

Commissioners:

Below is my public comment for the December 2024 regular meeting.

1. Response to Staff Memo on Declaratory Order Petition

The memo prepared by agency staff in response to my petition for declaratory order is not accurate. I hope that the Commissioners will read the petition for themselves as opposed to simply deferring to agency staff. There is no good reason for the agency to refuse to clarify its stance on the reportability of checks that are written but not deposited within a given reporting period.

I will respond to each point below.

Staff: “...the petition simply seeks a vehicle to collaterally attack the Commission’s Order in a compliance action... .. the declaratory order process is not intended to provide the mechanism to allow such consideration...”

Response: This is false. I recognize that a petition for declaratory order cannot be used to overturn an enforcement order that has already been issued. My interest is in trying to clarify the application of the FCPA and agency guidance prospectively, not retroactively.

Both the agency staff and the respondent did an exceptionally poor job briefing this issue to the Commissioners. Probably this was because the charge relating to the undeposited check was the least significant of all the charges brought against the respondent in that particular case. However, the PDC’s order in this case creates significant confusion as to how the agency interprets the FCPA as it relates to checks written but not deposited within a given reporting period. My hope is that the agency will resolve this uncertainty.

Staff: “...PDC rules provide that a declaratory order cannot be substituted for a compliance action. Such relief is not warranted as it would require the Commission to consider the challenge to a pending matter...”

Response: Again, I am not attempting to use the declaratory order to substitute for a compliance action. The purpose of the declaratory order process is to allow petitioners to seek clarity from regulatory agencies as it relates to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. That is what I am trying to accomplish. My petition meets the criteria defined in RCW 34.05.240(1)(a)-(e) and WAC 390-12-250(1)(a)-(b).

I am not trying to challenge the agency’s decision on a pending matter. An order has already been imposed in the case referenced by staff. The motion for reconsideration is being heard at 9:45 AM on Thursday. The petition for declaratory order won’t be heard until 11:45 AM. By that time, there will be no pending matter in the case referenced by staff. If needed, I’d be happy to agree to the petition being heard at a future meeting or to refile the petition.

Staff: “...[t]he Petitioner requests the Commission to review its order in PDC Case 146593 and make the legal conclusion that an undeposited check should be classified as a debt for purposes of reporting campaign activity under RCW 42.17A.240”

Response: This is false. I am NOT requesting that the Commission review its order in PDC Case 146593. I am requesting that the PDC clarify the application of the FCPA and agency guidance prospectively, not retroactively.

While I personally believe that undeposited checks of \$1000 or less should be reportable as debts and not monetary expenditures under the FCPA, I am happy to follow whatever decision the Commission makes. I tried to make this clear in the petition as well. I am only asking that the PDC consider the reality that its recent decision has created regulatory uncertainty and to resolve that uncertainty so that we as filers can understand what the agency expects of us.

Staff: “...the petition does not point to any evidence to show there is actual confusion for candidates, committees, or treasurers in how payments by check are reported.”

Response: This is false. Again, I would ask that the Commissioners read the petition for themselves and not rely on the staff memo.

Here is a brief summary of the confusion. If undeposited checks are reported by a filer as monetary expenditures (as the PDC’s order implies), it will cause the C4 form prepared by filers to show an inaccurate number for the campaign’s bank account balance amount (Line 18).

This puts campaigns in a difficult position. The campaign could either: a) not report undeposited check as a monetary expenditure and risk being penalized for failure to report, or b) report the undeposited check as a monetary expenditure and risk being penalized for filing an inaccurate report for failing to accurately identify the actual bank account balance.

2. \$25M Meta Judgement Upheld on Appeal

I wanted to congratulate the agency for successfully defending its \$25M judgement against FB/Meta. That is a huge accomplishment.

It is worth remembering that the agency staff had previously tried to settle this case in January of 2020 by imposing a small, nominal penalty on Facebook that would have been less than 1% of the judgement amount that the AG's office succeeded in obtaining. Beloved former PDC Commissioner Russ Lehman wrote about this in a July 2023 op-ed:

"This is the same agency, led by the same director, Peter Lavallee, 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

PDC Written Comment for December 2024 Meeting

By Conner Edwards

enough' sent it to the Attorney general and he successfully sued them for a \$25 million fine." - Fmr. PDC Commissioner Russ Lehman

Link to Commissioner Lehman's full op-ed: <https://www.thejoltnews.com/stories/public-disclosure-commissionfailed-to-fulfill-its-mission,11154>

For additional context, you can hear Director Lavallee defend the decision to seek such a small penalty against Facebook in response to a question from Commissioner Jarrett at the January 2020 meeting. Link: <https://www.youtube.com/watch?v=nSOqFegOTk0> (4:23:57 to 4:24:56)

The fact that the agency sought and successfully obtained a \$25M judgement in this case is evidence of the positive things that can happen when the Commissioners exercise their own common sense as opposed to simply deferring to agency staff.

end