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Sent via e-mail to pdc@pdc.wa.gov

December 1, 2021

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

Re: Public Comment on Sections 17 and 1 of Request Legislation

Dear Commissioners:

Subsequent to our November 23 and 30, 2021, public written comment regarding the above-referenced matter, additional nonprofit organizations beyond the **99** that endorsed the November 23 and 30 comments have contacted the undersigned asking that we convey to the PDC their support for those comments. Those organizations include the following:

Arc of Washington State
Homestead Community Land Trust
Wenatchee CAFE
Eastside for All
Communities Rise
Washington Low Income Housing Alliance
InterIm Community Development Association
The Justice for Girls Coalition of WA State

This brings the total number of organizations that have asked that their concerns about the proposed request legislation be brought to the Commission's attention to **107**.

Enclosed you will also find a revised version of the November 23, 2021, public written comment, containing the names of all of the signatories in one letter.

I look forward to addressing the Commission directly regarding this matter at the upcoming December 2, 2021, meeting.

Respectfully,

A handwritten signature in black ink, appearing to read "Dmitri Iglitzin", written in a cursive style.

Dmitri Iglitzin
Danielle Franco-Malone
Marina Scarbrough

Enclosure



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Sent via e-mail to pdcc@pdcc.wa.gov

November 23, 2021
Updated December 1, 2021

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

Re: Public Comment on Sections 17 and 1 of Request Legislation

Dear Commissioners:

Please accept the following as the public comment of the undersigned organizations regarding Sections 17 and 1 of the PDC's proposed Request Legislation, as published October 22, 2021. For the following reasons, we oppose inclusion of Section 17, as drafted, in this bill, as well as the new definition of "grass roots lobbying" contained in Section 1, to be codified as RCW 42.17A.005(27).

The changes that the PDC proposes would be unduly burdensome on non-profit organizations and would likely have a disproportionate effect on smaller, community-based, BIPOC-led organizations. Currently, most non-profits that engage in grass roots lobbying are required only to report their total spending through their registered lobbyist. This allows organizations to disclose their grass roots lobbying activities in a transparent way to the PDC and to the public without over-burdening the organizations' ability to engage in those activities in the first place. If the PDC's proposed changes were to go into effect, non-profit organizations would instead have to comply with a brand new and very onerous reporting and disclosure scheme for grass roots lobbying campaigns, including weekly reports of campaign activity and disclosure of the name, address, occupation, and pay of every person involved in or assisting the campaign in any way.

Even well-resourced non-profit organizations report that the proposed legislation would severely diminish their capacity to engage with the public on issues of public importance, because so much of their efforts would have to shift towards reporting and compliance. Non-profits that are lucky and well-resourced enough to have staff dedicated to complying with campaign finance regulations report that they would likely have to hire another staff member, at least commencing the month before session and continuing at least until session ends, just to comply with the proposed grass roots lobbying rules. This would constitute a severe burden on organizations' ability to engage in grass roots advocacy campaigns. For non-profit organizations that rely heavily on grass roots lobbying, in large part because it is such an effective means of communication and engaging their constituencies on issues of public import, the PDC's proposed changes would operate to quash grass roots enthusiasm and democratic engagement.

Non-profits, including the ones below and their affiliated organizations, report that making weekly reports of all reportable grass roots lobbying campaign activity would be administratively difficult if not impossible to do. It would be a huge burden for non-profits to have to do weekly collection of the names, addresses, businesses, occupations, and compensation of every person who gives even small or minimal assistance to the campaign. “Wrangling” every person that did any type of work related to the grass roots campaign each week and trying to report each person’s activities accurately would present a tremendous challenge.

Organizations that are not well-resourced enough to hire dedicated compliance staff would likely choose not to engage in this work at all. Even for those organizations with more resources, this legislation would disincentivize them from pitching in on campaigns that they support but are not central to their mission, as the new reporting requirements would make it simply too burdensome to engage in all but the most crucial of grassroots lobbying. Smothering nonprofits’ ability to engage in advocacy in this way is not good policy and will diminish the ability of non-profits of all stripes to further their programmatic objectives.

As one nonprofit reports, not atypically:

[We are] a small organization that uses a number of strategies to meet our mission. [We] currently spend[] about 7 hours per month just collecting and reporting lobbying which includes our grass roots lobbying efforts. The weekly reporting would move this 7 hours per month to 7 hours per week, multiplying our costs and staff time by 4 or 5, depending on the month, nearly an FTE in lost time and expense. For an organization our size this would be an outsized burden on both the staff doing the actual grass roots lobbying who are working ridiculously long hours to keep up with the Legislature during session as well as the administrative staff who need to compile and report the time. Lobbying is not a primary function of our organization and the time required to adjust to this reporting schedule would become a significant hardship which could lead to incorrect reporting and then additional follow up for corrections or managing inquiries from the PDC. There are ways in which [the] proposal makes sense for organizations who exclusively do lobbying work, but for an organization who sees public policy as one of many strategies, it is an outsized burden.

Section 17 would also present special challenges to coalition-based grass roots lobbying campaigns. Building coalitions is an essential way that mission-driven non-profit and community-based organizations build power and harness their collective strength. It is an especially important tactic for smaller and less-resourced non-profits because it is a way to harness collective power and get their message to more people. It is common for 10+ organizations to come together to launch and run a grass roots lobbying campaign. If the proposed changes were to go into effect, the sponsor for the coalition would not only be in charge of managing the basic financials of the campaign, but would also likely be in charge of managing the reporting for those 10+ organizations’ involvement in the campaign. This would mean that the sponsoring organization would have to report every person in all 10+ organizations who assisted the campaign, as well as how much they were all being compensated, and report every

activity that each of the 10+ organizations do weekly for the campaign. Alternatively, each of the 10+ organizations will have to undertake this responsibility themselves.

The burden of reporting and disclosing that would fall on the sponsor of a grass roots campaign coalition, or on each member of the coalition, would be so great that some organizations would have to choose to not be involved in coalitions or grass roots campaigns at all. Even for non-profits with full-time staff dedicated to campaign finance compliance, having to comply with the heightened level of reporting and disclosure would be a strain on operations, to the point that many organizations may simply decide that it is not worth it to lead coalitions. This, again, would most severely impact the smaller, community-led, BIPOC-led non-profits who depend on better-staffed non-profit organizations to provide the administrative and operations support for coalition campaigns. As one non-profit leader told us, “laws regulating campaign financing are supposed to be ensuring fair engagement in our elections and issue advocacy work, but there has to be a balance. If the rules are so restrictive that community-based and BIPOC-led organizations don’t have the opportunity to engage, from a racial equity standpoint you’re creating artificial barriers to entry.”

In addition to the burden that would fall on a sponsor of a grass roots lobbying coalition in terms of disclosure and reporting, the proposed PDC changes would also create difficult administrative and practical burdens on staff trying to comply. Non-profits report that they are often “patchworking” coalitions together as they run grass roots lobbying campaigns—inviting new organizations in, finding different ways to engage different sectors of the community, employing different tactics week-to-week with different organizations taking point on different issues. Non-profits report that attempting to gather the necessary data to report the “names, addresses and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign...and the terms of compensation for all such persons,” would be incredibly difficult. Non-profit coalition leaders worry that such administrative burdens would lead to the adoption of strict restrictions for which organizations are allowed in the coalition. This would be both tremendously burdensome on organizations and also is anathema to the point and purpose behind coalition-based grass roots lobbying campaign, which is to engage as many people as possible.

Importantly, the proposed requirement to report the names, addresses, occupations, and compensation for all persons managing or hired to assist the grass roots campaign in any way poses serious safety and security concerns for certain non-profits, such as Planned Parenthood. Often, members of the public who organize with Planned Parenthood on grass roots lobbying campaigns share private and sensitive information regarding their experiences with abortion or surviving violence. Their safety and privacy is a huge concern for Planned Parenthood and giving the public unfettered access to their private information, including their addresses, would be too great of a risk. This proposed requirement would absolutely have a chilling effect on peoples’ willingness to be involved with the important work of non-profit organizations like Planned Parenthood.

The proposed changes to the grass roots lobbying campaign laws would also impact non-profits that currently are able to provide limited or peripheral support to smaller, community-based organizations or coalitions. Some non-profits, usually those with more staff capacity and funding, have robust internal systems that must be followed to get approval for signing onto a letter, petition, other formal action by the organization. Currently, these more-resourced non-profits can still participate in assisting smaller organizations and coalitions by providing tangential support to grass roots lobbying

campaigns, like providing advice, or publicizing the campaign through its member list, or other “lower lifts” that still provide meaningful assistance to the grass roots campaign but do not need to go through internal approval systems. If the PDC’s proposed changes went into effect, that type of tangential support—currently essential to the ability of smaller and less-resourced organizations to come together in coalition and run a grass roots lobbying campaign—would have to be reported to the PDC, and thus would likely lessen the ability of better-resourced non-profits to offer that type of support without going through their internal structures. Yet again, the net result would be that smaller, community-based, and especially BIPOC-led non-profits would receive diminished support, limiting their ability to engage in the democratic process of engaging the public around important issues.

Another not-insubstantial problem with the proposed legislation is the way the new language amplifies the impact of the statute’s existing provisions regarding the reporting of moneys received from persons “contributing twenty-five dollars or more to the campaign, and the aggregate amount contributed.” Under existing law, an organization whose lobbyist reports its grass roots expenditures on an L-2 form does not have to comply with this requirement. RCW 42.17A.650(1). Under the new language, it would. Expanding this requirement to nonprofits and not just to their lobbyists is problematic because as one stakeholder reports:

As a 501c3 we do not raise funds specifically for lobbying, but rather use unrestricted funds to do our lobbying which is disclosed in our annual 990. Because of this there is no way to accurately report who is contributing to our lobbying efforts, which could cause inaccurate data for [the PDC] and confusion among our donors that is unnecessary and damaging our donor relationships. I honestly don’t know how we would report that information to [the PDC] accurately and for it to provide a correct picture of our lobbying expenses when funds are not raised for this purpose.

Another change that non-profits reported would be tremendously burdensome is the proposed change to the definition of grass roots lobbying campaigns, contained in Section 1. The new definition would expand the definition of a grass roots lobbying campaign to include even those communications which only *indirectly* seek to influence legislation. This potentially sweeps up any and all educational drives, outreach efforts, and educational programming that non-profits make available to the public. For justice-oriented non-profit organizations, from racial justice to voting justice to climate justice to housing justice, part of educating people about these issues necessarily also involves some degree of education about the current laws and how laws could be changed or added to better serve the interests of justice. If these educational programs fall into grass roots lobbying campaigns due to the new definition then that would potentially drastically the limit the amount of education that non-profit organizations are able to provide to the public.

Lastly, the draft Request Legislation proposes dramatic increases to the disclosure requirements for grass roots lobbying communications and advertisements. The new required disclosures—having to list the Top Contributors, Top Individual Donors, etc.,-- for each communication, compounds the tremendous burden placed on staff to comply with the new weekly reporting requirements, again coming down disproportionately hard on smaller organizations. Non-profits report that small, community-based organizations don’t have communications departments. There are not dedicated communications staff members or departments of small organizations that have the institutional knowledge, time, and capacity

to compile, update, and comply with the new disclosure requirements. Even larger non-profits report that this would be “very difficult” for their operations, explaining that these types of disclosure and reporting requirements make sense if an organization spends significant sums (e.g. \$100,000) on a television ad buy, but do not make sense for non-profit organizations which at most might engage in \$1,500 worth of cumulative email advocacy – and possibly even only slightly more than the almost trivial \$500 threshold which triggers obligations under the proposed bill. The additional burden that the proposed communication requirements would put on non-profits, especially smaller organizations, would potentially be so great that it would inhibit organizations from being able to communicate their messages effectively to the public.

Taken as a whole, the provisions of the proposed legislation would be so burdensome on expressive activity as to raise serious constitutional concerns. The proposed changes would have a chilling effect on organizations’ ability to engage in constitutionally protected speech and association.

The Supreme Court recently invalidated a California law that required charities to disclose the identities of their major donors because the law wasn’t narrowly tailored and thus impermissibly infringed on the plaintiffs’ First Amendment rights. *Americans for Prosperity Foundation v. Bonta*, 141 S.Ct. 2373 (2021). The Court explained that, “[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *Id.* at 2382, quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). The Court explained that a compelled disclosure law must be subjected to exacting scrutiny and the state’s interest must be narrowly tailored where First Amendment activity is chilled, even indirectly, “[b]ecause First Amendment freedoms need breathing space to survive,” quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963). The chilling effect this proposed legislation would cause makes it constitutionally suspect.

It is doubtful that the PDC’s proposed legislation could survive the exacting scrutiny standard that the Supreme Court applies to compelled disclosure laws such as this one. In *McCutcheon v. FEC*, 572 U.S. 185 (2014) the Court clarified that the only interest available to states to justify campaign finance-related restrictions is to combat *quid pro quo* corruption. Because the concern about *quid pro quo* corruption pertains to direct contributions made to candidates for elected office, not grass roots lobbying campaigns that, by definition, do not even involve communications made directly to legislators, the PDC’s proposed changes to the grassroots lobbying laws are not narrowly tailored to combating *quid pro quo* corruption. As it is likely that the onerous burdens that the proposed grass roots campaign laws would have on organizations would prevent them from engaging in political speech, it is doubtful whether the new provisions of RCW 42.17A proposed by this Request Legislation would pass constitutional muster.

For the foregoing reasons, the organizations identified below strongly oppose the provisions of the Request Legislation that change existing law regarding grass roots lobbying campaigns, and ask the Commission to delete those provisions from any Request Legislation it may choose to submit to the Legislature.

Respectfully submitted on behalf of the signatory organizations,



Dmitri Iglitzin

Danielle Franco-Malone

Marina Scarbrough

Barnard Iglitzin & Lavitt, LLP

On behalf of:

350 Seattle

A Way Home Washington

ACLU of Washington

African Community Housing and Development (ACHD)

Ally Community Development

APACE

APACE WA

Arc of Washington State

Attain Housing

Balance Our Tax Code

Be: Seattle

Black Community Impact Alliance

Catholic Community Services

Catholic Housing Services of Western Washington

Climate Solutions

Communities for Our Colleges Coalition

Communities Rise

Community Homes

Compass Housing Alliance

Congolese Integration Network (CIN)

Disability Rights Washington

Eastside for All

Eastside Interfaith Social Concerns Council

Economic Opportunity Institute

Equity in Education Coalition

Fair Work Center &

Faith Action Network

Firelands Workers Action/Accion de Trbajadores

Fix Democracy First

Fuse Washington

Global To Local

Got Green

Habitat for Humanity Seattle-King & Kittitas Counties

Homes First

Homestead Community Land Trust

HopeWorks Social Enterprises

Housing Authority of Snohomish County

Housing Consortium of Everett and Snohomish County

Housing Development Consortium of Seattle-King County

Housing Hope

Housing Hope Properties

Housing Resources Bainbridge

Interfaith Family Shelter

InterIm Community Development Association

Invest In Washington Now

Issaquah Sammamish Interfaith Coalition

Khmer Anti-Deportation Advocacy Group (KhAAG)

King County Young Democrats

Latino Educational Training Institute

League of Education Voters

Low Income Housing Institute

More Equitable Democracy Action

NAMI Washington

National Association of Social Workers - Washington Chapter

National Council of Jewish Women (NCJW)

NorthStar Advocates

Northwest Harvest

Northwest Kenyan Community Association

OrgSupport, LLC

Parkview Services

Partners for Our Children

People Empowerment and Renewal Services (PEARS)

People of Color Community Coalition

Planned Parenthood Alliance Advocates

Pro-Choice Washington

Progress Alliance

Puget Sound Advocates for Retirement Action (PSARA)

Puget Sound Sage

Quaker Voice for Washington

Real Change

Seattle/King County Coalition on Homelessness

Self-Advocates in Leadership (SAIL)

SHARE (Seattle Housing and Resource Effort)

Share The Cities Action Fund

Shared Housing Services

Statewide Poverty Action Network

Tacoma Ministerial Alliance

Tacoma-Pierce County Affordable Housing Consortium

The Champion Advocacy Fund

The Homeless Network of Yakima County

The Justice for Girls Coalition of WA State

The Mockingbird Society

The Urbanist

The WA Coalition for Homeless Youth Advocacy

The Washington Bus

Transit Riders Union

United Way of King County

UTOPIA WA

WA Build-Back Black Alliance

WA Community Alliance Action Fund

WA for Black Loves Education Fund

WA For Equitable Representation

Wakulima USA

Washington Homeownership Resource Center

Washington Housing Alliance Action Fund

Washington Low Income Housing Alliance

Washington Nonprofits

Washington Physicians for Social Responsibility

Washington State Association for Justice

Washington State Budget & Policy Center

Washington State Community Action Partnership

Washington Women's Foundation

Washington's Paramount Duty

Wenatchee CAFE

What's Next Washington

Win/Win Action

Working Washington