal government

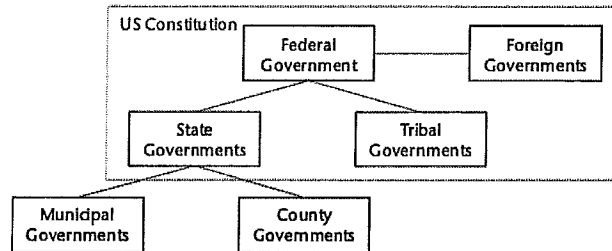
It is noteworthy to point out that cities, counties, or other local government entities are subjected to audits by the state Auditor’s Office. An improper campaign contribution by these entities would likely surface during the regular audits that are conducted. No political contributions by the local governments could be found in a review of the reports filed with the PDC.

Due to the sovereignty of tribal governments, tribal accounts holding public funds controlled and dispensed by tribal governments are not subject to similar audits by the Auditor’s Office. Therefore, the public is typically reliant upon the PDC to insure candidates, parties, and pacs honor the prohibition of using public funds for political purposes. While the PDC does not have control over the behavior of tribal governments operating on trust land within a reservation, the Commission clearly has authority over those receiving contributions intended for use in elections held within the state of Washington.

The prohibition on use of public funds insures that the City of Portland or the state of Oregon does not use its power of taxation to influence the elections across the Columbia River in Vancouver, Washington. In a similar fashion, the prohibition prevents the City of Seattle using its tax base to unfairly compete with a smaller city for legislative attention or even worse, determining the outcome of the city council races in a nearby city such as Auburn.

Another purpose of the prohibition was the concern that elected officials would exercise control over public treasuries and divert public funds to complement their own candidacy or affiliated political parties. Diverting public funds to a tribal government that returns a portion back to campaigns or parties of those controlling the diversion in the first place *“will not pass the smell test”*. Public funds do not somehow ripen into non-public funds upon receipt

Figure 2
The US Constitution Explicitly Recognizes Four Sovereigns



Spilde, et al. (2002), 14.

11 http://www.fec.gov/pages/brochures/statefed.shtml#When_Federal_Law

by tribal governments that are also providing campaign contributions intended to benefit the same elected officials making decisions that result in the transfer public funds out of the state treasury over to the accounts of contributing tribal governments.

Expedient action by the PDC is warranted and necessary to restore confidence of the public during the 2016 election cycle

The intent, purpose, and effectiveness of the prohibition on using of public funds was severely negated when tribal governments decided to invest tens of millions in contributions into the non-tribal elections of the state over the last decade. Contributions for which there exists no apparent “common sense” explanation other than a desire by tribal governments to influence elections and the subsequent decisions of those elected to offices in non-tribal governments. Many citizens, including many AUTO members, believe a quid pro quo system has evolved wherein tribal governments use public funds to contribute with the full expectation of receiving a “good return on the investment” in the form of additional transfers out of the public coffers and legislative support for other matters of importance to the contributing tribal governments.

The fact that this activity has been ignored for a decade does not make the practice of accepting contributions of public funds by a tribal government allowable under state law in 2016. No “grandfather clause” exists in the prohibition statute. Further, for a tribal government to hold an exemption to the prohibition would require the law to be revised by the Legislature.

AUTO recognizes that the role of the PDC is oversight of election processes to insure public transparency and contributions are conducted in accordance with state statutes while leaving the decision of who is in office up to the voters. However, a simple legislative bill search on proposals effecting tribal governments currently under consideration in Olympia is telling. Especially, when one views the data bases at the PDC for the history of tribal contributions going out to sponsors and supporters.

Since the 2016 election cycle is underway, AUTO believes an expedient action by the PDC is in the public’s best interest to allow tribal governments and those who are actively seeking out contributions from a tribal government the clarification needed to maintain the public faith in Washington’s elections.

Respectfully,



Tim Hamilton
Executive Director

Evelyn Lopez

From: Tim Hamilton <tim@autowa.org>
Sent: Wednesday, February 03, 2016 5:40 PM
To: Evelyn Lopez
Subject: Re: Petition For Rule Making

Ms. Lopez, Thank you.

Tim Hamilton

On 2/3/16 5:03 PM, Evelyn Lopez wrote:

> Mr. Hamilton, I have received your petition for rule making and will provide it to the Commissioners. Both documents opened, and printed successfully. I will let you know when this matter will come before the Commission.

>

>

> Evelyn Fielding Lopez

> Executive Director

> Public Disclosure Commission, www.pdc.wa.gov

> Phone: 360-664-2735

> Email: evelyn.lopez@pdc.wa.gov

>

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> -----Original Message-----

> From: Tim Hamilton [<mailto:tim@autowa.org>]

> Sent: Saturday, January 30, 2016 2:46 PM

> To: Evelyn Lopez <evelyn.lopez@pdc.wa.gov>

> Subject: Petition For Rule Making

>

> February 1, 2016

>

> Evelyn Fielding Lopez, Executive Director Washington State Public Disclosure Commission

> 711 Capitol Way, Rm. 206

> P. O. Box 40908

> Olympia, WA 98504-0908 RE: Request For Adoption Of Rule

>

> Dear Ms. Lopez:

>

> Attached are 2 files in PDF format. The first is a form for a request for adoption of a rule by the PDC. The second is a letter supplementing the form. I'd ask that you confirm receipt of the files and that they opened appropriately on your end. Then, I request confirmation that the letter has been forwarded on to each of the Commissioners of the PDC. A followup hard copy has been transmitted via fax.

>

> Thank you for your assistance. If any questions arise, I can be reached either at the contact info on the letter or via my cell phone at 360.490.1077.

>

> Respectfully,

>

> Tim Hamilton

> Executive Director

> Automotive United Trades Organization (AUTO)

RCW 34.05.330**Petition for adoption, amendment, repeal—Agency action—Appeal.**

(1) Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The office of financial management shall prescribe by rule the format for such petitions and the procedure for their submission, consideration, and disposition and provide a standard form that may be used to petition any agency. Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.

(2) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, and the petition alleges that the rule is not within the intent of the legislature or was not adopted in accordance with all applicable provisions of law, the person may petition for review of the rule by the joint administrative rules review committee under RCW 34.05.655.

(3) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, the petitioner, within thirty days of the denial, may appeal the denial to the governor. The governor shall immediately file notice of the appeal with the code reviser for publication in the Washington state register. Within forty-five days after receiving the appeal, the governor shall either (a) deny the petition in writing, stating (i) his or her reasons for the denial, specifically addressing the concerns raised by the petitioner, and, (ii) where appropriate, the alternative means by which he or she will address the concerns raised by the petitioner; (b) for agencies listed in RCW 43.17.010, direct the agency to initiate rule-making proceedings in accordance with this chapter; or (c) for agencies not listed in RCW 43.17.010, recommend that the agency initiate rule-making proceedings in accordance with this chapter. The governor's response to the appeal shall be published in the Washington state register and copies shall be submitted to the chief clerk of the house of representatives and the secretary of the senate.

(4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

- (a) Whether the rule is authorized;
- (b) Whether the rule is needed;
- (c) Whether the rule conflicts with or duplicates other federal, state, or local laws;
- (d) Whether alternatives to the rule exist that will serve the same purpose at less cost;
- (e) Whether the rule applies differently to public and private entities;
- (f) Whether the rule serves the purposes for which it was adopted;
- (g) Whether the costs imposed by the rule are unreasonable;
- (h) Whether the rule is clearly and simply stated;
- (i) Whether the rule is different than a federal law applicable to the same activity or subject matter without adequate justification; and
- (j) Whether the rule was adopted according to all applicable provisions of law.

(5) The *department of community, trade, and economic development and the office of financial management shall coordinate efforts among agencies to inform the public about the existence of this rules review process.

(6) The office of financial management shall initiate the rule making required by subsection (1) of this section by September 1, 1995.

WAC 82-05-040

What happens after a petition is submitted?

(1) Within a reasonable time, the administering agency will send you, the petitioner, acknowledgement of receipt of the petition, including the name and telephone number of a contact person.

(2) No later than sixty days after receipt of a petition, the agency must either

(a) Initiate rule-making proceedings in accordance with chapter 34.05 RCW, or

(b) Deny the petition in writing, stating its reasons for the denial and specifically addressing the concerns stated in the petition. Where appropriate, the agency must indicate alternative means by which the agency will address the concerns raised in the petition.

[Statutory Authority: 1995 c 403 § 703. WSR 96-03-048, § 82-05-040, filed 1/12/96, effective 2/12/96.]

March 18, 2016

Washington State Public Disclosure Commission
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98504-0908

Honorable Commissioners and Director Lopez:

The Automotive United Trades Organization (AUTO) has submitted a petition for rulemaking that seeks to expand Washington's laws regulating the political uses of its state funds to include the regulation of tribal governments' uses of their own tribal funds. AUTO mistakenly describes the subject of rulemaking as "the prohibition against the use of public funds by political action committees, political parties, and candidates for state wide, legislative, judicial or local office or in support or opposition of a measure on the ballot." AUTO's request suffers from two fatal flaws:

- 1) Washington lacks jurisdiction to regulate the use of tribal revenues by tribal governments and elected officials; and
- 2) There is no statutory authority for the rule requested by AUTO.

AUTO's request also demonstrates a fundamental lack of understanding of the complexity and range of tribal revenue sources, as well as the uniqueness of tribes within our federal system. Because each tribe is also unique as compared to its peers, we offer a very general overview of tribal government revenue sources and activities following an overview of the jurisdictional issues raised by AUTO's request.

For these reasons, we respectfully request that the Commission deny AUTO's petition for rulemaking.

I. AUTO's Request for Direct State Regulation of Tribes is Preempted by Federal Indian Law and Would be in Excess of the Commission's Jurisdiction

AUTO has requested that the Public Disclosure Commission (PDC) adopt a rule under which the State would purport to regulate tribes, tribal elected officials, and the use of tribal revenues for certain purposes. Under longstanding principles of federal Indian law, the State lacks the regulatory jurisdiction to take such action.

AUTO has requested that the PDC adopt the following rule:

For purposes of RCW 42.17A.550 and RCW 42.17A.555, "public office" as defined in RCW 42.17.005(39) includes a federally-recognized Native American tribal government, and official agencies of such government, and "public funds" include moneys from such federally-recognized Native American tribal governments.

Each of the referenced statutes contains regulatory prohibitions that would be applied to tribal governments and their enterprises if the rule were adopted, in contravention of federal law. We will take each in turn.

RCW 42.17A.550 reads:

Use of public funds for political purposes.

Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or school district office. A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

AUTO requests that the PDC enact a rule including tribal revenues in the definition of “public funds”. Such a rule would cause this statute to serve as a direct and unprecedented regulation of the tribes’ uses of their own tribal revenues, including revenues derived entirely from on-reservation tribal economic activity.

RCW 42.17A.555 reads, in relevant part:

Use of public office or agency facilities in campaigns—Prohibition—Exceptions.

No elective official ... nor any person ... employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election ... or for ... any ballot proposition.

By including tribal governments and their elected officials in the definition of “public office”, the rule proposed by AUTO would act as a direct prohibition of activity by tribal governments and their elected officials, including their use of on-reservation tribal facilities.

The State lacks the jurisdiction to enforce such prohibitions. States lack regulatory jurisdiction over tribes and their members in Indian country, absent a clear treaty, executive order, or congressional expression to the contrary. “The Constitution vests the Federal Government with exclusive authority over relations with Indian tribes. Art. I, 8, cl. 3” *Montana v. Blackfeet Tribe*, 471 U.S. 759, 764 (1985)¹ Thus, tribal sovereignty is “subordinate to, only the Federal Government, not the States.” *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987), quoting *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980). State laws are therefore not applicable to Indians on an Indian reservation except where Congress has expressly intended that State laws shall apply. *McClanahan v. Ariz. State Tax Comm’n*, 411 U.S. 164, 170-71 (1973); , or where other “exceptional circumstances” exist that justify the intrusion of state regulation into tribal affairs.

No federal law authorizes Washington to apply the campaign finance regulations proposed by AUTO to tribes and tribal officials. Congress has authorized only limited application of state criminal laws, but not civil regulatory laws, to tribal on-reservation conduct. *Bryan v. Itasca County*, 426 U.S. at 388 (discussing Public Law 83-280, 67 Stat. 588 (“P.L. 280”)). State laws that “prohibit absolutely certain acts fall into the first category, while those generally permitting certain conduct but subject to regulation are within the second.” *Confederated Tribes of Colville Reservation v. Washington*, 938 F.2d 146, 147 (9th Cir.

¹) See also *Worcester v. Georgia*, 6 Pet. 515, 561 (1832); *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974); *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450 (1995).

1991) "The shorthand test is whether the conduct at issue violates the State's public policy." *Id.* (internal citations omitted). Given the First Amendment, campaign contributions do not and cannot violate the State's public policy, and they are not "prohibited absolutely" or criminal. Rather, donations are subject to civil regulations. Supreme Court precedents make clear that P.L. 280 does not authorize application of those regulations to on-reservation tribal actions such as decisions to spend tribal funds.

Nor are there "exceptional circumstances" *Cabazon*, 480 U.S. 202, 216 (1987) that might justify the regulation AUTO has proposed. The existence of such extraordinary circumstances must be evaluated "in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government." *Id.* Here, the State has an interest in fair elections, but that interest can be and is being served by regulating campaigns and candidates, and requiring them to disclose the sources of their campaign funds. Given these available alternatives, nothing can justify the extraordinarily intrusive step of directly regulating tribal decisions regarding the spending of tribal funds.

II. There is no statutory authority for the rule requested by AUTO

Aside from a strict jurisdictional barrier, AUTO's request is inconsistent with existing Washington law, and therefore lacks a statutory basis. A thorough search of the state Revised Code of Washington turns up just two definitions of "public funds". The first appears in a chapter dealing with life sciences research. RCW 43.350.010(8) defines the term as follows:

"Public funds" means any funds received or controlled by the state of Washington or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state, or local taxes, gifts or grants from any source, public or private, federal grants or payments, or intergovernmental transfers.

The second appears in a chapter dealing with the deposit and investment of public funds. RCW 39.58.010(16) defines the term as follows:

"Public funds" means moneys under the control of a treasurer, the state treasurer, or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees;

Both definitions clearly apply to funds of the State of Washington and its political subdivisions, and do not extend to the funds of tribes or other governments outside the state's regulatory jurisdiction.

While not defining "public funds", the state Constitution and various sections of the Revised Code of Washington use the term consistently with these two definitions. For example, the Constitution contains the following two sections:

SECTION 14 PRIVATE USE OF PUBLIC FUNDS PROHIBITED. The making of profit out of county, city, town, or other public money, or using the same for any purpose not

authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SECTION 15 DEPOSIT OF PUBLIC FUNDS. All moneys, assessments and taxes belonging to or collected for the use of any county, city, town or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depository to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they belong.

Both refer to the funds of political subdivisions of the State, and not to any external governments. A review of several other examples of the use of this term confirms its consistent use to refer to monies of the State and its political subdivisions. To the extent that the State wished to impose any of the following provisions on tribes, it would lack the regulatory jurisdiction to do so absent clear and unequivocal Congressional authorization. Following are several examples typical of the use of this term throughout the RCWs:

RCW 39.58.080 Deposit of public funds in public depository required—Deposits in institutions located outside the state.

(1) Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depository located in this state or as otherwise expressly permitted by statute....

RCW 39.58.020 Public funds—Protection against loss.

All public funds deposited in public depositories, including investment deposits and accrued interest thereon, shall be protected against loss, as provided in this chapter.

RCW 43.09.185 Loss of public funds—Illegal activity—Report to state auditor's office. State agencies and local governments shall immediately report to the state auditor's office known or suspected loss of public funds or assets or other illegal activity.

RCW 39.58.750 Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.

Notwithstanding any provision of law to the contrary, the state treasurer or any treasurer or other custodian of public funds may receive, disburse, or transfer public funds under his or her jurisdiction by means of wire or other electronic communication in accordance with accounting standards established by the state auditor under RCW 43.09.200 with regard to treasurers of municipalities or other custodians or by the office of financial management under RCW 43.88.160 in the case of the state treasurer and other state custodians to safeguard and insure accountability for the funds involved.

Even within the chapter that includes the statutory section on which AUTO relies, the uses of the term “public funds” clearly are not intended to include tribal governments or other governments over which the State lacks regulatory jurisdiction:

42.17A.635(5): Each state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district that expends public funds for lobbying...

42.17A.750(1)(g): Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW 42.17A.635 (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

A thorough search of all uses of the term “public funds” found in the state Constitution, Revised Code of Washington, and the Washington Administrative Code makes clear that the term is not intended to include tribal government or tribal enterprise funds. This intent is consistent with the limits of the State’s regulatory jurisdiction under federal law.

III. Tribal Revenue Sources are Diverse, and Tribes are Unique within Our Political System

The attached chart provides a brief overview of the diversity and range of tribal revenue sources. While certain of these sources are subject to contractual or other legal limitations on their use, many are subject only to laws and policies adopted by the tribes themselves as self-governing sovereigns. While tribes perform many governmental functions similar to the federal, state, and local governments, they provide programs, services, and benefits to their communities that are unique to Indian country and are not generally permitted under State law. For example, many tribes by statute or policy provide housing, funeral expense, loans, per capita, educational and other benefits to members and their families that are not generally provided by other governments and, in many cases, would not be permitted uses of State or local government funds. These vary significantly depending on the values, culture and history of each tribe, as well as each tribe’s financial capacity.

Similarly, the appointment and election of officials is unique to each tribe. While most elected and appointed tribal official positions in Washington bear, on the surface, some resemblance to positions found in federal, state or local governments, there are significant distinctions in the roles and authorities of those positions based on each tribe’s culture and laws. Tribal officials are often expected, and sometimes required, to take actions that their federal, state and local government peers may not.

AUTO’s desire to cast tribal revenues and tribal elected official positions as equivalent in to those of State and local governments is simplistic and belies a fundamental ignorance of the complexity and uniqueness of tribal governments in our federal system.

One element of AUTO’s justification for its request requires specific attention. AUTO attempted, in unrelated litigation, to establish that fuel tax refunds received by tribes under compact agreements with the State of Washington are not “refunds” and are an unconstitutional use of State funds. AUTO lost that case in the Grays Harbor County Superior Court, lost that case on appeal to the Washington State Supreme Court, and lost again on its Motion for Reconsideration to the Washington State Supreme Court. The Supreme Court agreed with the lower court that the fuel tax revenues received by the tribes under these government-to-government agreements, authorized by statute, are legitimate refunds under the 18th Amendment to the State Constitution.

The signatory tribes have contractual obligations under the fuel tax compacts to use the refunds for specified purposes, including road construction and other transportation-related projects. AUTO's accusations that the tribes are misusing the refunds are without basis in fact, as confirmed by rigorous independent, third party audits to which the tribes are subjected annually. Moreover, the refunds themselves lose any quality of "public funds" they would have had if retained by the State as fuel tax receipts. The fuel tax refunds received by tribes are no more "public funds" than are personal income tax refunds from the IRS or any other tax refund received from any federal, state, or local government agency.

IV. Conclusion

Under long-established federal Indian law principles, the State lacks regulatory jurisdiction over tribes absent clear and unequivocal Congressional authorization. Congress has not spoken to the issue of tribes using their own unrestricted revenues to support political candidates or other political activities, and therefore the State has no authority to direct or restrict the tribes' expenditures. Even if the State had the requisite regulatory jurisdiction to accept AUTO's proposal, there is no authority for the PDC to adopt the proposed rule because the underlying statutes are directed at the State of Washington and its political subdivisions. We respectfully request that the PDC reject AUTO's request.

Sincerely,

/s/ Leonard Forsman, Chairman
Suquamish Tribe

/s/ W. Ron Allen, Chairman
Jamestown S'Klallam Tribe

/s/ Don E. Secena, Chairman
Confederated Tribes of the Chehalis Tribe

/s/ Brian Cladoosby, Chairman
Swinomish Indian Tribal Community

/s/ Mel R. Sheldon, Chairman
Tulalip Tribes

/s/ Jeromy Sullivan, Chairman
Port Gamble S'Klallam Tribe

OVERVIEW OF TRIBAL REVENUE SOURCES

Category	Notes	Restrictions on Use of Revenues
Federal Contracts/Grants	Federal contracts (to carry out federal trust responsibilities) and grants.	Restrictions and audit requirements in accordance with federal law, as specified in contract or grant documents.
Federal Purchases	Purchases of goods and services from tribally-owned industries, including 8(a) companies. Includes construction, janitorial, manufactured items, etc.	Purchase contract may include federal law requirements and restrictions applicable to the goods or services provided (e.g. drug free work place, non-discrimination, etc.), but not to the use of profits.
State Compact Dollars	Refunds paid to tribes pursuant to compacts authorized by statute. Tribal taxes collected by tribes in lieu of state taxes pursuant to compacts authorized by statute.	Refunds are not public funds of the state, but may be subject to contractual obligations or restrictions on use. These are tribal dollars, not state taxes, but may be subject to contractual obligations or restrictions on use.
State/Local Grants	Various grant programs.	Subject to restrictions applicable to non-tribal recipients.
State/Local Purchases	Purchases of goods and services from tribally-owned industries. Includes professional search services, meeting room rents, etc.	Purchase contract may include state/local law requirements and restrictions applicable to the goods or services provided (e.g. drug free work place, non-discrimination, etc.), but not to the use of profits.
Private Funding	Grants, donations, and other revenues from non-profit organizations, foundations, and private individuals. May be subject to restrictions depending on the funding source.	Donor may, but does not always, restrict use of funds.
Timber Sales	Sales of tribally-owned timber.	Only if Tribal law so provides.
Lease Revenues	Lease of tribally-owned industrial, commercial, agricultural, residential, and aquatic lands; residential leases.	Only if Tribal law so provides.
Other Land Revenues	Right-of-way royalties, easements, temporary access uses, facility rentals; etc.	Only if Tribal law so provides.

Category	Notes	Restrictions on Use of Revenues
Gaming Revenues	Revenues of Tribal gaming operations.	Under the Indian Gaming Regulatory Act, certain tribal gaming revenue distributions require approval of a Revenue Allocation Plan by the National Indian Gaming Commission.
Enterprise Revenues	Revenues of enterprises wholly-owned by tribes or owned in partnership with individual tribal members, tribal member owned business entities, individual non-Indians, and/or non-tribal business entities. Includes: casinos; hotels; golf courses; convention facilities; restaurants; construction; water parks; gas stations; convenience stores; health care facilities; child care facilities; cigarette manufacturing; cigarette distribution; fish and shellfish aquaculture, wholesale, retail, and processing; timber processing; museums; amphitheatres/entertainment venues; professional search services; management services; fireworks sales; and others.	Subject only to Tribal law and the terms of any financing agreement or agreements with partners.
Utilities	Revenues of tribally-operated water, sewer, and other utilities.	Subject only to Tribal law and the terms of any financing agreement or agreements with partners.
Program Revenue	Revenues of tribally-operated programs.	If federally or grant funded, may be subject to the terms of the relevant contract or grant; otherwise, subject only to Tribal law.
Taxes	Tribal tax revenues on tribal operations, tribal members, and non-Indian individuals and entities. Includes sales, cigarette, fuel, liquor, marijuana, fish/shellfish, timber, hotel occupancy, leasehold excise, and other taxes.	Subject only to Tribal law except to the extent collected under a state-tribal compact, in which case contractual obligations may apply.
Investment Income	Income from active and passive investments. Includes stocks, bonds, mutual funds, partnerships, interest on loans, and other investments.	Subject only to Tribal law.



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“Keeping the Wheels Rolling in Washington State”

March 21, 2016

Evelyn Fielding Lopez, Executive Director
Washington State Public Disclosure Commission
711 Capitol Way, Rm. 206
P. O. Box 40908
Olympia, WA 98504-0908

RE: AUTO’s Comments on staff recommendations

Dear Ms. Lopez:

AUTO respectfully provides a rebuttal to the staff recommendations and presentation viewed on the Commission’s website related to our petition for rule making regarding contributions by tribal governments. We request transmission to the members of the Commission.

First and foremost, AUTO challenges the allegations and assertions in email commentary supplied to the Commission that the petition is somehow racially motivated. AUTO is a nonprofit trade association of motor fuel marketers with a membership that includes marketers that are also members of a federally recognized Native American Tribe. It’s hard to image that a more ethnically diverse group exists than what is found behind the counter of a convenience store in WA State today. On a personal note, my grandchildren have parents that are African-American, Vietnamese, and Native American (Lakota). The Commissioners can rest assured race is not an issue in this situation except wherein it is used by others in an attempt to intimidate.

Staff correctly states in its communication to the Commission dated March 17, 2016 that AUTO’s petition did not include text of a proposed regulation. This was not an oversight but an intentional omission. The rationale was simply recognition that the first step in the APA process is to file a CR101 that is posted on the state register notifying all that a consideration was underway. Then, utilizing the stakeholders’ process set forth in the APA, input could be gathered and issues vetted and thoroughly researched. At that point, a CR102 could be filed containing proposed language wherein all stakeholders had the ability to comment and participate. If major changes in the language were desired, a CR102 Supplemental could be used to allow comments to be updated reflective of any new language. Finally, if or when the Commissioners would deem it appropriate, a decision on passage or rejection would occur.

During the meeting with Executive Director Lopez, the issue of language being provided was brought up. AUTO’s Attorney Phil Talmadge offered to draft text and forward it to the staff. It was not our intent to provide a final language for consideration by the Commission. Rather, in the transmittal we stated, “*attached is a word file of a proposed rule drafted by Mr. Talmadge that would be one means to accomplish the task.*” (emphasis added). We have always assumed the language development would occur after a CR 101 was filed and all stakeholders (not just AUTO and several tribal governments) had an opportunity to participate in the stakeholder process and the issues were adequately researched and vetted out¹.

¹ RCW 34.05.310 Prenotice inquiry—Negotiated and pilot rules

PDC Authority and Capacity

Staff raises concerns over “legal issues, budget issues, and workload considerations....” Specifically, while recognizing that AUTO is not requesting any application except to those who would run for an elective office in WA state, staff states “...it will impair the ability of the Tribes to make contributions....” potentially in conflict with the First Amendment. We strongly disagree with this analysis.

The Federal Election Committee published an advisory on tribal contributions stating “*Indian tribes are treated in the same way as a number of other types of organizations, such as partnerships or certain limited liability companies, Indian tribes are treated in the same way as a number of other types of organizations, both of which are also not subject to the \$101,400 limit imposed on individuals.*”² The point made is a tribal government is not an individual, it is a government. Additionally, just as it does with an out-of-state corporation, the PDC can enforce prohibitions on candidates accepting contributions from a tribal government operating outside state jurisdiction.

WA law prohibits and the PDC enforces, the prohibition against a government using public funds to contribute. To argue that this same prohibition for a tribal government somehow crosses the line for the First Amendment is an admission that the existing prohibition does the same for the city of Seattle, county of King, or the state of Idaho. Again, we point out that individual members of a tribe are not affected by AUTO's petition. They, just as a citizen residing in Seattle, are free to engage in political action in any election of the state provided they honor the rules and laws established by the state. The notable exception is the common practice of tribal governments to prevent a non-tribal citizen residing on a reservation from participating in a tribal election.

Staff cites *Hillis v Dept of Ecology*, 131 Wn.2nd 373,393-4, 932 P. 2nd 139 (1997) as a reference for justification in declining to take action due to budgetary concerns or staffing workloads³. We again disagree as this case is totally off point. Ecology faced a demand that an applicant's water rights permit be prioritized and processed out of order to a backlog of 2,000 waiting applicants. The court agreed it would not be arbitrary and capricious to have Hillis wait its turn.

The petition requested by AUTO does not ask for a “leap ahead” as did Hillis but rather to simply start a process by filing a CR101. Said process can be conducted within the confines of staff work loads and priorities. Further, even if the CR101 eventually led to the results sought by AUTO, the rule would be “self-functioning” as a simple prohibition and not require significant staff involvement. As a result, we believe denying our request would amount to an arbitrary and capricious decision by the Commission.

Administrative Authority

Staff correctly identifies the state statute that prohibits the use of public funds for election purposes with “*RCW 42.17A.550 provides: “Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or school district office.”* AUTO agrees with “The term “public funds” is not defined further in statute...” but disagrees with the message that follows “...*but* in a review of other statutes the term “public funds” is used for public sector retirement and pension funds, state and local government bond investments, funds held and managed by the state treasurer and the state investment board, and funds audited by the state auditor—none of those funds would include

² <http://www.fec.gov/press/press2006/20060202Tribenotice.htm>

³ <http://courts.mrsc.org/mc/courts/zsupreme/131wn2d/131wn2d0373.htm>

funds held and managed by Tribes. Therefore, we are concerned that the PDC does not have sufficient legal authority to make a rule that would define Tribal Government monies as public funds—the Legislature would need to take action to create that legal determination.”

This statement leaves AUTO questioning whether or not staff is asserting that tribal governments are not actually governments within the meaning of the law, exacting and using public funds from citizens and other government sources. The statutes staff reference that do not include funds of a tribal government in its definition of public funds specifically address bank accounts and financial affairs of the state itself or a political subdivision. Under federal law, WA is prohibited from regulating the financial affairs of a sovereign tribal government and inclusion of the accounts of the tribes in the definition of the referenced statutes would be inappropriate and unenforceable. The same would hold true for the reason why the treasuries of the states of Oregon and Idaho are not identified in these statutes under the definition provided for public funds.

We believe staff failed to adequately recognize that the lack of a definition for public funds in RCW 42.17A.005 does not grant tribal governments an exemption to the prohibition. To assume one should exist is to assume the role of the Legislature. If an exemption for a tribal government were desired at this point, additional action by the Legislature would be required. Since the prohibition does not exempt a tribal government and the revenue streams identified by tribal representatives⁴ are all within the description of “... derived through taxes, fees, penalties, or any other sources...” (emphasis added), we believe at this point in time the PDC not only has the authority to grant our request, but the primary duty and responsibility.

In addition, it is noteworthy that AUTO has the option to file a complaint. It was our believe that filing of a complaint or multiple numbers of complaints due to the number of recipients of tribal contributions would likely create far greater staff and budget pressures than opening the rule process to address the issue.

Further, it was our preference not to “point fingers” at elected officials who have taken these contributions in the past, but rather to deal with the issues prospectively. Failure to address the issue by rulemaking leaves AUTO and the public with no choice other than utilizing the complaint option to challenge campaigns retrospectively, which is matter we sought to avoid. This remaining option is also likely to include litigation; a concern that staff seems to grant its highest priority.

Agency Budget and Workload Capacity

Staff states it has overspent in its allotment for legal services. It adds “The AUTO proposal would “...likely to be challenged.” It goes on to state “The mission of the PDC is to provide timely and meaningful public access to accurate information...and provide equitable enforcement of Washington’s disclosure and campaign finance laws.” This statement shows why AUTO has ended up before the PDC, it is the mission of the Commission to equitably enforce the campaign finance laws, which is where the prohibition on use of public funds is inserted. We totally disagree with the comment “... AUTO’s proposed rule does not significantly add to the PDC’s Mission...the amount spent by the tribes is currently being disclosed in a timely manner.” The role of the PDC is not limited to timely disclosure via a website. Rather, its role is to equitably enforce the campaign finance laws, which includes the prohibition on the use of public funds. The fact that until this point the PDC had not previously recognized the problem AUTO is presenting in its petition is not adequate ground to continue in this manner. Bringing issues to the forefront with government entities is the primary intention for the APA

4 Email comments of W. Ron Allen, Chairman, Jamestown, S’Klallam Tribe, 3/14/16

containing a provision that allows a citizen to file a petition seeking a rule.

Larger Legal Issues

The staff again raises the issue of litigation and this time speculates the matter could end up before the state or federal supreme courts. The fact that action or inaction (the latter seems overlooked by staff) by a government entity could be legally challenged is an every day fact of life in our democratic process. While we appreciate efforts of management to seek means to limit litigative risks, AUTO does not agree that a threat of litigation from those who support tribal government campaign contributions somehow creates a defense for failure to fulfill one's duties and responsibilities. Again, to identify the intent of the people in creating the Public Disclosure Commission, AUTO points to:

RCW 42.17A.400 Findings—Intent (1) The people of the state of Washington find and declare that: (a) The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

Staff Recommendation

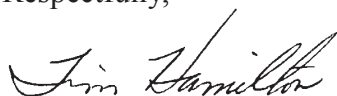
The recommendation reads, "Based on our review of the legal issues and the comments received from stakeholders, Staff and Legal Counsel recommend that the PDC deny AUTO's request for rulemaking". AUTO believes the staff recommendation is flawed and a result of a "rush to judgment".

The date of the recommendation is March 17, 2016. The email notice sent to the limited list of contacts by staff stated a deadline for comments as March 23, 2016. Comments from interested parties received after the 16th were apparently not considered. In essence, the recommendation was reached primarily through short discussions with the tribal government advocate in the Governor's office, attorneys representing tribes, and then with myself and our counsel Phil Talmadge. A far cry from the transparent process we envisioned wherein a CR101 could be filed and the public provided the opportunity to comment and participate.

Further, the staff admits its recommendation was determined prior to completion of a legal review of the issues.

As a result of all of the above, AUTO respectfully requests that the Commission reject the recommendation and instruct staff to file a CR101 so a truly thoughtful and transparent process can be undertaken with the public and stakeholders in accordance with RCW 34.05.310. Our request does not seek assurance of the end resulting action that could, would, or would not be taken by the Commission. That being said, entering the first phase of the rule making process would serve the public's interest by seeking possible solutions and doing so in a transparent manner that maintains the public's faith in the Public Disclosure Commission.

Respectfully,



Tim Hamilton
Executive Director