



State of Washington
PUBLIC DISCLOSURE COMMISSION

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Memorandum

To: Public Disclosure Commission

From: Jennifer Hansen, Compliance Officer

Date: January 19, 2023

Subject: Request from The Center for Election Science (CES), Reporting Modification

Partial Modification – Background & Request:

- On November 4, 2022, the Public Disclosure Commission (PDC) received a request from Anna F. Cavnar, Attorney with McNaul, Ebel, Nawrot & Helgren, PLLC on behalf of her client, The Center for Election Science (CES), for partial modification of the filing requirements described in RCW 42.17A.240.
- American Endowment Foundation is a donor-advised fund. CES requests a partial reporting modification that would exempt it from disclosing the source of an American Endowment Foundation payment, otherwise required to be disclosed on the Incidental Committee Payments and Political Expenditures Report (C-8 report) as one of the top ten largest sources of payments of \$10,000 or more during the current calendar year.
- In the written request provided by Ms. Cavnar, she states that CES is a national nonprofit organization that focuses on voting reform initiatives throughout the country and is not exclusively or even primarily focused on ballot initiatives in Washington. Ms. Cavnar states that, similarly, CES's donors are located throughout the country, and their donations are meant to support CES's nationwide efforts at voting reform. Those donations are neither earmarked nor utilized specifically for voting reform initiatives in Washington.
- Ms. Cavnar states that the donation from the American Endowment Foundation was not earmarked for political initiatives in Washington State or any particular purposes when it was received. In addition, the request explains that the American Endowment Foundation itself listed the advisor in question as anonymous on the amended C-8 report submitted

on November 1, 2022. Ms. Cavnar states that this advisor did not contribute these funds to CES with the specific intent, or even the knowledge, that such funds would be used to support ballot initiatives in Washington (nor does CES have a record that they were used in such a manner).

- Ms. Cavnar states that given these dynamics, and in light of the other disclosures CES has made to PDC, CES does not believe that respecting this particular individual's anonymity would frustrate the purposes of RCW 42.17A et seq. Ms. Cavnar continues, stating that CES is an incidental committee (not a political committee), its efforts in Washington have been devoted to supporting a ballot initiative in favor of voting reform in Seattle, and this particular individual's contributions were not earmarked or intended to support CES's specific efforts in Washington.
- Finally, Ms. Cavnar states that requiring CES to disclose the identity of this individual under these circumstances would be a manifestly unreasonable hardship, both for the individual involved and for CES. She states that CES is a 501(c)(3) organization, and as such, it is allowed to accept anonymous donations. If individuals make anonymous general contributions to CES – i.e., funds that are not earmarked for use in Washington State elections, or any other election – but are then required to forfeit their anonymity as a condition of giving, that could have a chilling effect on future fundraising efforts, and certainly would do so in this particular case.

Applicable Laws & Rules:

RCW 42.17A.207

Statement of organization by incidental committees.

(1)(a) An incidental committee must file a statement of organization with the commission within two weeks after the date the committee first:

(i) Has the expectation of making any expenditures aggregating at least twenty-five thousand dollars in a calendar year in any election campaign, or to a political committee; and

(ii) Is required to disclose a payment received under RCW [42.17A.240\(2\)\(d\)](#).

(b) If an incidental committee first meets the criteria requiring filing a statement of organization as specified in (a) of this subsection in the last three weeks before an election, then it must file the statement of organization within three business days.

(2) The statement of organization must include but is not limited to:

(a) The name, address, and electronic contact information of the committee;

(b) The names and addresses of all related or affiliated political or incidental committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders and the name of the person designated as the treasurer of the incidental committee;

(d) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing if the committee contributes directly to a candidate and, if donating to a political committee, the name and address of that political committee;

(e) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition; and

(f) Such other information as the commission may by rule prescribe, in keeping with the policies and purposes of this chapter.

(3) Any material change in information previously submitted in a statement of organization must be reported to the commission within the ten days following the change.

RCW 42.17A.240

Contents of report.

Each report required under RCW [42.17A.235](#) (1) through (4) must be certified as correct by the treasurer and the candidate and shall disclose the following, except an incidental committee only must disclose and certify as correct the information required under subsections (2)(d) and (7) of this section:

(1) The funds on hand at the beginning of the period;

(2) The name and address of each person who has made one or more contributions during the period, together with the money value and date of each contribution and the aggregate value of all contributions received from each person during the campaign, or in the case of a continuing political committee, the current calendar year, with the following exceptions:

(a) Pledges in the aggregate of less than one hundred dollars from any one person need not be reported;

(b) Income that results from a fund-raising activity conducted in accordance with RCW [42.17A.230](#) may be reported as one lump sum, with the exception of that portion received from persons whose names and addresses are required to be included in the report required by RCW [42.17A.230](#);

(c) Contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum if the treasurer maintains a separate and private list of the name, address, and amount of each such contributor;

(d) Payments received by an incidental committee from any one person need not be reported unless the person is one of the committee's ten largest sources of payments received, including any persons tied as the tenth largest source of payments received, during the current calendar year, and the value of the cumulative payments received from that person during the current calendar year is ten thousand dollars or greater. For payments to incidental committees from multiple persons received in aggregated form, any payment of more than ten thousand dollars from any single person must be reported, but the aggregated payment itself may not be reported. The commission may suspend or modify reporting requirements for payments received by an incidental committee in cases of manifestly unreasonable hardship under this chapter;

(e) Payments from private foundations organized under section 501(c)(3) of the internal revenue code to an incidental committee do not have to be reported if:

(i) The private foundation is contracting with the incidental committee for a specific purpose other than election campaign purposes;

(ii) Use of the funds for election campaign purposes is explicitly prohibited by contract; and

(iii) Funding from the private foundation represents less than twenty-five percent of the incidental committee's total budget;

(f) Commentary or analysis on a ballot proposition by an incidental committee is not considered a contribution if it does not advocate specifically to vote for or against the ballot proposition; and

(g) The money value of contributions of postage is the face value of the postage;

(3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(4) All other contributions not otherwise listed or exempted;

(5) A statement that the candidate or political committee has received a certification from any partnership, association, corporation, organization, or other combination of persons making a contribution to the candidate or political committee that:

(a) The contribution is not financed in any part by a foreign national; and

(b) Foreign nationals are not involved in making decisions regarding the contribution in any way;

(6) The name and address of each candidate or political committee to which any transfer of funds was made, including the amounts and dates of the transfers;

(7) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, the amount, date, and purpose of each expenditure, and the total sum of all expenditures. An incidental committee only must report on expenditures, made and reportable as contributions as defined in RCW [42.17A.005](#), to election campaigns. For purposes of this subsection, commentary or analysis on a ballot proposition by an incidental committee is not considered an expenditure if it does not advocate specifically to vote for or against the ballot proposition;

(8) The name, address, and electronic contact information of each person to whom an expenditure was made for soliciting or procuring signatures on an initiative or referendum petition, the amount of the compensation to each person, and the total expenditures made for this purpose. Such expenditures shall be reported under this subsection in addition to what is required to be reported under subsection (7) of this section;

(9)(a) The name and address of any person and the amount owed for any debt with a value of more than seven hundred fifty dollars that has not been paid for any invoices submitted, goods received, or services performed, within five business days during the period within thirty days before an election, or within ten business days during any other period.

(b) For purposes of this subsection, debt does not include regularly recurring expenditures of the same amount that have already been reported at least once and that are not late or outstanding;

(10) The surplus or deficit of contributions over expenditures;

(11) The disposition made in accordance with RCW [42.17A.430](#) of any surplus funds;
and

(12) Any other information required by the commission by rule in conformance with the policies and purposes of this chapter.

WAC 390-16-013

Incidental committees—Registration and reporting requirements and method for reporting.

(1) Chapter [42.17A](#) RCW requires the disclosure of monetary and in-kind contributions and expenditures by nonprofit organizations that participate significantly in candidate and ballot proposition campaigns in Washington state. Nonprofit organizations that make contributions or expenditures in Washington elections above specified thresholds, and are not otherwise defined under the law as political committees, must file organizational statements with the PDC and disclose certain contributors, regardless of the organization's primary purpose. These are referred to in the law as "incidental committees." To be an incidental committee, triggering the requirements to file a statement of organization with the PDC and then file the required

disclosure reports, an organization must expect to make contributions or expenditures of at least twenty-five thousand dollars in a calendar year for an election campaign and receive a payment of at least ten thousand dollars from a single source.

(2) The official form for providing the statement of organization by incidental committees as required by RCW [42.17A.207](#) is designated the incidental committee registration report, or "C-1-IC."

(3) The official form for reporting top ten payments and expenditures by incidental committees as required under RCW [42.17A.240](#) is designated the incidental committee payments and political expenditures report, or "C-8."

(4) These reporting forms must be filed electronically when the PDC has provided an electronic method to do so. Until an electronic method is provided, the reporting forms should be downloaded from the PDC's website, www.pdc.wa.gov, or obtained at the PDC office, in Olympia, Washington, and submitted by postal mail or hand delivery. The executive director may make exceptions on a case-by-case basis for an incidental committee that lacks the technological ability to file reports electronically.

(5) For purposes of determining whether a nonprofit organization has the expectation of making contributions or expenditures aggregating at least twenty-five thousand dollars in a calendar year that then triggers the reporting requirements:

(a) Contributions include any monetary or in-kind contributions made to a political committee, including a political committee that the nonprofit organization sponsors; and

(b) Contributions do not include contributions made to an out-of-state political committee, unless the contribution is earmarked or otherwise designated specifically for any in-state election campaign or political committee.

(6) The sources of the top ten largest cumulative payments of ten thousand dollars or greater, as required to be reported on the C-8 report, must include:

(a) The top ten sources of payments within the current calendar year through the applicable reporting period, including any changes to the top ten sources from the previous reporting period; and

(b) The total cumulative payment value, within the current calendar year through the applicable reporting period, made from a person who is reported on the current report as a source of a top ten payment.

(7) For purposes of reporting the sources of the top ten largest cumulative payments of ten thousand dollars or greater, for payments received from multiple persons in an aggregated form, only a payment of more than ten thousand dollars from any single person must be reported, but not the aggregated payment to the nonprofit organization itself or through any intermediary aggregated payment.

(8) An incidental committee may request a modification or suspension of reporting requirements in cases of manifestly unreasonable hardship pursuant to RCW [42.17A.120](#), as set forth in chapter [390-28](#) WAC.

(9) Each incidental committee is automatically dissolved at the end of the calendar year in which it was registered, or upon completion of all reporting requirements for that year, whichever is later. Dissolution does not absolve the nonprofit organization that registered as an incidental committee from responsibility for any obligations resulting from a finding before or after dissolution of a violation committed prior to dissolution. Dissolution in this context refers only to the termination of an incidental committee created to fulfill the nonprofit's reporting responsibilities under chapter [42.17A](#) RCW, and is not intended to affect the legal status of the nonprofit organization itself.