

**Written Public Comment for October PDC Meeting
Conner Edwards**

Preface

In advance of the 2023 General Election, I wanted to thank agency staff and the Commissioners for all of the work you do on behalf of the agency. Although I often disagree with many of the agency's decisions, I understand how difficult the job must be and I have a lot of admiration for the work that you all do. In particular, I've reached out to the agency with a lot of technical questions/issues this cycle and I've been generally impressed at the speed at which the filer assistance team reaches back out to me to help solve problems and answer questions.

1. Foreign Contribution Certification Requirement

It is time for the agency to work collaboratively with lawmakers, treasurers, and other stakeholders to find a reasonable reform to the foreign contribution certification requirement. You have heard extensively from myself, lawmakers, and other treasurers on this issue and I won't repeat here everything that's already been said on this issue. As far as I can tell, no one has even attempted to come to the defense to the existing requirement.

The Legislature will not pass an omnibus campaign finance bill that ignore the most glaring problem with our campaign finance laws, particularly as we enter an even-numbered election year. The PDC can either work collaboratively with lawmakers, treasurers, and other stakeholders to find a reasonable way forward on this issue, or it can watch the agency's request legislation die for a third year in a row. As it stands today, the agency's trajectory is towards the latter option. Please act to change this trajectory at Thursday's meeting.

As campaign treasurers, we are extremely disappointed in the agency's refusal to work with us on this important regulatory issue. What was the point in having the engagement session on this issue if the agency is just going to continue to do nothing?

2. Discussion of SB 5207 (controlled entities)

The most significant part of that bill would require that: "[t]he contribution of any entity must be aggregated with the contributions made by each individual who owns or holds a majority interest in the entity."

On its face, this doesn't seem that unreasonable. However, to the extent that the PDC or other decision-makers would believe this bill would mandate changes to WAC 390-16-308 (identification of source of contributions), this bill could be an absolute disaster for treasurers and campaigns. The agency needs to take some time during this meeting to answer two questions related to this bill before it gets further through the legislative process.

a. When we receive a contribution, may we continue to report the name on the check/remit/online donation receipt as the contributor? Or are we obligated to attempt to research whether there is a majority interest holder in the company and report that name as the contributor instead?

b. How does the agency expect that treasurers will be able to determine who entities are owned by?

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To put it in simpler terms: say we get a \$1000 check that has "ABC Company" listed on the face of the check. Is it the PDC's view that (under SB 5207) that either a) we could report it on our C3 reports as being from ABC Company, or b) would we have to try to research the company to determine if an individual owns or holds a majority interest in that company to see if the \$1000 contribution should be attributed to that individual instead? **Please address this in the meeting tomorrow.**

Washington's campaign finance laws are already a minefield of complexity that sets volunteer and often professional treasurers up for failure and noncompliance. This bill threatens to make that much, much worse. I see this bill as having the potential to be a far more significant administrative burden for campaigns than even the foreign certification requirement.

3. PDC Non-Enforcement of C3 (contribution) & C4 (expenditure) Reporting Deadlines

In August of 2022¹, I provided written public comment to the Commissioners about how the agency does not actively or meaningfully enforce the requirement that filers timely file C3/C4 reports.

Put simply, the agency does not actively monitor the C3/C4 reports submitted by filers to make sure that they have been filed on time. What's worse, when filers simply do not file C3/C4 reports at all (sometimes over the entire election cycle), the agency does absolutely nothing on its own initiative.

When a member of the public notices that there has been a failure to timely file reports and files a complaint with the PDC, agency staff virtually never seek to impose a monetary penalty². Instead, agency staff will issue a warm admonishment to the respondent that says, in essence, "please don't do it again". This warm admonishment is known as a "warning letter" and it has no meaningful deterrence effect whatsoever³. This is especially the case when the "warning letter" is issued *after* the respondent's

¹ <https://pdc.wa.gov/sites/default/files/2022-08/EdwardsWrittenComment%20%281%29.pdf>

² In a small handful of particularly egregious instances of filers failing to file (such as when the filer goes the entire election cycle without filing a single report) agency staff will seek a paltry \$150 penalty. This penalty is so laughably small that it has virtually no effect as a deterrent whatsoever. Think about it: if you had an option between a) paying a treasurer \$1000 over a campaign cycle to file your reports, b) attempting to learn how to use ORCA to file your own reports –still a very difficult proposition even with recent improvements, or c) not filing any reports and simply paying a \$150 penalty after the election was already over, what option would you choose?

If this option was presented clearly to filers at the beginning of each election cycle I believe that the vast majority of filers would choose to simply pay the \$150 penalty after the election was over.

³ In the context of PDC staff issuing a "warning letter" in a .555 violation case, former PDC Commission Russ Lehman concisely described the effect of "warning letters": "[t]he PDC not only failed to do their job, but they really did worse than that. They tried to make it look like they are doing their job while actually doing nothing – and thereby sending signals to all local governments about what can be a consequence-free use of public funds in this situation, and what is not." <https://www.thejoltnews.com/stories/public-disclosure-commission-failed-to-fulfill-its-mission,11154>

In the context of late C3 and C4 filing enforcement cases, "warning letters" issued by agency staff not only do nothing to deter future violations, these letters send a signal to the filing community about how much late reporting they are able to get away with without facing consequences.

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campaign is already concluded so repeating the same mistake isn't even possible to begin with. In some instances, the PDC will *repeatedly issue warnings letters to the same respondent when they violate the same exact provision of law.*⁴

After the agency took no action in response to my August of 2022 written testimony, I filed an APA petition for rulemaking on December 24, 2022, which would have required the agency to actively enforce report filing deadlines⁵.

At the agency's meeting on January 26, 2023, the Commission discussed the issue and contemplated changing agency practices to address the concerns I had raised but ultimately denied the petition. However, in denying the petition, then-Chair Jarrett noted that the agency would consider: "*...creating an internal flag for these accounts that, rather than generating an automatic warning to the filer, will allow staff to make an individualized review of whether that filer needs to be contacted.*"

While I was disappointed that the Commission had denied the petition, then-Chair Jarrett's comment made me hopeful that the agency was taking my concerns seriously and was going to act to address them.

On April 18, 2023, I attended and provided testimony at a brief enforcement proceeding where Chair Isserlis was presiding. I reiterated my request that the agency actively and meaningfully enforce filing deadlines and referenced PDC Case No. 111409 where a filer had gone the entire campaign cycle without filing a single C3 or C4 report and was being let off with a slap on the wrist. In adjudicating that complaint, Chair Isserlis made the following statement: "*...it's unfortunate that it took this long to resolve this matter and I can assure anyone that is listening today that we are aware of this issue as Commissioners and certainly the staff have this in mind as we move forward to make sure that things like this don't drop through the cracks going forward.*"

While I was disappointed that the respondent in that case did not receive a meaningful penalty, the comments made by Chair Isserlis made me hopeful that the agency was taking my concerns seriously and was going to act to address them.

On August 4, 2023 (after the primary election had been held), I decided to use the PDC's Open Data portal see how many candidates had failed to file a single C3 or C4 report over the entire election cycle. I was shocked to learn that there were 411 candidates who had failed to file a single C3 or C4 report. In response, I sent the list of candidates to agency staff and the Commissioners in the hope that the agency would take some type of concrete action to bring these filers into compliance. I pointed out that many of the non-filing candidates may not have been acting in bad faith but may have been simply unclear of their filing obligations under the law or may be experiencing technical difficulties with ORCA. I pointed out that the agency's failure to act resulted in: a) serious negative impacts to the public when candidates fail to file ANY campaign finance disclosure reports prior to the election being held, and b) it negatively harms the candidate because when the candidate does not receive timely notice of a failure to file it

⁴ See PDC Case No. 95815, 107983, and 139428 against the committee "Washingtonians to Recall Inslee".

⁵ <https://www.pdc.wa.gov/sites/default/files/2023-01/Edwards%20Comment%201.26.23%20RulemakingPetitionC4Enforcement.pdf>

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allows the problem to fester and become more serious than it otherwise would have been if the problem was caught and addressed immediately.

I received only a perfunctory response from agency staff, which made it clear to me that the agency would not be acting to fix this problem.

On October 18, 2023, I reached out again to agency staff and to the Commissioners. I shared a list of 333 candidates that had not filed a single C3 or C4 report over the entire election cycle. I pointed out that by any objective measure, it was unacceptable that the PDC would take no action to bring these filers into compliance now that ballots are out to the voters. I pointed out that the PDC has an obligation to provide transparency to the voters by enforcing filing requirements. I pointed out that I had tried many different times to get the agency to take action against these types of non-compliant filers with no tangible results whatsoever. I pointed out that I would be filing a PDC complaint against the 333 candidates if the agency did not take some tangible action by the next day to address my concerns. When the agency did not respond to me, I filed my complaint against the non-filing candidates.

The agency's failure to act to ensure that reports are being timely filed by candidates in advance of the 2023 general election is completely unacceptable by any objective measure. The agency's failure to act damages the public's right to know about reportable campaign activity by candidates.

I have been trying to address this problem for over a year now, with virtually no tangible progress. It has proven to be very easy for the agency to ignore my APA petition, written comments, and verbal comments. As far as I can tell, the only remaining tool available to me to attempt to coax the agency to take action on this issue is to continue to file PDC complaints.

To be clear, I would really rather not have to file additional complaints. I would rather the agency addressed this problem on its own. For that reason, I am urging the agency to discuss this issue at the Thursday meeting and **take immediate and meaningful action** to address this problem moving forward.

Best,

Conner Edwards
(425) 533-1677 cell

PDC Non-Enforcement of C4 Reporting Deadlines

Written Comment by Conner Edwards for August 25, 2022 PDC Meeting

Background

Last month, while discussing the agency's proposal to increase the number of C4s due the month before the election, I brought up the fact that the agency does not actively or meaningfully enforce the requirement that filers timely file C4 reports. This month, I wanted to provide additional context and background for those remarks.

Since last month, I have taken two steps to highlight this problem in the hope the agency will address it.

First, I reached out to campaign finance authorities in neighboring states (Oregon, Idaho, Alaska, Hawaii) as well as Federal Election Commission (FEC) to learn how they enforce the requirement to timely file campaign finance reports. Their written responses are appended to this document. It appears that these campaign finance authorities (for the most part¹) do not share the PDC's passive approach towards enforcing the timely file requirement for C3/C4 report equivalents.

Second, I recently filed 15 complaints against candidates/committees from past election cycles that failed to timely file pre-election C4 reports before they appeared on the ballot. My expectation is that every single one of these complaints (while meritorious) will be dismissed via the use of a "warning letter" (a dismissal of the complaint in which no monetary penalty is levied against the respondent). In other states, if a filer fails to timely file a report (especially if they fail to file a required report before the election) a monetary fine is typically issued. These fines serve as a deterrent for would-be late filers.

So, what do I mean exactly when I say that the agency does not actively or meaningfully enforce the requirement that filers timely file C4 reports? Here is my two-part answer.

Part One: What is "active enforcement"?

This is best illustrated through an example. A great example would be how the PDC enforces the requirement that candidates and elected officials file C1s (candidate registrations) and F1s (personal financial affairs statements).

Agency staff actively track which individuals are required to comply with these requirements. When individuals fail to live up to their legal obligations, reminders are sent asking them to file. When the reminders do not have the desired effect, the agency subjects the individuals who are required to file to financial penalties. That is what active enforcement looks like. So far, so good.

¹Because Oregon utilizes a unique transaction-based reporting system as opposed to a fixed-date style reporting system, active enforcement against Oregon filers who fail to file any reports would be hampered: the agency has no way of knowing if a filer is just failing to file reports or if they legitimately don't have any transactions. However, if/when the entity files a late transaction report, the agency has an automatic process to fine them unlike the PDC, so I believe this qualifies as partial active enforcement.

However, after a campaign has filed its C1, the agency appears to assume a completely passive posture towards the campaign. The agency appears to do nothing to make sure that the campaign files subsequent required reports such as C3s and C4s.²

A recent example of the agency's passive attitude towards reporting deadlines can be found by looking at the reporting history of 2022 Thurston County Auditor candidate Sal Militello (R), see also PDC Complaint #111239 (filed by former Olympia City Councilmember Joe Hyer on 8/2/22). Responsible for the administration of elections, County Auditor is a particularly important office, especially in the current political climate.

Candidate Militello first filed his C1 back in January of 2022, well before May's filing week. Militello filed a handful of reports on April 16th and *then did not file a single subsequent report until over two weeks AFTER the August primary election in which he appeared on the ballot as a candidate*. Militello was required to file a C4 covering the month of May, a 21-day pre-election report (covering all of June and part of July), and a 7-day report (covering all remaining activity in the latter part of July up to 7 days before the 8/2 primary). He filed none of those reports by the appropriate due date, waited until AFTER the election occurred, and only filed the reports in response to a savvy member of the public who noted the deficiency and filed a complaint.

So, what was the bottom-line result here? Members of the public were deprived of the opportunity to view information that they were entitled to see before casting their vote in the August primary. Contributions that should have been reported were not reported. This is not an isolated occurrence, and all of the 15 complaints I recently filed are regarding factually similar situations where candidates failed to file required reports prior to elections on which they appeared on the ballot.

Of course, blame for the failure to timely file reports lays with the candidate for failing to comply with the law. But our analysis shouldn't stop there. The agency could have and should have intervened when this candidate and other candidates fail to file reports that their campaign are required by law to file. The agency is failing to do this, and the public's access to information about campaign finance activity is suffering as a result.

Part Two: What is "meaningful enforcement"?

Put bluntly, "meaningful enforcement" of C4 reporting deadlines means that the actions taken by the agency in response to late filers are sufficiently "scary" enough to intimidate filers into complying with the law.

Put even more bluntly, it means actually fining campaigns that fail to comply with reporting deadlines. By and large, this is not happening.

Outside of complaints that are brought to the Commission where PDC staff are the complainants (group enforcement regarding late C1/F1 filings), it is relatively rare for the agency to fine filers for any reason whatsoever. It is even rarer for the Commission to issue a fine for late C3/C4 filing. Over the last year, I've listened to every single regular Commission meeting from the very beginning of the meeting to the very bitter end. I don't think I recall a single case that was even brought to the Commission where late

² See Sean Flynn's response to my e-mail that is also appended to this document.

C3 or C4 reporting was alleged. A quick, targeted search in the agency's "Enforcement Cases" page using "Area of Law: RCW 42.17A.235 & Status: Violation Found By Commission" seems to confirm this.

This is not because all campaigns are filing their reports on time. Neither is it because no-one is filing complaints regarding late C3s/C4s. Rather, it is because agency staff seem heavily inclined to outright dismiss complaints that correctly identify respondents who engage in late reporting or other types of violations.

Agency staff often dismiss meritorious complaints via the use of "warning letter". These letters meekly ask the respondent (oftentimes after the election is concluded and the respondent has ceased all election-related activity anyways) to please not violate the law again. In theory, warning letters are only supposed to be used to dismiss minor violations³. In practice, they are often used to dismiss major violations.

Agency staff seem to feel comfortable dismissing meritorious complaints because there is no appeals process by which complainants can object to how the agency dismissed their complaint and present their case directly to the Commissioners.

The other way the agency can fine filers for late reporting is through a Statement of Understanding or SOU. A quick, targeted search using "Area of Law: RCW 42.17A.235 & Status: Statement of Understanding" reveal a mere 10 cases opened after 1/1/20 and adjudicated via SOU for late C3 or C4 reporting. The fines issued are generally miniscule in comparison to the violations and could not reasonably be interpreted as being a proper incentive for filers to comply with filing deadlines, especially when the cost of hiring a professional to prepare the required reports would exponentially exceed the penalty imposed by the agency.

So why do agency staff dismiss so many meritorious complaints alleging violation of C3/C4 filing deadlines and other legal requirements? I strongly suspect that agency personnel would like to take stronger action against violators but that they are hampered by a lack of resources and a time intensive complaint adjudication process. By dismissing a large number of meritorious complaints, the agency creates a disincentive for would-be complainants to file complaints alleging small to medium level campaign finance violations. After all, if you know that the agency is likely to dismiss your complaint, why bother to file a complaint to begin with? By creating this disincentive, the agency is able to somewhat effectively manage its caseload and avoid a large influx of complaints relating to late filing.

This disincentive brings me to my next point, addressing those who may believe that the agency's passive approach to enforcing C4 deadlines is sufficient. That it's OK to leave it up to members of the public to find violations and to wait for them to file a complaint before the agency does anything. Consider what would realistically be required for someone to notice a significant violation and file a complaint as eventually happened in the Sal Militello case. Realistically, the following criteria would have to be met: 1) the complainant would actually have to know the appropriate reporting periods and deadlines, 2) the complainant would have to be able to successfully navigate the website to know the reports hadn't been filed, 3) the complainant would have to have some level of faith that the agency would engage in some meaningful action in response to the complaint, and 4) the complainant would have to not fear reprisal or other negative effects from coming forward.

³ WAC 390-37-060(1)(d)

In Thurston County, an area with a much higher than usual familiarity with PDC requirements, it took over 3 months of no reports being filed and a primary election for those criteria to be met and a complaint to be filed.

Conclusion

As I hope I have successfully shown in the foregoing (and from the attached), this agency does not currently engage in the active or meaningful enforcement of C4 deadlines. Other states do engage in active and meaningful enforcement of these types of deadlines and should serve as a model to the PDC.

If the agency ultimately decides to move forward with its proposal to increase the number of pre-elections C4 filing periods, you can expect me to submit a new APA rulemaking petition. The language of this proposed rule will be modeled on the practices and penalty schedules of other campaign finance authorities that already practice the active and meaningful enforcement of contribution and expenditure reporting deadlines. If the agency rejects this petition and also refuses to take other steps to begin actively and meaningfully enforcing C4 reporting deadlines, I think the Legislature can and should draw the conclusion that the PDC is either unable or unwilling to enforce existing C4 deadlines and imposing additional C4 deadlines on filers would not be warranted until the non-enforcement issue is addressed.

Best,

Conner Edwards
Campaign Treasurer
(425) 533-1677 cell

P.S. I apologize for so often coming across as being critical of the agency. Truth be told, this agency is doing some great things and I don't acknowledge that as much as I should. But the purpose of public comment is not to pat the agency on the back and say "well done" but to meaningfully critique the agency's actions when warranted and to advocate for needed changes. Pushing the agency to actively and meaningfully enforce filing deadlines (as other campaign finance authorities do) is one of those changes. If anyone reading this feels that I am not doing as good of a job of offering substantive criticism and advocating for positive changes as I could be, I encourage you to drop me a quick e-mail at CG.Edwards53@gmail.com to let me know how I can do better.

I try to be as accurate as possible in my written comments. If anyone reading this feels I have gotten something wrong, I would ask you to please give me an opportunity to respond, to fully explain what I have written, and for me to provide additional evidence if needed. If it turns out that I am wrong about something I have said, I am prepared to admit I'm wrong. You can use the above e-mail address for that as well.

PDC enforcement of late C4s

Flynn, Sean (PDC) <sean.flynn@pdc.wa.gov>
To: Conner Edwards <cg.edwards53@gmail.com>

Mon, Aug 1, 2022 at 11:00 AM

Hi Conner.

Thanks for your question. I'm not sure what you're getting at, but I can try to answer the questions and assumptions you propose here. I think I need to clarify our process. Yes, we "actively investigate" C-4 reporting requirements. Investigations do not "initiate enforcement," but are part of the enforcement process.

We also "actively enforce" C-4 requirements on a quite frequent basis. You can check our website to review all the cases resolving issues regarding C-4 requirements. Of course, those cases usually are not contested and often resolved by agreement or warning once the respondent has filed the appropriate report(s).

I am guessing what you may be asking about is whether the PDC initiates complaints alleging failure to timely file a C-4 report in the same way that we initiate group enforcement actions for C-1/F-1 filers. We do not have such a process for C-4 reporting requirements. The PDC always has been a complaint-driven agency. Agency resources can dictate how enforcement activity is conducted and current group enforcement takes considerable amount of time. Outside of enforcement actions and investigation, the Commission has prioritized developing an audit program to assist with promoting compliance among PACs, including timely filing reports, which they are considering for expansion.

I hope that helps.

Sean Flynn

General Counsel

Public Disclosure Commission

www.pdc.wa.gov

Office (360) 664-2736

Cell (360) 789-9225

Shining light on Washington politics since 1972

From: Conner Edwards <cg.edwards53@gmail.com>

Sent: Friday, July 29, 2022 5:50 PM

To: Bradford, Kim (PDC) <kim.bradford@pdc.wa.gov>; Young, Kurt (PDC) <kurt.young@pdc.wa.gov>; PDC <PDC@pdc.wa.gov>; Lavallee, Peter (PDC) <peter.lavallee@pdc.wa.gov>; Flynn, Sean (PDC) <sean.flynn@pdc.wa.gov>; Hodgson, Kendra (PDC) <kendra.hodgson@pdc.wa.gov>

Subject: PDC enforcement of late C4s

External Email

Hello:

I had a question that I was hoping someone at the PDC could answer.

Does the PDC actively investigate candidates and committees to determine whether or not they have timely filed the C4 reports that they are required by law to file, initiating enforcement actions when the candidates/committees have failed to do so?

I'm almost certain that the PDC doesn't actively enforce the "timely" requirement for C4s (like it does with late/missing C1s/F1s), but I just wanted to reach out to confirm this.

If at all possible, I'd appreciate it if someone could answer me by 5:00 PM on Tuesday, August 2nd, 2022.

Thank you and have a great weekend.

Best,

Conner Edwards



RE: Question on late-filed FEC reports

no-reply@fec.gov <no-reply@fec.gov>
Reply-To: "no-reply@fec.gov" <no-reply@fec.gov>
To: cg.edwards53@gmail.com

Tue, Aug 9, 2022 at 8:30 AM

Thank you for contacting the Federal Election Commission.

The FEC's Administrative Fine Program assesses civil money penalties for late and non-filed reports. Fines are established by a pre-existing formula.

Most reports that committees file are covered under the Administrative Fine Program. This includes semi-annual, quarterly, monthly, pre-election, 30-day post-general and special election reports, as well as 48-Hour Notices.

If the Commission finds "reason to believe" (RTB) a committee failed to file on time, the FEC will notify that committee in writing of the finding and the penalty amount. These letters are sent to the committee and its treasurer at the address listed on the committee's most recent Statement of Organization (Form 1).

Committees have 40 days to either pay the fine or submit a written challenge. The Commission will then make the appropriate final determination.

More information on the FEC's Administrative Fine Program can be found at <https://www.fec.gov/legal-resources/enforcement/administrative-fines/>

Should you have further questions, please do not hesitate to contact staff in the Information Division at 202-694-1100 or 1-800-424-9530 (prompt 6).

FEC Information Division

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===== ORIGINAL MESSAGE =====

From: cg.edwards53@gmail.com
Sent: 2022-08-06 07:44:38
Subject: Question on late-filed FEC reports

Hello,

I was trying to look through the FEC's website and I had this question:

If a federal candidate required to report with the FEC and appearing on the 2022 general election ballot fails to timely file a pre-general or quarterly report by the appropriate deadline, is that something that the FEC would actively notice and potentially investigate/fine the candidate for missing the deadline?

Or would it be dependent on a member of the public to notice the report had not been filed and file a complaint?

--

Best,

Conner Edwards
(425) 533-1677 cell

Ref:MSG0223356



Question on Late Reporting for Candidates

Elections <elections@sos.idaho.gov>

Wed, Aug 3, 2022 at 2:10 PM

To: Conner Edwards <cg.edwards53@gmail.com>, Elections <elections@sos.idaho.gov>

Conner,

Do you have a specific candidate in mind that you are curious about? Are they a statewide or state candidate or a county candidate?

To help you understand the process: the SOS is over statewide, state and most judicial candidates. The County Elections are over county, city, special district candidates and Magistrate Judges. There is a \$500 threshold code that applies to county, city, special district and all judicial candidates (IC 67-6608). **SOS candidates all file monthly reports in the year of their election** and annual reports in off election years (IC 67-6607). County and Judicial candidates that reach the \$500 threshold also file monthly in an election year once that threshold is met and yearly in non-election years if that threshold was met.

At the SOS we send a courtesy reminder email to our candidates and political committees that they have an upcoming report due on the 10th. If applicable, we send an email on the 11th notifying them of the missed due date as prescribed by Idaho Code 67-6625A. Code allows for a 48hr grace period so we start fining \$50 a day beginning on the 13th (not counting the day they file). We then email them a fine notice when they file their past due report.

The complaints we receive are usually regarding incorrect filings or code violations as **we consistently monitor our campaign finance account filings**. We have on a few occasions been made aware of entities that fall within the definition of a political committees that have not created accounts and we work with them to get them into compliance. Hopefully this addresses your question. If not, what is your specific concern or complaint?

Sheryl

From: Conner Edwards <cg.edwards53@gmail.com>

Sent: Wednesday, August 3, 2022 2:14 PM

To: Elections <elections@sos.idaho.gov>

Subject: [External] Question on Late Reporting for Candidates

Hello:

I live in Moscow, ID, and I had this question about how the SOS's office operates.

If a candidate is required to file a monthly campaign finance report (C-2) because they are running for election, and the SOS's office notices that the candidate has failed to do so, does the SOS's office do anything to 1) remind the candidate of their filing obligation, or 2) take steps to fine that candidate for their failure to file?

Or would the SOS's office wait for a member of the public to file a complaint before it does anything?

Best,

Conner Edwards



ALASKA RESPONSE

Conner Edwards <cg.edwards53@gmail.com>

Late Reporting

Lucas, Tom R (DOA) <tom.lucas@alaska.gov>
To: "cg.edwards53@gmail.com" <cg.edwards53@gmail.com>

Tue, Aug 9, 2022 at 5:45 PM

Mr. Edwards,

Staff checks to see if any reports due have not been filed. If not, we send a notice of delinquency telling the candidate to file the report because penalties are accruing. Once the report is filed late, staff assesses a penalty.

If you have any questions or desire further information, please do not hesitate to contact me.

Thomas R. Lucas
Campaign Disclosure Coordinator

Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Rm. 128
Anchorage, Alaska 99508
Phone: (907) 276-4176
Fax: (907) 276-7018

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From: Conner Edwards <cg.edwards53@gmail.com>
Sent: Thursday, August 4, 2022 1:44 AM
To: Public Offices Commission, Alaska (DOA sponsored) <doa.apoc@alaska.gov>
Subject: Late Reporting

You don't often get email from cg.edwards53@gmail.com. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello:

I was looking at the Alaska Public Office Commission (APOC) website and I had this question:

If a state candidate appearing on the 2022 general election ballot fails to timely file a 30 day or 7 day Campaign Finance Report by the appropriate deadline, is that something that APOC would actively notice and potentially investigate/fine the candidate for missing the deadline?

Or would it be dependent on a member of the public to notice the report had not been filed and file a complaint?

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Best,

Conner Edwards
(425) 533-1677 cell



HAWAII RESPONSE

Conner Edwards <cg.edwards53@gmail.com>

Question on late reporting penalties

Hawaii Campaign Spending Commission <csc@hawaii.gov>
To: Conner Edwards <cg.edwards53@gmail.com>

Thu, Aug 4, 2022 at 2:09 PM

Mr. Edwards,

The Commission does send a Notice of Late Report to candidates who fail to timely file their disclosure reports. These candidates can also be found on our website (<https://ags.hawaii.gov/campaign/cc/notice/>). The Commission may assess a fine in accordance to the applicable Hawaii Revised Statutes ("HRS").

If you have any further questions, please give our office a call at 808-586-0285.

Mahalo,

Janelle Tanna

Elections Assistant

Hawaii Campaign Spending Commission

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From: Conner Edwards <cg.edwards53@gmail.com>
Sent: Thursday, August 4, 2022 10:21 AM
To: Hawaii Campaign Spending Commission <csc@hawaii.gov>
Subject: [EXTERNAL] Question on late reporting penalties

Hello:

I was looking at the Campaign Spending Commission's website, and I had this question:

If a state candidate appearing on the 2022 general election ballot fails to timely file a 1st or 2nd Preliminary General Report by the appropriate deadline, is that something that CSC would actively notice and potentially investigate/fine the candidate for missing the deadline?

Or would it be dependent on a member of the public to notice the report had not been filed and file a complaint?

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Best,

Conner Edwards

COVID-19: Information and Latest Updates



State of Hawaii
Campaign Spending Commission

HAWAII FINE SCHEDULE

[Home](#) » [Legal Resources](#) » Schedule of Fines for Violations of Hawaii Revised Statutes, Chapter 11, Part XIII

SCHEDULE OF FINES FOR VIOLATIONS OF HAWAII REVISED STATUTES, CHAPTER 11, PART XIII

Approved June 23, 2021

SCHEDULE OF FINES¹

	HAWAII REVISED STATUTES (HRS) – Escheat to Hawaii Election Campaign Fund	HRS – Fine to General Fund	HRS – Administrative Catch-All Fine to General Fund §11-410
<u>REGISTRATION</u>			
A. Electronic Filing Form (HRS §11-321) 1 – Not File 2 – Late File or Not Amend/Correct	N/A	N/A	1 – \$50 2 – \$25
B. Organizational Report (HRS §§11-321, 322, 323) 1 – Not File 2 – Late File or Not Amend/Correct (within 10 days)	N/A	N/A	1 – \$100 2 – \$50
<u>REPORTING</u>			
A. Disclosure Reports (HRS §11-340)	N/A	1 – N/A	1 – 1 st time → \$500 2 nd time → \$750

<p>1 – Not File 2 – Late File</p>		<p>2 – \$50/day (first 7 days); \$200/day thereafter provided that in aggregate, the fine shall not exceed 25% of total amount of contributions/expenditures (whichever is greater) for the period covered by the report</p> <p>– Minimum fine is \$200 if more than 4 days late</p> <p>*Publish on Commission’s website names of candidate committees and non-candidate committees that fail to file (HRS §11-340(f))</p>	<p>3rd time → \$1,000 2 – Fine N/A if paid fine (HRS §11-410(h)) & no criminal referral (HRS §11-412(g))</p>
<p>(Candidate & Noncandidate Committees) Reports Due 10 Days Before an Election (HRS §11-340(c))</p> <p>1 – Not File 2 – Late File</p>	<p>N/A</p>	<p>1 – N/A</p> <p>2 – Not to exceed \$300/day provided that in aggregate, the fine shall not exceed 25% of total amount of contributions/expenditures (whichever is greater) for the period covered by the report</p> <p>– Minimum fine is \$300</p> <p>*Publish on Commission’s website (HRS §11-340(f))</p>	<p>1 – 1st time → \$500 2nd time → \$750 3rd time → \$1,000 – Fine N/A if paid fine (HRS §11-410(h)) & no criminal referral (HRS §11-412(g))</p>
<p>(Candidate & Noncandidate Committees) Late Contributions Report (HRS §§11-333(c), 335(d), 338)</p> <p>1 – Not File 2 – Late File</p>	<p>N/A</p>	<p>N/A</p>	<p>1 – \$750 2 – \$500</p>
<p>(Noncandidate Committees – Only Super PACs) Late Expenditure Report (HRS §§11-337(b), 338(c))</p>	<p>N/A</p>	<p>N/A</p>	<p>1 – \$750 2 – \$500</p>



Question on late campaign finance reports

SOS Orestar-Support * SOS <Orestar-Support.SOS@sos.oregon.gov>
To: "cg.edwards53@gmail.com" <cg.edwards53@gmail.com>

Thu, Aug 4, 2022 at 10:52 AM

The schedule of filing deadlines can be found on page 20 in the manual found here: <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf>

If the transaction is filed after the deadline, you will receive a late message when you file "this transaction may be considered late". Late (described on page 67) and insufficient filings are then subject to the penalty matrix (1/2% x amount x # of days late, not to exceed 10%).

If the Secretary of State determines that a committee is in violation of Oregon election law because late and/or insufficient transactions were filed and the total calculated penalty is \$50 or more, the Elections Division will create a case and issue a proposed penalty notice. If the total amount is less than \$50 we just dismiss the penalties.

Does that help clarify the question?

ORESTAR Support Team

From: Conner Edwards <cg.edwards53@gmail.com>
Sent: Thursday, August 4, 2022 2:20 AM
To: SOS Elections * SOS <Elections.SOS@sos.oregon.gov>; MORRIS Ben * SOS <Ben.MORRIS@sos.oregon.gov>
Subject: Question on late campaign finance reports

Hello:

I was just reading pg. 67-70 of the Oregon Campaign Finance Manual (<https://sos.oregon.gov/elections/Documents/campaign-finance.pdf>) and I'm not sure I fully understood something I read about the SOS's enforcement procedures, so I wanted to ask this question:

Generally speaking, if a candidate misses a filing deadline and files a late report for a transaction (let's say they filed a week later than required by law), would that be something that the agency would notice and potentially start an investigation/issue a monetary penalty for? Would it be any different if the report was filed a full month later than required?

Or would a member of the public have to notice the late reporting and file a complaint to start the enforcement/penalty process?

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Best,

Conner Edwards



(/uploads/original/20230322-194303-Depositphotos_6496641_L.jpg)

The JOLT publishes readers' letters on Thurston County topics, generally verbatim and within a day or two of receiving them. These opinions come from members of our community.

PHOTO BY STUART MILES

Posted Monday, July 3, 2023 6:07 pm

Submitted by Russ Lehman

The PDC failed to fulfill its mission regarding the complaints filed about Tumwater and Olympia's regional fire ballot measure flyer. The flyer was transparently propagandistic and sent at taxpayer expense in blatant support of the measure. Despite the cities putting their finger on the scale, the measure was decisively defeated by the voters.

Throughout my career in public service, in the executive and legislative branches of government, I have found one of the things most negatively impacting the public's trust and faith in the government is when administrators, policymakers, and agencies feign action when they have a duty, responsibility, and legal authority to act.

The Public Disclosure Commission (PDC) was created by the People, through a statewide Initiative, to be an *independent* regulatory agency tasked with assuring transparency and compliance with our campaign and public disclosure laws. It was created exactly because elected officials have an obvious real or apparent conflict of interest in enforcing the rules designed to regulate themselves.

Regulatory agencies, just like courts, have a legal and ethical responsibility to protect the public interest. Because laws cannot anticipate every possible permutation of behavior, they make rulings on a case-by-case basis thereby creating the “guardrails” to be used by all of us.

The City of Olympia has only recently been found to have broken the same law (regarding using public funds to convince voters to take its side on a ballot measure) and paid a fine as a result. In this case, the exclusion of the words “vote for” or “vote against” was intended to protect them from violating the law, even though the flyer was so clearly not a “neutral” effort to educate voters.

The City of Olympia, really the City Council, did what the savvy and well-financed do when they want so badly to accomplish something, no matter the law. They consult their lawyers about how far they can stretch the law and still muster a plausible legal defense.

In this case, it’s the PDC’s job to respond to a complaint by taxpayers who believe the City’s actions went too far. That both the flyer and the cost for attorneys for the cities were paid by taxpayer dollars to first construct a loophole and then defend it to defy the public’s voted interest in disclosure adds insult to injury.

The PDC’s letter (<https://www.pdc.wa.gov/rules-enforcement/enforcement/enforcement-cases/124392>) did all that was possible to obscure the offenses that occurred and failed to extract real accountability from the parties responsible. The PDC letter to the cities was clear that violations occurred, as they wrote, “...PDC staff is issuing a formal written warning to the cities of Olympia and Tumwater and their officials concerning the prohibition against the use of city facilities and resources to support or oppose candidates and ballot propositions.” It is also why they wrote that they would consider the warning on deciding on further Commission action if there are “*future*” violations. Also, writing that the “PDC staff found no evidence of *further* violations” does not exonerate the cities, it just indicates that the complainants did a good job finding the violations.

The PDC not only failed to do their job, but they really did worse than that. They tried to make it look like they are doing their job while actually doing nothing – and thereby sending signals to all local governments about what can be a consequence-free use of public funds in this situation, and

what is not.

This is the same agency, led by the same director, Peter Lavalee, which, when considering a complaint against Facebook, for refusing to disclose political expenditures on its site, and after already being fined by the Attorney General's Office for the exact same behavior, suggested to the Commission that Facebook be slapped on the wrist with a small fine of \$60k, that they agreed to, of pennies on the dollar, and when the Commission said "not good enough" sent it to the Attorney general and he successfully sued them for a \$25 million fine.

The PDC, with a vital public interest responsibility, has been institutionally designed to fail from the beginning. With its reliance on the people it regulates for its budget and its statutory authority, with its director and some staff seemingly more interested in protecting their careers than fulfilling their obligations to the public, and the appointment of some Commissioners who seem more concerned about protecting the status quo than serving the People who created the agency, it should be little surprise they are more interested in *appearing* to do their jobs than, you know, really doing them.

We need change to restore the PDC to what the people voted for it to be. Reforms that could be made should include a guarantee of insulation from budget retribution by legislators such as the State Auditor has in its funding of agency performance audits. In addition, it should be explored and considered how those who fund campaigns, especially the millions of dollars spent, usually by big corporations, on ballot measures, should pay a fee for the services they require the state to undertake.

The City of Olympia pushed the limits of the law and good governance, in this case, but the voters delivered an unequivocal message of opposition, and they will hopefully be more mindful and prudent in the future. The PDC, however, rolls slowly on, untethered from the voters and acting as the captured agency it is.

~ **Russ Lehman**, *Olympia*

Russ Lehman is an attorney and former member of the Washington State Public Disclosure Commission.

The opinions expressed above are those of the writer and not necessarily those of *The JOLT's* staff or board of directors. Got something to say about a topic of interest to Thurston County residents? Send it to us, and we'll most likely publish it. See the [Contribute your news](https://www.thejoltnews.com/forms/submit-news/) (<https://www.thejoltnews.com/forms/submit-news/>) button at the top of every page.

Comments

7 COMMENTS ON THIS ITEM **PLEASE LOG IN TO COMMENT BY CLICKING HERE (/LOGIN.HTML? REFERER=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)**

 **bobkat**

Excellent analysis and comment! How do you pronounce O-B-F-U-S-C-A-T-I-O-N!?

TUESDAY, JULY 4 **REPORT THIS (/REPORT_ITEM.HTML? SUB_ID=11154&COMMENT_ID=3088&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)**

 **HappyOlympian**

PDC failed, but would not have had the chance if Olympia city council had the interest of the public in mind when making the horrible decisions they do.

TUESDAY, JULY 4 **REPORT THIS (/REPORT_ITEM.HTML? SUB_ID=11154&COMMENT_ID=3095&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)**

 **Larry Dzieza**

Reading the PDC staff report was like reliving then Attorney General Barr's successful effort in controlling the narrative of the Mueller report. Barr's four-page summary was designed to spin the story by obfuscating the findings.

The PDC should do better and the PDC members, if their mission means anything to them, should take control of this.

NPR 8/20/22 - "Democrats have complained for nearly a year that Barr's description of the report was skewed and that it altered the public narrative about Mueller's conclusions. Shortly after Barr issued a letter describing Mueller's findings, the special counsel wrote to Barr to complain about the framing and to ask that the report's executive summary be released immediately.

However, Barr declined to allow what he called a piecemeal release of the report, which did not occur until almost a month after it was submitted.

Now, Democrats have a Republican-appointed judge endorsing Mueller's view that Barr's characterization led to confusion."

AP 3/5/2020 - "U.S. District Judge Reggie Walton delivered the criticism in a 23-page order in which he directed the Justice Department to provide him with an unredacted version of the report so that he could decide if any additional information from the document could be publicly disclosed.

The scolding was unusually blunt, with Walton saying Barr had appeared to make a "calculated attempt" to influence public opinion about the report in ways favorable to Trump. The rebuke tapped into lingering criticism of Barr, from Democrats in Congress and special counsel Robert Mueller himself, that he had misrepresented some of the investigation's most damning findings."

WEDNESDAY, JULY 5 **REPORT THIS (/REPORT_ITEM.HTML?**

SUB_ID=11154&COMMENT_ID=3103&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)

 **waltjorgensen**

Thanks, Russ. This critique couldn't have come from a better source than you. If there is a next step, let me know what it is and count me in. Being shoved to the side of the road like this by the PDC, who instead is supposed to be guiding other agencies like the cities down the center line of good governance, is outrageous.

Walt Jorgensen

waltjorgensen@comcast.net

WEDNESDAY, JULY 5 **REPORT THIS (/REPORT_ITEM.HTML?**

SUB_ID=11154&COMMENT_ID=3108&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)

 **ConnerEdwards**

Well said Russ. The decision by staff to dismiss this case without sending it to the Commissioners was appalling. You should consider coming to the next meeting of the PDC to testify on these issues. It will be held on Thursday, July 27, 2023 at 9:30 AM. Anyone can testify and can do so remotely via Microsoft Teams. You can sign up by e-mailing

pdcc@pdcc.wa.gov and requesting to sign up and testify, but if staff ignore your first e-mail make sure to follow up and be persistent: members of the public have a right to testify at these meetings.

Your perspective as a former Commissioner would be particularly valuable. Very few people are willing to offer meaningful critiques of the agency's performance (or lack thereof). Most of the meetings are filled with self-congratulatory reports from staff on what a great job they are all doing and members of the public can't get a word in edgewise except for the first 5-10 minutes of the meeting.

THURSDAY, JULY 6 **REPORT THIS (/REPORT_ITEM.HTML? SUB_ID=11154&COMMENT_ID=3114&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)**

 **WayTooOld**

Thank you, Russ.

FRIDAY, JULY 7 **REPORT THIS (/REPORT_ITEM.HTML? SUB_ID=11154&COMMENT_ID=3118&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154)**

 **TonyW33**

Spot on Russ! The PDC has failed here and in other areas of it's mission as well, even core ones like financial disclosure by candidates for elected office. I am tracking local County Commissioner races here and have noted that some candidates show no campaign contributions or expenditures at all. yet when I travel around the county I see their signs everywhere and they are in the new voters election pamphlet. I called the PDC about that and discovered that if a candidate attests that they will only collect a certain amount of money, the PDC doesn't require them to report anything! That means that outside support that doesn't directly get to the candidate's campaign account is also unreported. That is the core mission of the public DISCLOSURE commission in fact and even that they ignore as policy. It seems to me that the PDC's policies actually violate the law that they should be enforcing. Time to revamp this single People's Agency and reassign the scofflaws that occupy the staff positions and director seats there. We the people created this agency and deserve that it serve our interests as voters and citizens.

A reminder of our rights as citizens of Washington State as stated in RCW 46.56:

"The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern."

SUNDAY, JULY 9 [REPORT THIS \(/REPORT_ITEM.HTML?](#)

[SUB_ID=11154&COMMENT_ID=3129&REFERRING_URL=%2FSTORIES%2FPUBLIC-DISCLOSURE-COMMISSION-FAILED-TO-FULFILL-ITS-MISSION%2C11154\)](#)

OTHER ITEMS THAT MAY INTEREST YOU

Ballots ready, ballot drop boxes open for November 7 general election
[\(/stories/ballots-ready-ballot-drop-boxes-open-for-november-7-general-election,12738\)](#)

Lacey greenlights its involvement in Thurston Climate Mitigation Collaborative
[\(/stories/lacey-greenlights-its-involvement-in-thurston-climate-mitigation-collaborative,12737\)](#)

Tumwater to manage sewer connection fees collection at residential development on Littlerock Road
[\(/stories/tumwater-to-manage-sewer-connection-fees-collection-at-residential-development-on-littlerock-road,12726\)](#)

Olympia resident seeks help to address encampments around home
[\(/stories/olympia-resident-seeks-help-to-address-encampments-around-home,12735\)](#)



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Olympia, Lacey & Tumwater
on Monday

Toni Lince

From: Russell Lehman
Sent: Friday, June 25, 2021 10:32 AM
To: Fred Jarrett; Nancy Isserlis; Bill Downing
Cc: Flanagan, John (GOV); Sheri Sawyer
Subject: Resignation

Fred/Nancy/Bill,

I joined the Public Disclosure Commission (PDC) in January 2019. Unlike other Commissioners, I was not “recruited”. I applied after my experience with a statewide ballot measure campaign and the subsequent research I did which showed that the “citizen initiative” in Washington state was in danger of becoming merely a vestige of our populist roots.

What occurred there was entirely legal in Washington state. I felt, at the time, that I wanted to have whatever impact I could in helping to level the legal playing field, regarding: 1) money, 2) transparency, and 3) disclosure in WA state politics.

The trade-off for someone joining the Commission is abstaining from any political activity in exchange for the opportunity to have a direct impact on “shed(ding) the light” on Washington politics and governing. I decided to join the Commission only after I spent some time on the phone with the then-Chair, Anne Levinson. It was her obvious intelligence, commitment and, to me, most importantly, her plans and hopes for leadership, substantive change, and an activist PDC (i.e. to preserve and increase the independence of PDC, digital transparency, assuring the public’s access to commercial political advertisers records, etc.) which was the deciding factor for me.

Notwithstanding my experience in politics and policymaking, I quickly became aware of my naivete when confronted with both the institutional and bureaucratic inertia, as well as the counterforces to reform and change from elected leaders and the political establishment. As one colleague reminded me “there is more than a supermajority in both chambers who would be happy to see the PDC go away”.

But it’s not just those in the legislative branch, who both appear to relish the almost complete leverage they have over the PDC, while also seemingly offended at the very notion that they must consider public access to political, personal, and financial matters of candidates and elected officials. It is also the executive branch which too often acts as if they are put out by even the minimal management and coordination of an agency which has the chutzpah to enforce state law and the public mandate. As of this writing the Governor’s office has still not, despite requests and offers of help since the summer of 2020, even named a fifth member of the Commission.

The PDC is now recognized as a very “customer friendly” agency which both practices responsiveness and professionalism to citizens. It also, and not insignificantly, supports a happy and satisfied workforce. However, mistaking the floor for the ceiling, the agency and the Commission, I believe, misinterprets its true mission as set forth by the people in two statewide initiatives. The “North Star” of the agency is often reduced to a numeric or input/output calculation, instead of what it should be – can the public, as easily and simply as possible, access the information it needs to be an informed and engaged electorate?

It has a website which, even in its revised versions, is somewhat cumbersome and difficult to navigate for journalists, much less the general public. At least 20% of Commission meetings are typically spent (mostly) approving candidates/public officials request to **exempt** themselves from disclosure requirements. When a public political ad digital archive was suggested, so that the public would have access to what has become a major source of political advertising, the agency’s executive Director called it a “pipe dream”. The only time in 3 years he supported any effort by

the Commission to seek statutory modernization or reform was for the purpose of changing the law so the Commission could increase *his* salary.

When the very independence of the agency is threatened, either by direct action of the legislature (i.e., budget proviso's limiting its ability to perform its functions) or indirectly (i.e., threats and intimidation by legislators controlling its budget) the reaction of the PDC is submission and acquiescence instead of respectful and principled opposition and advocacy. The likely unconstitutional prohibition on any political involvement by Commissioners, anywhere in the country, unique amongst PDC-like agencies in the U.S., is met with mere conciliatory resignation by the Commission.

My colleagues on the Commission are smart, fair minded, people of integrity and civic duty. It is quite clear though, that my desire of a more activist PDC which boldly and aggressively plays a leading role in advocating for the public's right to know, brings forth proposals and programs which enhance the public's access to information, and takes all necessary steps to increase civic engagement, is not shared by my colleagues.

My hopes and aspirations when I joined the PDC have not subsided. It is clear to me, however, that the change and reform I believe is needed, is not likely to come from the PDC.

It is for these reasons, I hereby resign my position effective immediately.