



August 23, 2022

Submitted electronically to [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov).

Fred Jarrett, Chair  
Public Disclosure Commission  
711 Capitol Way S., #206  
Olympia, WA 98504

Dear Chair Jarrett and Members of the Commission,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the Public Disclosure Commission (“PDC” or “Commission”) in response to its request for public comment regarding possible priorities for the PDC’s 2023 legislative agenda.<sup>1</sup>

CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law at all levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every American’s right to a responsive and transparent democracy.

CLC commends the PDC for its proactive approach in enhancing transparency around election spending for voters in state and local elections. The priorities discussed below have the potential to strengthen Washington’s Fair Campaign Practices Act, addressing the changing landscape of political spending and advertising in our elections.

These comments address two of the four potential legislative priorities the PDC is investigating for the 2023: (1) adjusting the campaign expenditure reporting schedules and last-minute contribution reporting under RCW 42.17A.234 and RCW 42.17A.265; and (2) requiring sponsors to identify political advertising when purchased from commercial advertisers and specifying campaign expenditure reporting details for digital advertising under RCW 42.18A.345.

## **I. Adjusting the campaign expenditure reporting schedules**

CLC supports updating the applicable disclosure dates for campaigns, political committees, and independent expenditure groups in the period preceding an election to provide the voting public with up-to-date information consistent with their First Amendment right to meaningful participation and contribution to self-government in Washington.

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<sup>1</sup> See *Comment on potential PDC legislative priorities*, WASH. PUB. DISCLOSURE COMM’N (Aug. 17, 2022), <https://www.pdc.wa.gov/news/2022/comment-potential-pdc-legislative-priorities>.

Campaign finance disclosure laws promote First Amendment values by providing voters with critical information necessary to make informed choices in the political marketplace.<sup>2</sup> The U.S. Supreme Court has affirmed this principle for more than forty years, recognizing that “the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government”<sup>3</sup> and repeatedly affirming the constitutionality of campaign finance disclosure laws.<sup>4</sup>

Currently, Washington requires disclosure reports from campaign committees, political committees, and incidental committees to be filed on the 21<sup>st</sup> and 7<sup>th</sup> days prior to an election and on the 10<sup>th</sup> day of the month following the election, in addition to regular monthly reporting outside of election periods<sup>5</sup> and event-driven reporting in the seven days prior to a primary or general election.<sup>6</sup>

Notably, Washington conducts its elections entirely by mail, unlike many other states with reporting schedules similar to Washington’s current reporting schedules. In Washington, ballots are mailed to voters at least 18 days prior to election day, and ballots must be postmarked by election day to be counted.<sup>7</sup> With Washington’s universal, extended voting period, voters would benefit from additional reporting in the days leading up to the start of the vote-by-mail period.

Under the state’s current schedule, voters who cast their ballot early during the voting period may have access to less complete, up-to-date information about who is spending money to influence their vote in the days leading up to the start of the voting period as compared to voters who cast their ballots on election day. Specifically, voters who wait until election day have access to information reported seven days before and twenty-one days before election day,<sup>8</sup> as well as event-driven reporting surrounding large contributions or expenditures in the week prior to election day.<sup>9</sup> But voters who exercise their right to cast their ballot by mail early in the voting period may be deprived of

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<sup>2</sup> *McConnell v. FEC*, 540 U.S. 93, 197 (2003); see also AUSTIN GRAHAM, CAMPAIGN LEGAL CTR., TRANSPARENCY AND THE FIRST AMENDMENT, at 15-19 (Nov. 29, 2018), <https://campaignlegal.org/document/transparency-and-first-amendment-howdisclosure-laws-advance-constitutions-promise-self>.

<sup>3</sup> *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 604 (1982).

<sup>4</sup> See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (per curiam); see also *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

<sup>5</sup> See RCW 42.17A.235(3)(a) (generally requiring candidates and political committees to file reports on the tenth day of each month outside of election periods); RCW 42.17A.235(3)(b) (generally requiring incidental committees to file a report on the tenth day of each month during which the incidental committee is not otherwise required to report).

<sup>6</sup> RCW 42.17A.265 (requiring campaign treasurers to submit a special report “when a contribution or aggregate of contributions totals [one thousand six hundred] dollars or more” from a single person or entity is received during the period between the final 7-day report under RCW 42.17A.235 and the primary or general election day, and political committees to file a special report when the committee makes a contribution or aggregate of contributions to a single entity that totals [one thousand six hundred] dollars or more” during that same period).

<sup>7</sup> RCW 29A.40.010. See also, *Frequently Asked Questions on Voting by Mail*, Wash. Sec. of State, [https://www.sos.wa.gov/elections/faq\\_vote\\_by\\_mail.aspx](https://www.sos.wa.gov/elections/faq_vote_by_mail.aspx) (last accessed Aug. 22, 2022).

<sup>8</sup> Reports issued on the twenty-first day and seventh day prior to election day include all contributions received and expenditures made as of the end of one business day prior to the date of the report. Reports filed on the tenth day of the month include all contributions received and expenditures made from the closing date of the previous report through the last day of the month preceding the current report. RCW 41.17A.235(4).

<sup>9</sup> *Supra* note 6.

similar information about election-related spending in the lead-up to casting their ballots, particularly spending occurring shortly before the 21-day pre-election report.

While the PDC's proposal does not list a suggested schedule, prior legislation introduced in the Washington State Legislature in the 2021-22 session provides an example of how a modified reporting schedule might be arranged. The current statute requires reporting on the 21<sup>st</sup> and 7<sup>th</sup> days prior to an election and on the 10<sup>th</sup> day of the month following the election.<sup>10</sup> Under HB 1919, reports would be due on the 27<sup>th</sup>, the 20<sup>th</sup>, and the 6<sup>th</sup> day prior to an election, and then on the 10<sup>th</sup> day of the month following the election.<sup>11</sup> The PDC noted in its notice that "ballot returns have continued to trend earlier in the voting period,"<sup>12</sup> and reconfiguring the reporting schedule with an additional, earlier report date would serve to provide *all* Washington voters with similarly up-to-date information about who is spending money to influence their vote in the days leading up to voters casting their ballots.

We also recommend that the PDC consider expanding the special reporting period for political advertising sponsors under RCW 42.17A.260. Currently, political advertising sponsors must file special reports to the PDC for any independent expenditures made within twenty-one days of an election, if those expenditures have a value of \$1,000 or more and support or oppose a candidate or ballot proposition.<sup>13</sup> HB 1919 would have expanded this time period, requiring special reports on qualifying political advertising beginning 60 days before an election.<sup>14</sup> HB 1919 also would have required sponsors to file further reports after any additional independent spending on the same race or ballot proposition.<sup>15</sup> CLC supports expanding this special reporting time period for independent expenditures, which, like expanded reporting for campaigns and political committees, would provide critical information for voters who cast their ballots during Washington's early voting period.

## II. Last-minute contribution reporting

We further recommend that the PDC retain the existing threshold for last-minute contribution reporting. Under RCW 42.17A.265, the last-minute contribution threshold (when adjusted for inflation) is currently set at \$1,500 in Washington.<sup>16</sup> The PDC proposes synchronizing this threshold with the last-minute contribution limit for a statewide office to ensure that last-minute contribution reporting "keeps pace with the adjusted highest contribution limit" and limits such reports to "contributions that exceed the contribution limit for individuals and most entities."<sup>17</sup> But adjusting the limit on last-minute contribution reporting to match the statewide office last-

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<sup>10</sup> RCW 42.17A.235(2).

<sup>11</sup> See Substitute House Bill 1919, State of Washington, 67<sup>th</sup> Legislature (2022 Regular Session), available at <https://lawfilesexp.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1919-S.pdf?q=20220822055103>.

<sup>12</sup> See *Comment on potential PDC legislative priorities*, WASH. PUB. DISCLOSURE COMM'N. (Aug. 17, 2022), <https://www.pdc.wa.gov/news/2022/comment-potential-pdc-legislative-priorities>.

<sup>13</sup> RCW 42.17A.260(1).

<sup>14</sup> Substitute House Bill 1919, State of Washington, 67<sup>th</sup> Legislature (2022 Regular Session) at Sec. 9 (1), available at <https://lawfilesexp.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1919-S.pdf?q=20220822055103>.

<sup>15</sup> *Id.* at Sec. 9 (2).

<sup>16</sup> See *Comment on potential PDC legislative priorities*, WASH. PUB. DISCLOSURE COMM'N. (Aug. 17, 2022), <https://www.pdc.wa.gov/news/2022/comment-potential-pdc-legislative-priorities>; see also, RCW 42.17A.265.

<sup>17</sup> *Supra* note 12.

minute contribution limit, which is currently set at \$50,000 for such races,<sup>18</sup> would drastically raise the threshold and, in turn, dramatically reduce the information available to voters regarding many large, last-minute contributions.

Indeed, Washington law already limits this reporting to contributions or aggregate contributions received within the 21 days before an election—meaning that at least \$1500 from one contributor must have been received in that period to trigger this reporting obligation—and the proposed change in HB 1919 would have similarly required \$50,000 to have been received during “the period from the beginning of the last full month preceding an election ... and concluding the day before that election” to trigger this obligation.<sup>19</sup>

Federal law and a number of other states require last-minute contribution reporting similar to the existing requirement in Washington. For example, federal candidates must report contributions of \$1000 or more received between the 20th day before an election and 48 hours before that election within 48 hours of receiving the contribution.<sup>20</sup> While the precise threshold for expedited, last-minute contribution reporting will vary from state to state, the proposed higher threshold would unnecessarily reduce the information available to the public regarding last-minute contributions, particularly for local or state legislative races where smaller contributions amounts can make a larger impact.

Accordingly, we recommend that the PDC retain the existing threshold for last-minute contribution reporting. As an alternative, the PDC should consider raising the last-minute contribution reporting threshold by a significantly smaller amount, such as to \$5,000, so as to not unduly reduce the information available to the public regarding fundraising by political spenders close to an election.

### **III. Requiring purchasers to identify political advertising when purchased**

Consistent with CLC’s prior comments, CLC continues to support requiring purchasers of political advertising to proactively identify such advertising to commercial advertisers at the time of purchase. Providing this notification and other related expenditure details at the time of purchase would help to streamline commercial advertisers’ compliance with Washington’s disclosure system and enhance transparency for the public.

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<sup>18</sup> RCW 42.17A.265, RCW 42.17A405(2); *see also Special Limits and Reports for Last-Minute Contributions*, WASH. PUB. DISCLOSURE COMM’N, <https://www.pdc.wa.gov/registration-reporting/candidates-committees/contributions/special-limits-and-reports-last-minute-contributions> (last visited Aug. 22, 2022).

<sup>19</sup> Substitute House Bill 1919, State of Washington, 67<sup>th</sup> Legislature (2022 Regular Session) at Sec. 10 (1), *available at* <https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1919-S.pdf?q=20220822055103>.

<sup>20</sup> 52 U.S.C. § 30104(a)(6)(A); 11 C.F.R. § 104.5(f); *see also* Minn. Stat. Ann. § 10A.20 Subd. 5 (requiring political committees to report any contribution of more than \$1,000 “received between the last day covered in the last [regular] report before an election” and the date of the election to be reported within 24 hours); 25 Pa. Stat. Ann. § 3248 (requiring a “political committee . . . which receives any contribution or pledge of five hundred dollars or more, and any person making an independent expenditure . . . of five hundred dollars or more after the final pre-election report has been deemed completed shall report such contribution, pledge or expenditure . . . within twenty-four hours”).

## Conclusion

CLC thanks the PDC for its consideration of our input on these critical questions. We would be happy to answer questions or provide additional resources as the PDC continues to develop its 2023 legislative agenda.

Respectfully submitted,

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