

August Public Comment
Public Disclosure Commission Meeting
By Conner Edwards

Commissioners:

Thank you for taking up the issue of the foreign contribution certification requirement at the upcoming PDC engagement session on Wednesday, August 30.

It is my hope that the Commission will take a position on this issue and work with campaign treasurers to reform this requirement as part of the agency's request legislation. However, failing this, it is my hope that the PDC will at least serve as a neutral third-party and assist us in working with other interested groups to come up with a solution that works for all.

In 2020, the foreign contribution certification requirement was created in good faith by legislators with the best of intentions. Notwithstanding this, the foreign contribution certification requirement seeks to address a nonexistent problem with an ineffective solution.

The driving force behind this requirement appears to have been the unfounded belief that there are foreign owned or controlled entities that are seeking to illegally influence the results of Washington state elections. During the legislative process which created the foreign contribution certification requirement, there was no evidence brought forward to support the existence of this problem. To my knowledge, there has been no evidence to support this notion that has been brought forward since the passage of this requirement.

However, assuming for the sake of argument that foreign controlled entities intervening in state elections was a real problem, there is no evidence which would suggest that the certifications (which are not even signed under penalty of perjury) could prevent this illegal activity. Moreover, it feels absolutely foolish for us as campaign treasurers to constantly have to request that entities (such as a local firefighters union or a neighborhood small business) effectively "self-certify" that they are not controlled by the likes of Vladimir Putin, Xi Jinping, Hugo Chavez or Kim Jong-un.

For campaign treasurers, when we first learned that this requirement was created in 2020 without our knowledge or involvement in the process, it felt like a sucker punch to the back of the head. The requirement fundamentally changed the very nature of our jobs overnight. Suddenly, we were no longer simply responsible for managing/reporting the finances of the campaigns we worked for. Instead, we were put in the position of trying to force outside entities to sign a form, or alternatively badgering our candidates into doing that for us. This may sound easy but, for a variety of reasons, it is not.

For the first two years after passage, campaign treasurers suffered in silence thinking that perhaps the requirement would feel less painful as time went on. Unfortunately, the pain associated with this requirement has not subsided.

Starting in 2022, campaign treasurers from both sides of the political divide started to come together to look for some sort of reasonable path forward to reform this requirement. This effort ultimately culminated in HB 1330, which had bipartisan cosponsorship, no opposition, and ultimately passed the House of Representatives **unanimously** (95-0) during the 2023 Legislative Session. This bill would have applied the foreign contribution certification requirement only to contributions totaling \$2500 or more,

honing the law's focus on those truly large contributions which have the ability to significantly affect the outcome of an election. This simple change would have significantly reduced the burden of this requirement. This popular and bipartisan policy was ultimately stalled because of an alternative proposal being unilaterally pushed by the Senate Democratic Caucus. This alternative proposal (described briefly in Sean's memo) did not have sufficient support to pass the House, ultimately causing the death of the agency's bill. Part of the reason that this alternative proposal did not have sufficient support was because it would have completely extinguished the political voice of local companies such as Boeing, Microsoft, Amazon, etc.¹

To the extent that foreign involvement in Washington state elections does exist on some small level, the foreign contribution certification requirement is a disproportionate response. Proportionality is an important regulatory concept that is not often discussed at the PDC or in front of the Legislature. It is a concept you hear a lot about in the foreign policy context. Proportionality stands for the proposition that if some other country jails one of your citizens on a fictitious charge, you don't respond by taking your Air Force and carpet bombing their capital city. Instead, you would take some responsive action that is roughly in line with the scale of the original problem or bad act.

The PDC, and to some extent the Legislature, typically does not make campaign finance policy in keeping with concept of proportionality. As members of the regulated community, we have frequently seen oppressive regulatory changes that have been made to deal with problems that are either completely imaginary, or extremely small in scope. Almost every time this agency, or the Legislature attempts to create a solution to solve a small or sometimes totally fictitious problem, the solution almost always creates larger problems than it purports to solve. That is certainly the case with the foreign contribution certification requirement.

Here are some proportionate regulatory ideas that I hope the Commission and other interested parties might consider as an alternative to the current foreign contribution certification requirement.

1. Create a requirement that specifies that a campaign may not knowingly accept a contribution from a foreign-controlled entity and then define what "knowing acceptance" means.²

¹ Coincidentally, a near identical version of this proposal was recently signed into law in Minnesota. The law was scheduled to go into effect on January 1, 2024. However, it has been challenged on 1st Amendment grounds in federal court by the Minnesota Chamber of Commerce. The law will almost certainly be struck down, and when a decision is released in the next several months, I will share the written opinion with the PDC.

² This is how the Federal Elections Commission deals with this issue. (Link: <https://www.fec.gov/help-candidates-and-committees/foreign-nationals/>)

"For the purposes of this section, knowingly means that a person must: Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national; Be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or Be aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.

Pertinent facts that satisfy the "knowing" requirement include knowledge of: Use of a foreign passport or passport number for identification purposes; Use of a foreign address; A check or other written instrument drawn on an account or wire transfer from a foreign bank; or Contributor or donor living abroad."

2. Make it a violation of RCW 42.17A to fail to prominently state on a candidate's/committee's online donation page or remit forms a statement roughly equivalent to the following:

"It is against state law for an entity that is organized under the laws of, and has its principal place of business in, a foreign country to make a campaign contribution. It is against state law for a contribution to be financed in any part by a foreign national, or for foreign nationals to be involved in making decisions regarding the contribution in any way."

3. Change the existing requirement so that candidates/committees only have to collect the certification form for donations of \$5000 or more.
4. Create a new requirement which would require that, whenever an individual or entity donates more than \$50,000 on aggregate in an election year that that individual or entity would have to file a foreign certification statement directly with the PDC under the penalty of perjury.
5. Create criminal penalties for when an individual or entity knowingly violates the prohibition against foreign national financing or being involved in campaign-related contribution or expenditure activity.

Best,

Conner Edwards
Professional Campaign Treasurer
(425) 533-1677 cell