

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

**1. PDC-related Legislation**

Support Foreign Certification Reform (HB 1330)

The WA House of Representatives recently signaled their strong support for reforming the foreign certification requirement by passing HB 1330 on a strong bipartisan vote of 95-2. This bill would hone the focus of the foreign certification requirement by only requiring committees to collect foreign certifications if the aggregate contributions received from an individual entity is \$2500 or greater.

Our bipartisan group of professional campaign treasurers have worked tirelessly to advance this policy since last session. Last session, this bill passed the House unanimously but did not receive a hearing in the Senate because of an alternative proposal that would have required that the certifications be filed directly with the PDC. This alternative proposal did not have the votes to pass in the House and died last session.

The PDC should drop its neutrality on this proposal and support HB 1330. If HB 1330 does not pass, it is likely that the most viable alternative reform (requiring entities to file directly with the PDC) will pass at some point in the future. According to the fiscal note on HB 1885, this would cost the agency just shy of \$1,000,000 in operating expenses when projected out over the next 5 years.<sup>1</sup>

The current requirement is extremely burdensome on campaign treasurers and campaign staff. This requirement seems to serve no legitimate purpose as the certifications are not signed under penalty of perjury and the PDC does not actually check to make sure that campaigns are collecting these forms. Our group has met with a number of legislators from both sides of the aisle, and we have yet to encounter a single individual who was willing to defend the value of the current requirement. There is no evidence which suggests that there has ever been a problem with foreign nationals intervening in state elections, and this conduct is already prohibited under federal law.

Oppose Recodification Effort (SB 5857)

Last Friday, the Senate Committee on State Government and Elections heard SB 5857, which would recodify RCW 42.17A under a new title: RCW 29B. This bill would not make any substantive changes to the state's campaign disclosure laws. The PDC signed in as being "pro" on this bill.

The fiscal note<sup>2</sup> for this bill indicates that it would cost the agency \$241,662 over the next 5 years to implement this reorganization effort. According to the narrative in the fiscal note, this cost is associated with the following:

*"A complete recodification will require significant outreach efforts that inform the public about the change, including publishing materials that explain the changes in law and track the current law into the new statutory framework, and providing assistance with locating the new references for the law. Continued outreach and customer service will be needed to assist the regulated community, media, professionals, and the public who most commonly use statutory citations to refer to substantive provisions of the law."*

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<sup>1</sup> Link to fiscal note for HB 1885: <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=68838>

<sup>2</sup> Link to fiscal note for SB 5857: <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=69238>

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If this bill were passed into law, there would be no substantive benefit for the public and significant short/medium term confusion with reorganizing the law.

At the last two meetings, Director Lavallee has alluded to how the agency is “hamstrung” by a lack of resources. If this is the case, it probably doesn’t make sense for the agency to support a policy which would consume scarce agency resources and have no substantive benefit for the public whatsoever. \$241,662 is a significant amount of money for an agency the size of the PDC and these resources could be put towards a productive use as opposed to just being wasted.

**2. Employer/Occupation Requirement**

This month’s agenda notes that the Commission will discuss pursuing additional clarity surrounding the requirement that committees disclose the employer/occupation/employer city & state for contributors who give more than \$250, see WAC 390-16-034.<sup>3</sup>

As Deputy Director Bradford notes in her memo, there is significant ambiguity as to what this rule actually requires. The Commissioners should take this opportunity to establish bright lines as to what this rule actually requires committees to do.

While many in the agency’s regulated community are deeply appreciative of all the hard work and creativity that goes into creating staff guidance, this guidance often goes above and beyond what the statutes seem to actually require. This was alluded to by Commissioners Downing and Hayward at the October 2022 meeting where the staff guidance relating to descriptive requirement for expenditures was discussed at length. Please let us know exactly what you would like to require us to do so there is no ambiguity.

The memo also offers guidance on what committees should do when disclosing the “location” of a contributor’s employer. As I mentioned last year, the vast majority of states (and the federal government) do not require that the “location” of a contributor’s employer be disclosed. While I support the requirement that the employer and occupation of a contributor be disclosed, requiring that we disclose the city and state where a person’s employer is located has no meaningful value to the public whatsoever, especially when this information can just be looked up online if someone is interested. If the Commission believes that there is some value in requiring that we disclose the city and state in which a person’s employer is located, I hope it will be identified at Thursday’s meeting. Otherwise, I intend to renew my APA petition to repeal the requirement that we provide the “location” of contributor’s employers. Believe it or not, this requirement can be quite burdensome to comply with when we are

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<sup>3</sup> On or around 12:00 PM on 1/22/24, a memo prepared by Deputy Director Bradford was uploaded to the PDC’s website for the January meeting agenda. For some reason, this memo was not included in the initial e-mail that was sent out to folks that are subscribed to the agency’s e-mail listserv. Unfortunately, this is not the first time this has happened. If the agency wants members of the regulated community to know and understand discussion items so that they can provide meaningful public comment to the Commission, all documents related to discussion items should be included as hyperlinks in the e-mail that is sent out to the listserv prior to the meeting. Most people do not repeatedly check the agency’s webpage to see if new documents are included on the agenda that were not included in the initial e-mail that was sent out.

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missing contributor information, and the elimination of this requirement would be a significant benefit for committees.

**3. Agency Non-Enforcement of C3 and C4 Reporting Deadlines**

In most states, and on the Federal level, campaign finance agencies actively monitor candidate filings and when a candidate fails to file contribution or expenditure reports by the required deadline, the agencies will intervene and impose penalties. This creates a meaningful incentive for candidates to follow the law.

The PDC doesn't do this. The PDC does not actively monitor candidate C3 and C4 filings to ensure that reports are filed by the required deadlines. Moreover, if and when a member of the public notices that reports are not being filed on a timely basis and files a complaint, the agency's general policy is to issue a "warning letter". A "warning letter" is essentially a warm admonishment to the candidate not to do it again. This letter is, in effect, the same as an outright dismissal. These letters are frequently issued after the election is already concluded and campaigns have already been wound down.

Washington's campaign disclosure requirements are among the most complex and burdensome in the nation. The candidates that I work with spend an incredible amount of time, energy, and money to comply with these requirements. It is extremely frustrating to observe that many campaigns completely ignore these requirements and face no substantive penalties whatsoever from the agency.

As a result of the agency's failure to meaningfully enforce filing deadlines, there are hundreds of candidates who participated in the last election cycle who failed to file reports on a timely basis. At one point on or around the deadline of the 21-day pre-general C4 report in 2023, there were over 300 candidates who had failed to file a single C3 or C4 report over the course of the entire campaign cycle.

And on some level, who can blame these candidates who failed to file? Why should candidates waste time, energy, or money trying to comply with the requirements if the agency doesn't pursue penalties against those who don't comply?

In trying to persuade the PDC to adopt a framework for meaningfully enforcing C3 and C4 reporting deadlines, I have drawn comparisons between how the PDC operates and how other state campaign finance authorities operate (this is also attached to the end of this written comment). Below, I want to point out the differences between the agency's failure to enforce C3 and C4 deadlines compared to the agency's successful enforcement of F1 deadlines. To aid in this, I am requesting that the agency answer two questions, which will be listed below.

**Question #1: Why does the PDC actively monitor F1 filings to make sure F1s are being filed on time, but does not do the same for C3 and C4 filings?**

One of the things that the PDC does really well is enforcing F1 (personal financial disclosure) filing requirements. Every year, agency staff determine which individuals are required to file F1 reports. Then, agency staff send reminders to these individuals letting them know of their obligation to file. When individuals don't file F1 reports by the required deadline, agency staff will schedule hearings where the individuals who fail to file reports by the required deadline will face penalties. Those who fail to file by the required deadline have the opportunity to avoid the hearing by signing a SOU (statement of understanding) where the respondent agrees to pay a penalty to the agency for failing to timely file.

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As mentioned above, the agency does not do this for candidate C3 and C4 filings. Instead, the agency uses a “complaint-based” system where the agency does not pursue enforcement unless someone first files a complaint. Then, once the complaint has been received, it is typically dismissed with a “warning letter”.

What is the justification for actively enforcing the requirement that people file F1s on time, but not doing the same for the requirement that people file C3s and C4s on time?

**Question #2: Why do agency staff pursue monetary penalties against those who fail to file F1s on time, but does not generally pursue penalties against those who fail to file C3s or C4s on time?**

How the agency handles late/non-filed F1s

As mentioned above, when individuals do not file F1s on time, agency staff take notice of this fact and almost always pursue monetary penalties against the individuals who have failed to file on time.

When the respondents in these cases come before the Commissioners in the context of an adjudicative proceeding, the respondents typically offer one of four arguments for why they shouldn’t have to pay a fine:

- a) “I wasn’t aware of this requirement/I’m a first-time candidate.”
- b) “I didn’t receive the e-mail from the agency telling me about the deadline or that I had missed it.”
- c) “I thought I had filed the form, but I guess it didn’t go through because of tech issues.”
- d) “I admit I didn’t file it before the deadline, but I did eventually get it filed so don’t fine me.”

When respondents present these arguments to the agency, they are almost universally rejected by the Commissioners. This is for good reason: my understanding is that the statute that requires filers to file form F1 is a strict liability statute. Many regulatory statutes are strict liability to deter potential violators from engaging in the prohibited activity (in this case, failing to timely file forms with the PDC). When the required forms are not filed with the agency on time, it injures members of the public who are unable to see the information they are entitled to view.

How the agency handles late/non-filed C3s and C4s

In contrast, if someone files a complaint that correctly alleges that a candidate has failed to file a C3 or C4 on time, agency staff will almost always dismiss the complaint with a “warning letter” which is equivalent to an outright dismissal.

Upon receipt of the complaint, staff will forward a copy of the complaint to the respondent. Typically, the respondent will provide a response and list one or more of the four excuses listed above for why the required C3 and/or C4 reports were not filed on time.

However, while these excuses are almost universally **unsuccessful** at excusing the late filing of F1 reports in the context of an adjudicative proceeding before the Commissioners, these excuses are almost universally **successful** at excusing the late filing of C3 and C4 reports at the staff level of complaint processing.

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Upon receiving the excuse or excuses provided by the respondent as to why the C3 and C4 reports were not filed on time, agency staff will copy and paste these excuses into the warning letter dismissal and provide a copy to both the complainant and the respondent.

Considering both the F1 filing requirement and the C3/C4 filing requirement are both strict liability statutes, what is the justification for why the agency handles these two different types of violations in such a different manner?

**4. Welcome to Commissioner North**

I would like to welcome Commissioner North to the PDC. It is great to have an additional member of the Commission who has the experience of having been a candidate and having to comply with the often burdensome and complex requirements that the agency enforces.

In his capacity as judge, North fined Facebook nearly \$25 million for repeatedly and intentionally violating campaign finance disclosure law, in what is believed to be the largest campaign finance penalty in U.S. history.<sup>4</sup>

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<sup>4</sup> It is worth remembering that Director Lavalley had previously tried to settle this case in January of 2020 by imposing a small, nominal penalty on Facebook. 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 Lavalley, 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.*

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

For additional context, you can hear Director Lavalley defend the decision to seek such as 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 transcript from a media interview with Commissioner Lehman (as well as his resignation letter) is also attached to this written comment for additional context.



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**RE: Question on late-filed FEC reports**

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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](mailto: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?

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Best,

Conner Edwards  
(425) 533-1677 cell

Ref:MSG0223356



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## Question on Late Reporting for Candidates

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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 10<sup>th</sup>. If applicable, we send an email on the 11<sup>th</sup> 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 13<sup>th</sup> (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

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**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>

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## 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](mailto: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>

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## Question on late reporting penalties

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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

[235 S. Beretania Street, Room 300](#)

[Honolulu, Hawaii 96813](#)

Phone: (808) 586-0285

Fax: (808) 586-0288

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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 FINES<sup>1</sup>

	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
<b><u>REGISTRATION</u></b>			
<b>A. Electronic Filing Form (HRS §11-321)</b>  1 – Not File 2 – Late File or Not Amend/Correct	N/A	N/A	1 – \$50 2 – \$25
<b>B. Organizational Report (HRS §§11-321, 322, 323)</b>  1 – Not File 2 – Late File or Not Amend/Correct (within 10 days)	N/A	N/A	1 – \$100 2 – \$50
<b><u>REPORTING</u></b>			
<b>A. Disclosure Reports (HRS §11-340)</b>	N/A	1 – N/A	1 – 1 <sup>st</sup> time → \$500 2 <sup>nd</sup> 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>3<sup>rd</sup> time → \$1,000 2 – Fine N/A if paid fine (HRS §11-410(h)) &amp; no criminal referral (HRS §11-412(g))</p>
<p>(Candidate &amp; 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 – 1<sup>st</sup> time → \$500 2<sup>nd</sup> time → \$750 3<sup>rd</sup> time → \$1,000 – Fine N/A if paid fine (HRS §11-410(h)) &amp; no criminal referral (HRS §11-412(g))</p>
<p>(Candidate &amp; 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>



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## Question on late campaign finance reports

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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

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**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

# A Resignation and Warning



ELI SANDERS

JUN 28, 2021

Share



In a blunt and critical letter to his colleagues, Russell Lehman, bottom left, recently resigned from the Washington State Public Disclosure Commission.

On Friday morning, a scalding resignation letter arrived in officials' in-boxes at a Washington State agency charged with regulating everything from the financial disclosures of powerful politicians to the fast-changing world of online election ads.

The sender was Russell Lehman, an attorney and political activist who'd served on the Washington State Public Disclosure Commission for two and a half years. He told colleagues he was resigning because of the commission's "institutional and bureaucratic inertia" and the agency's inclination toward, in Lehman's words, "submission and acquiescence" when faced with pushback from outside critics, "instead of respectful and principled opposition and advocacy."

Lehman was [appointed](#) as an agency Commissioner by Washington State Governor Jay Inslee in January 2019, and in his resignation letter he also took a shot at the governor for having left a seat on the five-member body empty for the last six months. With this

resignation, Inslee now has two seats to fill and the Public Disclosure Commission is [down to three](#) members.

The PDC, Lehman wrote in his letter, “misinterprets its true mission as set forth by the people in [two](#) statewide initiatives.” He said the agency now spends “at least 20 percent” of most meetings on actions to exempt officials from disclosure requirements. He also took specific aim at the agency’s executive director, [Peter Frey Lavallee](#). “The only time in 3 years he supported any effort by the Commission to seek statutory modernization or reform,” Lehman wrote, “was for the purpose of changing the law so the Commission could increase *his* salary.”

In a statement, the agency’s spokesperson, Kim Bradford, wished Lehman well and said his “passion for the mission of the PDC was obvious.” But Bradford disputed Lehman’s characterization of the agency and Lavallee, saying the PDC “has transformed itself” in recent years and that “many of those changes were the result of significant statutory reform that Executive Director Peter Frey Lavallee championed.”

Bradford continued: “Based on that record, Peter has requested a raise during performance reviews.” Due to salary caps connected to state law, she said, “Peter noted in discussions with the Commission that one approach would be to amend that law, but the agency has not developed a proposal to do so.” Lehman disputes this take.

In his resignation letter, Lehman wrote that it’s “quite clear” his former colleagues on the commission do not share “my desire of a more activist PDC which boldly and aggressively plays a leading role in advocating for the public’s right to know.” After resigning, he went into more detail about his wide-ranging criticisms of the agency in an interview with *Wild West*, saying he’s come to believe necessary change at the PDC will only come from outside agitation, perhaps through another citizens initiative like the one in the 1970s that created the agency. He also accused the PDC of harboring an “implicit bias” that favors “those with wealth and power,” including deep-pocketed corporations like Google and Facebook.

The following interview with Lehman has been condensed in the interest of (relative) brevity.

**ELI SANDERS: In your resignation letter, you write that you didn't arrive at the Public Disclosure Commission by the normal route. How'd you end up a Commissioner?**

RUSSELL LEHMAN: The commission didn't come to me. I came to the commission. I'm the only one I know of who approached to the commission in this way. Everyone else was recruited. I decided I wanted to get involved because I had worked, pro bono, on the Soda Tax measure in 2018. That's the one where Coke and Pepsi put up about \$20 million to run a statewide initiative campaign that **ended up preventing** all other cities in Washington State from following Seattle's lead on taxing **sweetened beverages** to fund health and education initiatives.

I worked as a spokesperson for the "No" campaign, assisting my friends in the public health community. In contrast to the millions from Coke and Pepsi, the public health community had about \$50,000. And even though polls showed a majority of the public was in favor of a "No" vote, the sides were not evenly matched financially and so we couldn't beat their "**Yes! To Affordable Groceries**" messaging.

I was just amazed at how little a chance people have when corporations are on the other side. I was compelled by that experience. And when I found out there was an opening on the Public Disclosure Commission, I started thinking: *I wonder if I could have an impact that way, and help level the playing field...* So I applied. I sent an application to the governor's office.

I ended up being appointed to the commission, and I was excited to be working under the leadership of then-Chair Anne Levinson, who wanted to do big things. But before too long I got the Politics 101 lesson from some of my other colleagues at the agency. They told me, "We're not really independent. We're controlled completely by the legislature—our budget, our staff, everything is controlled by the legislature. That's the way it is." And that was my first indication that I just had a very different outlook on the role and the mission of the PDC.

**ES: How did these other outlooks on the PDC differ from yours?**

RL: In light of the racial reckoning that's been going over the last year and a half, I'd say what's going on at the PDC is a really interesting case of implicit bias on the part of a

state agency. I think the commission has a really strong implicit bias towards institutions, and towards those with wealth and power, and not toward the public interest—which is exactly where I think we *should* have a bias.

The law directs that, and it's no coincidence that the agency was created by the people, through a citizens initiative. The legislature probably never would have created a PDC. And while there are good people in the legislature, no question, generally speaking they've been completely unsympathetic to the public's right to know.

**ES: You wrote in your letter that a colleague at the agency once warned you: “There is more than a supermajority in both chambers who would be happy to see the PDC go away.” This will sound like an obvious question to you, but for the many, many people who don't track the bureaucratic dramas and consequential deliberations of the PDC, much less know it exists: Why would the legislature want the PDC to go away?**

RL: I think that's easy. It's the old saying, “Power tends to corrupt and absolute power corrupts absolutely.” Generally, people in power don't like transparency and disclosure about things they're involved in. I think that's more human than it is political.

They don't want the public to know about their financial matters. They don't want the public to know about where potential conflicts might arise. Sometimes there are not conflicts, but they don't want to have to explain that to the public. And I get that. But that's the price you pay, I believe, for serving the public. Because to have an informed public, which is the basis of our democracy, we need to have transparency and disclosure. And there is no compromise on that, as far as I'm concerned.

**ES: You point out that, as of the writing of your resignation letter, the governor's office still had not filled a vacant commissioner seat that's been sitting open for six months. Now there's a second vacancy on the commission and only three active commissioners. Why do you think it's been taking the governor's office so long to fill that other seat? And do you worry, given the institutional bias you're alleging here, that now, with a second empty seat to fill, the commission might end up swinging even further away from the more populist, activist orientation you'd like it to have?**

RL: That's a great question, and I can't answer that because I don't know who the governor is going to put on. I don't assume that the governor will appoint people whose



views are antithetical to disclosure and transparency. I really don't believe he would do that. At the same time, that implicit bias is dramatic throughout government generally.

For instance, our last chair, David Ammons, is a former journalist and self-fashioned First Amendment zealot. But he was anything but on the Public Disclosure Commission. We literally didn't do anything to move the ball forward at all during his tenure. *[Eds note: Bradford, in her statement responding to Lehman's resignation letter, specifically praised Ammons—along with former PDC Chair Anne Levinson and current Chair Fred Jarrett—for creating a “transformed” agency in recent years.]* And he actually caved when a legislator threw a fit. He got a [hair-on-fire email](#) from Sam Hunt, who happens to be the chair of the state senate committee with jurisdiction over the PDC. Hunt threatened and intimidated the agency to take down financial disclosure documents that were available online. And it was all based on a lie by another senator and fictions about supposed hacking of the PDC web site. Which, by the way, it's important to note: You can't hack the PDC web site. It's open. You can't hack it.

Now, Senator Hunt, he can do whatever he wants. My problem is that the PDC gave in to that. And that's just one example. And Governor Inslee put Ammons on the commission. So the governor puts on people who are good people, I just think that they have a blind spot. And it's compounded by the fact that not many people care. Not many people follow this.

**ES: You say in your resignation letter that at least 20 percent of PDC committee meetings now get spent mostly approving requests from candidates and public officials “to exempt themselves from disclosure requirements.” This criticism connects to financial disclosure documents, or “F1s.” For people who don't know what an F1 is, what's going on here?**

RL: All public officials in Washington State need to file what's called an F1 report, which discloses a number of personal and financial matters so that the public has an opportunity to determine whether or not a conflict might exist. The legislature, some time ago, wrote into law the opportunity to apply for what's called a modification. So now people file a modification request with the PDC, and they ask the PDC to permit them *not* to disclose certain things that are otherwise required.

Two years ago, the legislature passed a law that actually exempted judges and judicial officers from disclosing their personal addresses because of so many issues that came about with regard to threats to the safety and security of those judicial officers, allegedly because their addresses were on an F1 form. I say allegedly, because there's a number of ways to get people's addresses, and just speaking for myself I have seen little evidence that the F1 form was a source of people getting addresses that didn't otherwise have them. But the legislature passed that law, and now what we see, just in the last couple years since they've done that, county clerks, people in clerks' offices all around the state, election officials, lots of others are asking to not disclose their personal addresses.

The law does allow the PDC fairly wide latitude to do this. I'm guessing here, but probably 90 percent of the modification requests are approved. And this is now not just about street addresses. What it's about, very often, is financial matters. People who claim that to expose the business connections they have in their lawfirms would expose them to other liability, or would damage their business. Car dealers. People on boards. We get it from everybody. They want to shield their business connections.

Again, as a filer and as a human I understand that. My answer is that they shouldn't run for office if that's the case. I know, being involved in politics for many years, that people make important policy decisions based on all kinds of things, and often based on things that the public doesn't know about—because they have a connection to somebody that the people aren't able to find out about, or because their spouse does.

**ES: You've lobbed a pretty heavy charge against the current PDC Executive Director, Peter Frey Lavallee, writing that "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." The PDC disputes this. But beyond this specific issue, I want to know whether you're suggesting something more broadly here. Are you saying you lack confidence in Lavallee's leadership? And if so, what change do you suggest?**

**RL: I do lack confidence in his leadership. With that said, he clearly has created a work environment where the employees of the PDC appear to be happy and content and comfortable. My problem is, that's the floor not the ceiling. That's what any leader should be doing. But to really be a leader also involves advocacy, communication, bold**

reform efforts, and bringing to us ideas about how we can move forward in this changing world.

You know, Washington State loves to say we are leaders in the United States on transparency and disclosure. Well, there are some things that we have done well on, no question, but there are many things we haven't. And we are behind many, many states in some areas. And truly being a leader means taking a look and saying, "Where can we change? What do we need to do?" Especially as the world changes so quickly, and especially when it comes to political advertising.

And that sometimes involves changes to the law. And the reason I bring this up is that Peter, the current executive director, has frankly fought us on statutory changes and every year since I've been there has said, "We shouldn't ask the legislature for anything." That's completely antithetical to what I believe is a strong component of true leadership.

**ES: Let's talk about online political ads, which have been an issue for your entire tenure. You began on the PDC just as Facebook and Google were banning political ads in Washington State in response to new rules adopted by the agency, and this has been a truly complex, high-stakes issue that's generated a lot of outside lobbying and pushback. How do you think the PDC has handled this?**

RL: I thought it was a mistake last year to propose a settlement with Facebook that required no liability for the company's repeated breaking of our political ad rules. And I was glad that proposal was [summarily rejected](#) by the commission and sent to the attorney general for prosecution. Since then, Facebook is being told by the agency that the rules around political ad disclosure can be changed to accommodate their needs. *[Eds note: See [last week's newsletter](#) for more on this allegation and the PDC's response.]*

That accepts the violators' argument that the rules are the problem, rather than the problem being the companies that are selling online political ads—despite the bans they've announced—while also failing to follow our disclosure rules. We can't have it both ways. We can't take credit for leading the country on rules for digital ads and, at the same time, whenever tech giants say, "Wait a minute, this has gone too far, we can't

work with that,” start to capitulate, or be willing to capitulate and say to them, “Well, we could change the rules if it’s not working for you.” You can’t have it both ways.

And I think right now, the state is trying to have it both ways. And at the same time, leaders at the PDC are offering to both Facebook and Google at least the possibility, and I would say the likelihood, that the rules will change in their favor.

These rules meet our mission, and contrary to what Facebook and Google will say, they are constitutionally sound. So what should we be afraid of? Why not let it be tested in court?

**ES: Are you saying that when it comes to the current case of *Washington State vs. Facebook*, this would be your preferred option—for the AG to follow the case through to a courtroom conclusion rather than seek another settlement?**

RL: That would be my preferred option, knowing what I know. And I say that only because I haven’t done discovery in this case. That’s the AG’s job, and the AG’s office doesn’t talk to us about cases we’ve sent them. So I just don’t know, but unless they’ve found out something that we are totally unaware of, my own analysis—and much more importantly, the opinions of people who are much smarter than me—say we are on sound legal footing. So yes, I would say based on what I know that would be my preferred course.

Look, we just saw the AG agree to [a settlement with Google](#) that went the opposite direction. My problem with just settling and letting companies like Facebook and Google constantly pay fines for violating the law, without any admission that the law even applies to them, is that those violations of law will just keep on continuing. Because these are very deep pockets, so they just consider it a cost of doing business. So they’ll do it again. I don’t see how this all doesn’t play out again next year.

I believe these companies can go as fast as they want, but one thing they can’t break is our law. I think it’s pretty clear that they get a different message, however, from the PDC and from the AG’s office. The fines are a cost of doing business and the underlying violations just continue.

**ES: You [blew the whistle](#) about what you saw as a too-cozy relationship between the PDC leadership and Facebook and Google regarding potential changes to the current political advertising rules. But at [last week's](#) commission meeting—your last meeting, as it turned out—you voted to open a process that could lead to changing those rules. That's one of your last acts as a PDC Commissioner. How do you explain that?**

Frankly, I labored with that vote. It was a pro-forma vote, but I labored with it. But the other three commissioners supported it and were going to do it anyway. Also, it's just setting a six-month plan for potential rule revisions, which we have to do under the law, but there's no requirement about what those rule revisions will be or whether they'll even happen.

During the meeting, [I did ask](#) our counsel to what extent these suggested changes come from the regulated community, and to what extent they come from others. And clearly, they were very evasive about that. And my sense is, it's to cover themselves, in the sense that the input for changes—my sense is they're coming only from the large platforms that sell digital ads. My concern is that the PDC will capitulate to that. But I also believe that we should always be willing to go back and look at rules, and statutes on the books, and say, "How can we make this better?" So that's why I voted for it.

**ES: You and I could talk about all this stuff for a long time, but we've already had a pretty long conversation so...**

**RL: Just one more thing: We unfortunately expect those in the political establishment to erect obstacles and impair transparency and disclosure. But we need agencies to be different.**

We need them to forcefully, aggressively protect and enhance the public's access to information. Frankly, if not them, who? That's where we are right now. If it's not going to be done by the PDC, who's going to do it?

And I'm afraid that one could easily look at our situation now and say there are some similarities to the 1970s, when voters felt the need to create the PDC in the first place. Now, obviously we've made many strides forward since then. But I do think that fundamental change will only come from the outside. And maybe we need another initiative. Maybe we need the citizens to be able to have a say directly. You know, the

[uproar](#) after the legislature [tried to exempt](#) their own public records is a great example of what lies dormant among the public.

ES: People are going to read that and, given your background working on a statewide initiative battle, ask: Is Russell Lehman planning to run his own citizens initiative, like the one [Jolene Unsoeld](#) was part of back in the 1970s that created the PDC?

I have no plans right now. But I am absolutely talking to people with experience and money and interest to see if we could. Because I think, unfortunately, that is likely the only way we are now going to see fundamental change and reform.

Some of the things I've been reading this week:

- **A plague of deceptive fundraising emails** — “Older Americans, a critical source of political donations, often fall victim to aggressive and misleading digital practices,” a [New York Times investigation](#) finds.
- **“How Amazon Bullies, Manipulates, and Lies to Reporters”** — A look at the company’s PR practices by [Mother Jones](#).
- **The anti-anti-trust blitz begins** — “Executives, lobbyists, and more than a dozen groups paid by Big Tech have [tried to head off](#) bipartisan support for six bills meant to undo the dominance of Amazon, Apple, Facebook and Google.”
- **And the discontent with creator economy pay continues:**



Taylor Lorenz  
@TaylorLorenz

“These millions of likes, that should all translate to something. How do we get real money, power and proper compensation we deserve?”



nytimes.com

Are Black Creators Really on 'Strike' From TikTok?

A viral campaign aims to draw attention to the ways social platforms compensate users.

3:13 PM · Jun 25, 2021

74 Likes   14 Retweets

*Questions? Tips? Comments? [wildwestnewsletter@gmail.com](mailto:wildwestnewsletter@gmail.com)*

## Toni Lince

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**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.