



State of Washington PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: January 17, 2013
SUBJECT: Continued Discussion of Interpretation 07-04, *Campaign Activities on the Internet* – January 24, 2013 Meeting

Agenda Item

At its January 24 meeting, the Commission is scheduled to continue its discussion of possible amendments to Interpretation 07-04, *Campaign Activities on the Internet*.

Background

In May, June, August, September and December 2012, staff provided the Commission background materials and the current interpretive statement (Interpretation 07-04) on Internet political advertising, for review. This activity is part of the Commission's updates to its interpretations following recodification from RCW 42.17 to RCW 42.17A. In June and December, the Commission received stakeholder input. Copies enclosed.

Summary of Staff Recommendations

Pending further discussion by the Commission, staff recommends:

- **Disclaimers.** If the Commission determines that disclaimers are to be included on campaign websites that constitute political advertising and describes that information in the Interpretation, it should decide if that applies to all websites, or only some (such as political committee websites). Possible options and language are included the next draft (see enclosed).
- **Mass Emails.** If the Commission determines that the phrase "mass communication" with respect to "political advertising" includes mass (bulk) emails, it should decide if a specific number of identical or substantially similar emails qualifies as a mass emailing (1,000, 500, 200 are three current suggestions). The Commission could also begin rulemaking to update its current "political advertising" rule to address other bulk/mass mailings or other political advertisements.

Draft Amendments to Interpretation 07-04

The August draft amendments to Interpretation 07-04 (in **red text** and highlighted in **yellow**) addressed:

- Recodification (the new citations are added, former ones are deleted, as is a temporary “text box” at the top).
- Guiding principles (new one added).
- Online political advertising, including ads on YouTube and ads with restricted characters or space.
- Disclaimers on websites.
- Mass emails.
- Public announcements of candidacy via Facebook, websites, etc.

The September draft amendments (in **green text** and highlighted in **yellow**) addressed:

- Disclaimers on political committee websites.
- Mass emails.
- Future rulemaking.

The January draft amendments (in **purple text** and highlighted in **yellow**) address:

- References to the year 2013, and the current increased use of the Internet by campaigns.
- Disclaimers on political committee and other websites (more options are provided).
- Mass emails (to add a new option from stakeholders, of 1,000+ emails).
- More references to PDC Interpretation 08-01 (*Internal Political Communications and Sponsor Identification*) to address internal emails (a result of stakeholder comments) and websites available only to an internal audience.

The draft amendments do not add new information regarding the media exemption, or false political advertising.

Quick Review – Political Advertising Disclaimers

Political advertising includes a means of “mass communication” used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign. RCW 42.17A.005(36). Political advertising disclaimer requirements (sponsor’s name and address, partisan office disclosure, “Top 5” contributor, and disclosures for independent expenditures and electioneering communications) are addressed in RCW 42.17A.320. That statute requires in part that all “written” political advertising must include the sponsor’s name and address, and disclosure of a candidate’s partisan preference.

Political Committee Website Disclaimers – Question & Answer # 2

2007. The Commission determined in Interpretation 07-04 that political committee websites are similar to the level of small contributions that RCW 42.17 encourages, even if they support or oppose a campaign. Question and Answer # 2. Therefore, in 2007, and pending further developments on state campaign Internet use by candidates, political committees, or others in Washington, or developments in the law, the Commission did not require “paid for by” on any website.

2012 - August Draft Amendments. Stakeholder input from June on this website topic had ranged from no comments, to a recommendation that disclaimers should not be required to be placed on websites (from Madison Communications). In August, following presentations to the Commission on Internet campaign advertising developments as of 2012, and examples of political committee websites, staff proposed several next steps in enhancing disclosure of Internet political advertising including on websites. Staff proposed language that could be added to the Interpretation to “strongly encourage” political committees to add disclaimers to their websites.

2012 - September Draft Amendments. The September staff draft amendments took that August approach one more step, proposing an option that disclaimers are to be applied to political committee websites for committees filing C-1 (in-state) or C-5 (out-of-state) reports with the PDC, but not to websites maintained by individuals who are not candidates or political committee officers or other persons acting on behalf of a committee. Staff suggested additional stakeholder input could be sought on these and other possible amendments. Staff also suggested that no amendments become effective before 2013, given the close proximity of these discussions to the 2012 general election.

2013 - January Draft Amendments. In December, the Commission received additional stakeholder comments. Those comments included information that labor organization websites already disclose information about the organization (SEIU/State Labor Council comments from their attorneys), that some other organizations already have a “paid for by” on their websites (FUSE comments), and that “paid for by” should be on political committee and “campaign-related” websites (FUSE).

The January draft amendments provide a proposed clarifying step. That step presumes websites maintained by political committees or others generally do have some costs associated with them, and that they contain written information that could qualify as political advertising.

Therefore, the next draft proposes an option to recognize that all Internet websites that contain political advertising (including independent expenditures) are to include disclaimers, except for:

- (1) those created and maintained by individuals using their own modest resources (less than the \$100 and \$1,000 reporting thresholds for independent expenditures);
- (2) electioneering communications because they are exempted by law; and,
- (3) internal political communications such as a website page accessible only to an internal audience, because they are the kind of communications addressed in Commission Interpretation 08-01 (*Internal Political Communications and Sponsor Identification*) (copy enclosed). The internal political communication question was raised by stakeholders with respect to internal emails, but presents the same question with respect to a website available only to an internal audience.

These options would be different than the Commission's early view in 2007 that much Internet campaign activity would be unregulated, but consistent with the Commission's statement then that it would revise the Interpretation in the future if Internet use changed. The Commission noted that Internet use by campaigns was evolving. See pages 1-2 of the Interpretation, and Question & Answer # 11 (former # 10).

Mass Emails – Question & Answer # 9

2007. In 2007, the Commission described that it had not been provided information that mass emails are used in Washington by campaigns as a means of "mass communication" or have presented disclosure issues or complaints. Question and Answer # 9. The Commission described that emails from or on behalf of individuals, where there is little or no cost to the individual, remain unregulated. It described that costs associated with purchasing an email list would be a reportable expenditure. The Commission determined it would take a "wait and see" approach with respect to further disclosure requirements for emails.

2012 – August and September. In June, stakeholder feedback on emails included a recommendation to not amend the interpretation and thus add no new provisions regarding emails, and to exempt internal emails (Madison Communications). Staff proposed adding more background about campaign emails in the Interpretation. Staff also inquired if the Commission would like to consider a specific number of emails as a "mass communication," such as 200 or 500, an approach used in some jurisdictions. Staff inquired whether the Commission would also like to proceed to rulemaking to amend the current "political advertising" rule to include that number.

2013 – January Draft Amendments. In December, some stakeholders thought either 200 or 500 is a reasonable number; one stakeholder also suggested 1,000. The January draft amendments include the 200, 500 and 1,000 email number options, and provide a timeframe for that mailing (30 days). The amendments also recognize that internal political communications can include internal emails.

Chart

In June, staff provided a chart summarizing the current rules and statutes as they relate to the questions that had been presented. Another copy is enclosed for ease of reference.

Enclosures: Draft Amendments to Interpretation 07-04 (August – January)
Stakeholder Comments (June, December)
Interpretation 08-01
Summary Chart (June)

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**Draft Amendments for Discussion – August & September 2012,
& January 2013**

PDC Interpretation

APPROVAL DATE: October 25, 2007;
Amended XXXX NUMBER: 07-04

STATUS: Effective October 25, 2007 SUPERSEDES: N/A

REFERENCES: [Chapter 42.17](#) [42.17A](#) RCW, APPROVED BY: The Commission
[Title 390 WAC](#)

SEE ALSO: [PDC Interpretation 00-02](#) (Guidelines for Contributions Received Via the Internet);
[PDC Interpretation 08-01](#) (Internal Political Communications and Sponsor
Identification)

Campaign Activities on the Internet

The Public Disclosure Commission implements and enforces the campaign finance reporting requirements in [Chapter 42.17](#) [42.17A](#) RCW and [Title 390 WAC](#). During the fall of 2007, the Commission reviewed the approach of the Federal Election Commission (FEC) concerning campaign activities on the Internet. The Commission also reviewed current PDC statutes and rules, and gathered information from participants in the state and federal political campaign process about Internet campaign activities. **In 2012, former RCW 42.17 was recodified to RCW 42.17A, and as a result, the Commission updated this Interpretation to add those new citations, and to address some new developments in online campaign activity.**

The Commission's intent in providing this Interpretation is based on state voters' strong interest in public disclosure of campaign financing which allows the public to "follow the money." However, the Commission also recognizes the unique and evolving nature of the Internet, and that it often offers no-cost or low-cost opportunities for candidates, voters, bloggers and others to participate in the political process. The focus of the agency will be to first apply current state laws and rules to Internet activity where possible, before promulgating new rules or amending current rules.

As a result, to provide guidance to state political campaign participants at this time and while technology, Internet use, and the laws continue to unfold, the Commission is providing this Interpretation of its laws and rules as they are currently written, and as they may impact political

campaign activities conducted on the Internet, and impact Internet users. Those approaches are explained in this Interpretation.

Readers are also encouraged to check the PDC's website at www.pdc.wa.gov for any legislative changes or other developments in the law or rules. This Interpretation may also be subject to revision as the laws or rules are amended, or Internet usage develops and changes.

If you have any questions after reading this, please contact the PDC toll-free at 1-877-601-2828. You may also e-mail the PDC at pdc@pdc.wa.gov.

General Approach and Guiding Principles

- The primary objective is to not interfere with the free flow of political information provided via the Internet, particularly when the information is provided at no or little cost, knowing that any such interference may be counterproductive to enabling an informed electorate and the electoral process.
- The Internet is a unique and evolving mode of mass communication and political speech that is distinct from other media and warrants a restrained regulatory approach at this time. At this juncture in history, some have described the Internet as supplanting the town square or common as the primary place of citizen-to-citizen public discourse. However, as of 2013, there is an increasing use of political advertising on the Internet, and money flowing into political advertising on the Internet. The public is entitled to know who is financing those campaign activities.
- RCW 42.17A is to be liberally construed to promote the complete disclosure of all information respecting the financing of political campaigns to and assure the public interest is protected. [RCW 42.17.010](#) [42.17A.001](#). In addition, small contributions by individual contributors are to be encouraged and not requiring the reporting of small contributions may tend to encourage such contributions. [RCW 42.17.010](#) [42.17A.001](#).
- Where possible, state regulation of Internet activity will follow the Federal Election Commission approach. The concepts of disclosure and limitation of election campaign financing established by the Federal Election Campaign Act (FECA) will be implemented to the extent feasible at the state level, within the parameters of state laws and rules. See [RCW 42.17.010](#) [42.17A.001](#).
- The FEC approach provides in part, for example, that uncompensated individuals or groups of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction, and the activity would not result in a "contribution" or "expenditure" that triggers reporting requirements. However, under the FEC approach, Internet communications placed on another person's website for a fee are subject to FEC regulation (disclosure and disclaimer requirements apply), and which may result in a contribution or expenditure. Uncompensated "blogging" whether done by individuals or groups of individuals is exempt from FEC regulation. [11 CFR Parts 100, 110 and 114](#).

- The FEC, like many other jurisdictions, considers new technologies used by campaigns and candidates and the new questions they present, as those developments occur. The Commission continues to take this same approach, and will provide guidance within current laws. The Commission recognizes that the laws it enforces, and its rules, may change as technologies continue to develop, and as a result its approach may change. The Commission and its staff may provide guidance on a case-by-case basis, or may address the questions more formally when common or similar questions are raised. This interpretation provides guidance on common questions raised to date.

Index Of Questions and Answers

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Answers to Questions about Internet Campaign Activities in Washington

POLITICAL ADVERTISING

1. What political advertising placed on the Internet requires disclosure to the public (in a report filed with the PDC of what is paid and to whom) and a disclaimer (“paid for by”)?

Answer: By way of background, “political advertising” includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign. [RCW 42.17.020](#) [42.17A.005](#). Under state law, most “written political advertising” is to include the “sponsor’s name and address.” Under state law, “sponsor” means the person paying for the political advertising or independent expenditure. **Other disclosure requirements apply to certain ads, such as a candidate’s party preference, or list of “Top 5 contributors.” See RCW 42.17A.320.** If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor. [RCW 42.17.020](#) [42.17A.005](#). There are some exemptions (exceptions). [RCW 42.17A.320](#).

- **Payment is Key.** With respect to political advertising on the Internet, only paid advertising placed on another person’s website is subject to disclosure and reporting by the person paying for the advertising. This advertising is a political “expenditure” and “contribution” and must be disclosed by the sponsor (the person or entity paying for the advertisement). [RCW 42.17.020\(15\)\(a\) and \(37\)](#) [42.17A.005](#), [RCW 42.17.103](#) [42.17A.260](#), [RCW 42.17.510](#) [42.17A.320](#); [WAC 390-18-010](#), [WAC 390-18-020](#), [WAC 390-18-025](#).

If no cost is involved with the political advertising (such as you “cut and paste” the ad or information from another document or website, or you simply linked your website to another website containing an ad and no payment was required for that activity), no reporting or additional disclaimers are required. **If a cost was incurred by the sponsor at any point – such as a cost to produce a TV ad and the same ad is later replayed by the sponsor on YouTube, the disclaimer requirements apply.**

However, when a candidate or political committee is provided ad space for which the website owner, blog or Internet provider usually charges a fee but provides it to a candidate or campaign for less than fair market value, that is an “in kind contribution” to the campaign that is reportable by the candidate or political committee and is subject to any applicable limit. [WAC 390-16-207](#).

- **Media Exemption and Disclaimers.** Under statute, there is a “media exemption” from what is considered a campaign contribution (thus reporting and disclosure requirements do not apply). See answers to Questions # 7 and # 8. Under current rule, “political advertising” does not include “letters to the editor, news or

feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required. [WAC 390-05-290](#). At this time, the Commission is applying a modern day reading to what constitutes a newspaper or periodical for the purposes of this rule, and will apply this rule to online publications (whether it is an online publication that is the online presence of “mainstream media” or whether the publication has only an online presence via a website or blog.) This means that the disclaimer requirements (“paid for by”) do not apply to the activity exempted in [WAC 390-05-290](#) where payment is not normally required. The Commission may be interested in rulemaking in the future to update this rule or other rules, if it becomes necessary.

- **Internet Advertising with Limited Space or Limited Characters.** When an Internet advertising provider restricts the space or characters for the paid ad (such as with Google, Twitter or Facebook ads), the disclaimer requirements can be met through an automatic communication providing or directing the viewer to the disclaimers. For example, the ad should contain the disclaimers in an automatic “pop up”, “hover-over”, “mouse-over”, “rollover”, or in text box that otherwise automatically appears with the ad, or in a link within the ad that, when clicked, takes the viewer to a landing page or website that contains the disclaimers.
- **Electioneering Communications Exemption.** By definition, “electioneering communications” do not include political advertising on the Internet. [RCW 42.17.020](#) [42.17A.005](#); [WAC 390-05-505](#).
- **Sample Ballots and Slate Cards Exemption.** There is also a partial exception for sample ballots and slate cards: while they are political advertising, they may be distributed via websites, electronic bulletin boards and e-mails (but not other types of media), and they do not count against a contribution limit. See [WAC 390-17-030](#) for details on sample ballots and slate cards, including disclaimer requirements.
- **Websites.** See more information on websites at [Question # 2](#).

In sum, the financing of political advertising activates many of the reporting and disclaimer requirements under [RCW 42.1742.17A](#). As applied to the Internet, persons or entities paying for such political ads to be placed on websites or blogs should review the PDC’s information on political advertising and on independent expenditures. See the brochures on Political Advertising and Electioneering Communications on the PDC’s website at www.pdc.wa.gov. Click on “Filer Resources” then “Advertising Sponsors” or “Manuals/Brochures.”



WEBSITES

2. What other campaign activity on the Internet, such as creating and maintaining websites or “blogging,” are subject to reporting or disclaimer (“paid for by”) requirements?

Answer: Very little Some activity is subject to those requirements. First, recall for candidates and political committees that expenditures and contributions related to creating and maintaining websites, like other campaign expenditures and contributions, are generally reportable. The topic of blogs and blogging is discussed in Questions ## 3 - 6. Here is a description of some Internet campaign activities and topics that the Commission has been made aware of at this time, and how those activities will be addressed under current laws and rules.

- **Volunteer Services to a Campaign – Website Design and Maintenance.** In general, certain campaign activities are considered “volunteer services” and are not considered a contribution or expenditure, so long as the volunteer does not incur incidental expenses exceeding \$50. [RCW 42.17.020\(15\)\(a\)](#) [42.17A.005](#), [WAC 390-17-405](#). The Commission understands that currently, campaigns may be interested in obtaining volunteer services of non-professional persons who can assist the campaign by designing and maintaining websites. The Commission understands these non-professionals may earn a modest income from time to time in providing such website services for others (such as for their schools, friends, family members, community groups, etc.), but it is not their full-time profession. The Commission also wants to encourage candidates and campaigns to expand their outreach to voters via the Internet.

Therefore, at this time, the Commission will consider donated website design and maintenance services a “volunteer” service, so long as the volunteer does not incur incidental expenses exceeding \$50, and so long as the volunteer does not earn more than \$10,000 per calendar year providing similar services to others. The Commission will begin rulemaking to address this in [WAC 390-17-405](#), but in the interim, wanted to provide guidance to campaigns and candidates that are seeking to engage in Internet activities, but may lack the technological capability among its officers or current staff.

- **Volunteer Services to a Campaign – Internet Advertising.** Consistent with current rules specifically governing advertising, the Commission will not consider a volunteer’s donated Internet advertising production costs at \$50 or less, such as for producing a YouTube video, as a contribution or expenditure under [RCW 42.17A.005](#), so long as the individual does not ordinarily charge a fee or receive compensation for providing the service. See [WAC 390-17-405\(1\)\(k\)](#).
- **Disclaimers (“Paid for By”).** The Commission recognizes that the FEC requires disclaimers on political committee websites, and recommends placing disclaimer notices on all campaign materials, and has other requirements. However, tThe

Commission recognizes that at this time, there are often no-costs or low-costs associated with creating and maintaining most campaign websites. The Commission also recognizes that there has been a development of websites maintained by individuals using their own modest resources in support of or in opposition to candidates or campaigns (sometimes called “fan sites.”) The Commission has determined that even if they support or oppose a campaign, these websites are similar to the level of small contributions that the Public Disclosure Act encourages. Therefore, at this time, and pending further developments on state campaign Internet use by candidates, political committees, or others in Washington State, or developments in the law, the Commission is not requiring “paid for by” on any website, **although the Commission strongly encourages this disclosure on websites.** For example, if Joe Doe wants to use his home computer to create a website to support his favorite candidate, and link other similar websites, and use or purchase software at a modest cost to enable him to engage in this Internet campaign activity, none of those modest costs associated with those activities (use of computer, depreciation of computer, use or purchase of software, use or purchase of domain name) would be reportable to the PDC as a contribution or expenditure.

Remember, however, from the answer to Question # 1 that if a qualifying paid political advertisement under [RCW 42.17.020](#) [42.17A.005](#) is placed on a website, the disclosure and reporting requirements otherwise apply **for the advertisement.**

[September & January alternate draft option for discussion: Delete the paragraphs above under “Disclaimers” and substitute the following:]

- **Disclaimers (“Paid for By”).** The Commission recognizes that the FEC requires disclaimers on political committee websites, and recommends placing disclaimer notices on all campaign materials, and has other requirements. The Commission has determined to follow the FEC approach to the extent possible. The Commission recognizes that as of 2013, many political committees have websites and are presumed to spend more than \$50 to develop and maintain websites. Those websites serve as a contribution portal, as political advertising, as a blog, as a place to obtain campaign advertising items (buttons, banners, etc.) and other purposes. The Commission finds that under RCW 42.17A.320 “written political advertising” must include the sponsor’s name and address, and party preference for partisan offices, and political committee websites contain writing that can qualify as political advertising (except for electioneering communications on the Internet). Therefore, the Commission finds that a “paid for by” and party preference notice must be placed on political committee website home page when the committee is filing C-1 (in-state) or C-5 (out-of-state) political committee reports with the PDC.

The Commission also finds that other websites funded and created by nonindividuals such as corporations, businesses, unions or other entities may qualify as paid political advertising, as well as constitute independent expenditures, and thus are subject to the disclaimer requirements. The

Commission also recognizes that some portions of these websites may be accessible only to an internal restricted audience and qualify as an “internal political communication,” and thus are governed by Interpretation 08-01.

However, the Commission also recognizes that websites are also maintained by individuals (non-entities) who are not candidates and not political committee officers or others acting on behalf of a committee, but who are using their own modest resources in support of or in opposition to candidates or campaigns (sometimes called “fan sites”). The Commission has determined that even if they support or oppose a campaign, these types of websites are similar to the level of small contributions by individuals that RCW 42.17A encourages. RCW 42.17A.001(9).

Therefore, at this time, and pending further developments, the Commission is not requiring “paid for by” or other disclaimers on any website¹ created or maintained by an individual (non-entity) who is not a candidate and who is not a political committee officer or other person acting on behalf of a committee, and who is using their own modest resources, although the Commission strongly encourages this disclosure on all campaign websites. For example, if Joe Doe wants to use his home computer to create a website to support his favorite candidate, and link other similar websites, and use or purchase software at a modest cost to enable him to engage in this Internet campaign activity, none of those modest costs associated with those activities (use of computer, depreciation of computer, use or purchase of software, use or purchase of domain name) would be reportable to the PDC as a contribution or expenditure.

Remember, however, from the answer to Question # 1 that if a qualifying paid political advertisement under RCW 42.17A.005 is placed on any website (by an individual or nonindividual), the disclosure and reporting requirements otherwise apply for the advertisement.

- **Website Hosting and Similar Costs, Website Political Advertising, and Reporting Independent Expenditures.** As noted, the Commission recognizes that many websites created by uncompensated individuals have no costs or minimal costs associated with their creation and maintenance. The Commission also recognizes that candidates and campaigns may also elect to utilize qualifying volunteer services to assist them, and qualifying volunteer services thus do not constitute a reportable “contribution.”

However, there are other state laws that require reporting of certain expenditures in support of or opposition to a candidate or ballot measure that are made independently from a candidate or political committee, once a particular dollar threshold is reached. [RCW 42.17.100](#) [42.17A.255](#) (\$100 reporting threshold for an independent expenditure) and [RCW 42.17.103](#) [42.17A.260](#) (\$1,000 reporting

¹ By “website” the Commission includes social media sites.

threshold for independent expenditures that are political advertising) provide for disclosure (reporting) of the value of those expenditures once those thresholds are met, **by individuals or nonindividuals**.² Regarding the second statute ([RCW 42.17.103](#) [42.17A.260](#)), as described in the answer to Question # 1, if political advertising is placed on a website, and there is payment (an expenditure) for this advertising, state laws and rules require a report to be filed.

BLOGS

3. What “blogging”³ activity is subject to reporting and disclaimer (“paid for by”) requirements?

Answer: Very little. In particular, like at the federal level, uncompensated blogging is not subject to disclosure or disclaimer requirements.

- **Payment is Key.** A candidate, campaign or political committee paying a “blogger” to blog on behalf of a candidate or ballot measure would be required to report that campaign expenditure like they would any other campaign expenditure. The blogger is not required to report. A person or entity not associated with a campaign or candidate paying a blogger to blog on behalf of or in opposition to a candidate or campaign would be required to report that expenditure as an “independent expenditure” like that person or entity would report any other qualifying independent expenditure. [RCW 42.17.100](#) [42.17A.255](#). A person otherwise hiring a blogger as a vendor, independent contractor or employee to post information in support of or opposition to a candidate, campaign or ballot measure would be required to report that cost like any other campaign expenditure.
- **Blogs May Also Be Entitled To The “Media Exemption.”** In addition, a blog or blogger may be entitled to the “media exemption” from reporting and disclosure requirements in any event, if the statutory criteria are met in [RCW 42.17.020](#) [42.17A.005](#). See answer to Question # 8.

² [RCW 42.17.100\(2\)](#) [42.17A.255](#) provides in part that “within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more” the person making the expenditure must file a report with the PDC. [RCW 42.17.103\(1\)](#) [42.17A.260](#) provides that the sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

³ A blog (“web log”) is a website where entries are written in chronological order and commonly displayed in reverse chronological order. Many blogs provide commentary or news on a particular subject such as food, politics, or local news. A blog can combine text, images, and links to other blogs, web pages, and other media related to its topic. The ability for readers to leave comments in an interactive format is an important part of many blogs.

4. What about “tip jars” or other voluntary donations to bloggers?

Answer: A blogger who simply has a “tip jar” and has no direct payment arrangement with a candidate, campaign or political committee to post specific information in support or opposition to a candidate or campaign in exchange for the “tips” is not subject to any PDC regulatory requirements, nor is the donor.

5. Does the fact that a blogger otherwise sells advertising space place a reporting requirement on the blogger, if some of the space is sold to a candidate, political committee, or campaign?

Answer: No. However, if a blogger provides a candidate or political committee ad space for which the blogger usually charges a fee, but provides it to a candidate or campaign for less than fair market value, that is an “in kind contribution” to the campaign that is reportable by the candidate or political committee. [WAC 390-16-207](#).

6. Can public agency employees create blogs on public agency computers to support or oppose candidates or campaigns?

Answer: No. Statutes prohibit use of public agency facilities (including computers) for political campaign purposes. [RCW 42.17.130](#) [42.17A.555](#) and [RCW 42.52.180](#). Also see [WAC 390-05-273](#), and [PDC Interpretations 04-02, 01-03](#).



MEDIA EXEMPTION

7. Does the statutory “media exemption” from what is not considered a contribution extend to media activities on the Internet, including news media that exist only on the Internet?

Answer: Yes, if the statutory criteria in [RCW 42.17.020](#) [42.17A.005](#) are satisfied. The statute exempts from what is considered a contribution those communications that meet all the following criteria:

- a news item, feature, commentary, or editorial
- in a regularly scheduled news medium of primary interest to the general public
- that is in a news medium controlled by a person whose business is that news medium
- and that is not controlled by a candidate or political committee.

Also see [WAC 390-05-290](#) (political advertising exemption) and [WAC 390-16-313](#) (independent expenditures exemption). The Commission is considering rulemaking regarding [WAC 390-16-206](#) (ratings and endorsements).

8. Does this media exemption apply to blogs and bloggers, too?

Answer: Yes, if the statutory criteria in [RCW 42.17.020](#) [42.17A.005](#) are satisfied. In addition, under current rule, political advertising does not include “letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required.” [WAC 390-05-290](#). At this time, the Commission is applying a modern day reading to what constitutes a newspaper or periodical for the purposes of this rule, and will apply this rule to online publications (whether it is an online publication that is the online presence of “mainstream media” or whether the publication has only an online presence via a website or blog.) The Commission may be interested in rulemaking in the future to update this rule, if it becomes necessary. Also see [WAC 390-16-313](#) (independent expenditures exemption). The Commission is considering rulemaking regarding [WAC 390-16-206](#) (ratings and endorsements).



E-MAILS

9. What about mass distribution of e-mails that urge persons to vote for or against a candidate or ballot measure, or otherwise constitute political advertising? Are there reporting or disclaimer (“paid for by”) requirements?

Answer: The cost to a candidate or committee that is associated with purchasing an e-mail address list, or paying staff to create or maintain e-mails or e-mail lists, would be a reportable expenditure, just like any other expenditure.

As described in Question # 1, political advertising includes a “mass communication” used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign. RCW 42.17A.005.

In applying RCW 42.17A, the phrase “mass communication” has been given its ordinary meaning by the courts. That is, “mass” is defined as reaching a larger number of people, and “communication” is defined as “the exchange of ideas, messages, or information, as by speech, signals or writing” or a “system for sending and receiving messages, as by mail, telephone or television.” In Commission Interpretation 08-01 (Internal Political Communications and Sponsor Identification), the Commission recognized the phrase has a common understanding which implies an external communication to a large population of an unspecified number through a mass form of media intended to reach a broad audience. The FEC considers a “mass mailing” as 500 or more pieces of mail matter of an identical or substantially similar nature within any 30-day period (described as “bulk electronic mail” when the mailing is sent via e-mail). The FEC requires disclaimers on bulk e-mails sent by political committees. Other jurisdictions, such as California, use 200 or more identical or substantially similar items as the point at which a “mass” mailing occurs, and the point at which sponsor identification/disclaimers must be included in the communication.

At this time, because unlike at the federal level, the Commission has not been provided information that “mass e-mails” are used in Washington State campaigns as a “means of mass communication” under [RCW 42.17.020](#) [42.17A.005](#), or have presented disclosure or reporting issues or complaints, or other issues regarding reportable expenditures, the Commission is taking a “wait and see” approach with respect to any further provisions regarding e-mails. This means there are no other disclaimer or reporting requirements at this time that will be applied to e-mails, except for sample ballots and slate cards sent via e-mail which are subject to [WAC 390-17-030](#).

Therefore, the Commission views [1,000] [500] [200] or more identical or substantially similar e-mails [in a 30-day period] by a sponsor as a “mass communication” subject to reporting and disclaimer requirements. The Commission will begin rulemaking to provide this same information in its rules. Sample ballots and slate cards sent via e-mail are governed by [WAC 390-17-030](#). By definition, “electioneering communications” do not include e-mails and therefore are not covered by this section of this Interpretation. [RCW 42.17A.005\(20\)](#); [WAC 390-05-505](#).

In addition, the Commission will apply Interpretation 08-01 to internal political communications made by e-mail. Under 08-01, the Commission determined that sponsor identification is not required on an internal political communication that also constitutes political advertising if (1) the communication satisfies the statutory definition of “internal political communication” and thus it is directed from the defined entity to the audience defined in statute and rule, and (2) it is otherwise apparent on the face of the communication as to who the true sponsor or sponsors (original source or sources) is of the political advertising. See further discussion in Interpretation 08-01.

However, eE-mails from or on behalf of individuals, where there is little or no cost to the individual, remain unregulated. A person on his or her own time, who volunteers to send e-mails supporting a candidate or ballot measure, is not making a contribution. Similarly, if an individual who is not in the business of compiling e-mail lists creates an e-mail address list using his or her own contacts (like from a personal e-mail address book) and provides the list to a candidate or committee, such activity is also not reportable.

These e-mail provisions do not apply where other statutes prohibit use of public agency facilities (including computers and e-mail systems) for campaign purposes, such as [RCW 42.17.130](#) [42.17A.555](#) or [RCW 42.52.180](#). Also see [WAC 390-05-273](#), and [PDC Interpretations 04-02, 01-03](#).



PUBLIC ANNOUNCEMENT OF CANDIDACY

- 10. What happens when a candidate announces online that he/she is running for office? For example, they post a notice on their Facebook page or upload a video to YouTube, explaining they are running for office.**

Answer: They must file a Candidate Registration Form (C-1) and Personal Financial Affairs Statement (F-1) with the PDC within two weeks.

This is because by law, a person becomes a candidate when they do one of these things: raise or spend money for their campaign; reserve space or purchase advertising to promote their candidacy; **announce publicly that they are seeking office**; file a declaration of candidacy; or, authorize someone to do any of these activities. RCW 42.17A.005. Once they become a candidate, a person must file the F-1 and C-1 forms. "Announce publicly" includes announcement is made on the Internet such as through a website, Facebook, YouTube, Twitter, or through other similar means.



OTHER QUESTIONS

1. Will the Commission examine and possibly revise this Interpretation in the future if new or other questions are raised, if laws or rules are amended or new provisions adopted, if technology changes, or if Internet use changes?

Answer: Yes.

Stakeholder Comments - June



PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

The Public Disclosure Commission solicits stakeholder input on two subjects:

1. campaign activities on the Internet and
2. campaign fund raising through text messages.

Comments should be submitted to Lori Anderson. Please respond no later than June 13, 2012. Feel free to answer any or all of the five stakeholder questions. The staff will compile the responses for the Commission's review. Any other comments that you wish to offer will be passed on to the Commission as well.

PDC staff expects the Commission to discuss how to proceed when it meets Thursday, June 28. Anyone who provides comments will be given advance notice of the meeting and an approximate time the matter will be discussed.

1. Campaign Activities on the Internet

In 2007, the Public Disclosure Commission adopted Interpretation No. 07-04, Campaign Activities on the Internet. The purpose of the interpretation was to explain how the Commission was applying existing laws and rules, primarily requirements for disclosure and sponsor identification and disclaimer, to emerging campaign activities conducted on the Internet.

The Commission's approach in 2007 generally focused on payment as the key consideration – paid activities were subject to reporting and disclaimer requirements, while activities for which there was very minimal or no cost were not. After setting out its general approach and guiding principles in the interpretation, the Commission addressed the methods of Internet campaigning being used at that time: political advertising, websites, blogs, and Emails.

The Commission is now reviewing its interpretation to determine if it adequately addresses the current state of campaign activities on the Internet. The Commission solicits your input before proceeding.

Examples of recent questions asked of PDC staff:

- Is sponsor ID required for paid online ads with character limits, such as a Google text ad which is limited to a headline, two lines of text that can be no more than 35 characters per line, and a URL?
- Does the current sponsor ID exemption for 1-column inch or smaller newspaper ads also apply to paid online ads with character limits?
- Are "mass Emails" a form of "mass communication" for the purpose of defining political advertising and invoking related statutes, such as the false advertising prohibition?

- Is a tweet or a group text a form of “mass communication?”
- Does an individual’s tweet or Facebook posting that s/he is running for office constitute a public announcement for the purpose of determining when an individual is a candidate and subject to campaign finance disclosure laws?
- Does the Commission’s guidance for websites extend to Facebook pages?
- Are websites of any kind – free, professionally designed and hosted, etc. – subject to the false political advertising prohibition?
- Should videos posted on YouTube be subject to sponsor ID/disclaimer requirements? Does it matter if the video is posted with or without the knowledge or permission of the creator?
- Does the media exemption apply to social media? More specifically, under the right conditions, the media exemption applies to op-ed pieces or letters to the editor written by a paid consultant and printed in a traditional newspaper. If those same “earned media” pieces are posted on Facebook, Twitter, and YouTube, are they subject to any disclaimer provisions?

STAKEHOLDER QUESTION #1: Do you have an opinion about how the Commission should respond to the foregoing questions?

STAKEHOLDER QUESTION #2:

- (a) Are there other questions involving campaign activities on the Internet that are not adequately addressed by Interpretation No.07-04?
- (b) If so, are there existing state laws and/or rules that need modernization in order to adequately address the evolution of campaign activities on the Internet?

2. Campaign Fund Raising Through Text Messaging

The Federal Election Commission and some states (including California and Maryland), have recently addressed whether campaign contributions by text message may be accepted. Staff’s memo to the Commission summarizing these other jurisdictions’ opinions is available online [here](#).

The Commission would like comments from stakeholders before it considers addressing the issue of whether campaigns registered in Washington State may engage in fund raising through text messaging.

STAKEHOLDER QUESTION #3:

- (a) Are you involved with or aware of any campaigns that are exploring fund raising through text messaging?
- (b) If so, what is the level of interest in developing a regulatory scheme that would allow state and local campaigns in Washington to accept text message contributions?

STAKEHOLDER QUESTION #4: Do you have specific questions or concerns about fund raising through text messaging that the Commission should consider?

STAKEHOLDER QUESTION #5: If the Commission decides to address fund raising through text messaging, does the guidance issued by the Commission in 1995 in Interpretation 95-05 regarding

Fund Raising Through 900 Telephone Numbers provide a useful approach, or is there a better model/approach you think the Commission should consider?

Lori Anderson

From: Phil Lloyd [phil@seattlecfo.com]
Sent: Wednesday, June 13, 2012 4:46 PM
To: Lori Anderson
Subject: RE: Public Disclosure Commission seeking comments

Thank you for the opportunity to provide input on these two subjects.

➤ **STAKEHOLDER QUESTION #1:** Do you have an opinion about how the Commission should respond to the foregoing questions?

I do not have an opinion as to what answers that the Commission gives, but I have a strong desire for clear and consistent guidance as to how the law is applied and enforced. My observation is that, though they are responsive and generally helpful, PDC staff guidance is not always clear and consistent.

➤ **STAKEHOLDER QUESTION #2:**

(a) Are there other questions involving campaign activities on the Internet that are not adequately addressed by Interpretation No.07-04?

None that I can see.

(b) If so, are there existing state laws and/or rules that need modernization in order to adequately address the evolution of campaign activities on the Internet?

It would be helpful to update your Political Advertising manual once the Commission has provided guidance, such as the disclaimer requirements on internet ads. The brochure is clear, for example, that Sponsor ID is not required on Frisbees but it is unclear about internet ads. It is my understanding that PDC staff advises committee on a case by case basis, but this makes it difficult to provide general guidance to committees or to tell whether a particular ad is compliant.

STAKEHOLDER QUESTION #3:

(a) Are you involved with or aware of any campaigns that are exploring fund raising through text messaging?

Yes

(b) If so, what is the level of interest in developing a regulatory scheme that would allow state and local campaigns in Washington to accept text message contributions?

Yes, there is tremendous interest in the political industry on this topic. It is a rapidly growing source of donations to other causes that can easily be adapted to political campaigns.

STAKEHOLDER QUESTION #4: Do you have specific questions or concerns about fund raising through text messaging that the Commission should consider?

No, but I would encourage the Commission to rule quickly as I think there is a strong desire to use this technology in the current election cycle.

STAKEHOLDER QUESTION #5: If the Commission decides to address fund raising through text messaging, does the guidance issued by the Commission in 1995 in Interpretation 95-05 regarding Fund Raising Through 900 Telephone Numbers provide a useful approach, or is there a better model/approach you think the Commission should consider? This appears to be very easy to apply to donations via text message. The mechanics of such donations are very similar.

Lori Anderson

From: Jeff Davis [jeffdavis@madisoncorp.biz]
Sent: Wednesday, June 13, 2012 10:46 AM
To: Lori Anderson
Cc: Brett Bader
Subject: RE: Public Disclosure Commission seeking comments

Lori:

Response to Stakeholder Questions #1-3...

While Madison Communications generally encourages client-campaigns to display normal "paid for by" information on both website home pages and any, and all, communications generated by a client-campaign's website, we do not believe that any further regulation is required beyond that already included in PDC Interpretation 07-04. Given the regulatory environment, and the state of law surrounding internet activity, it is distinctly possible that any further action by the PDC would quickly -- and easily -- run afoul of First Amendment limits on government regulation of political speech.

This also applies to information disseminated (by mass email) either individually, or by secondary groups not specifically affiliated to a campaign. As long as the basic rule that no, or little, cost is incurred -- i.e., no purchased email list is involved -- the decision of a group or individual to transmit political information via the internet to a personal (or association list) would appear to come under already existing PDC guidance that no in-kind expenditure is created. Indeed, the education curve that would be imposed on a campaign to inform all campaign volunteers to report such activity would be onerous and also a potential violation of Free Speech standards. The same should also apply to any mass email sent by a campaign organization to a list of email addresses voluntarily supplied by individuals to the campaign as part of their normal "involvement" in the political campaign.

Again, while Madison Communications encourages client-campaigns to include regular "paid for by" information on emails sent to campaign volunteers, for the PDC to require the same would likely be overturned by judicial review. The defense of such a review would involve a needless, and in the current fiscal environment, completely unjustifiable expense by a state agency. This same logic would also apply to so-called "web ads" available for review solely on campaign maintained websites.

In addition, should an organization seek to transmit a group email to its association list of existing members that would not currently, and should never be considered, a campaign expense by that association on behalf of a campaign for two reasons. First, it directly involves free speech, and, second, the cost of said email is either non-existent or negligible and therefore would not normally come under the purview of the PDC.

In the same way, a "blogger" cannot -- under apparently evolving First Amendment law -- be regulated by the PDC, both because their opinion is generally not paid for by any campaign, and more directly because their stated opinion clearly comes under the media exemption already extant in state law.

The bottom line is that Madison Communications does not believe any additional regulation of existing campaign/candidate internet activities is required by the PDC.

Thank you for the opportunity to provide comment.

Jeff Davis
Madison Communications Corp.
206.617.9762 (voice)

Lori Anderson

From: Kurt Young
Sent: Wednesday, June 20, 2012 2:03 PM
To: Lori Anderson
Subject: FW: Question on online advertising

fyi

From: Guy [mailto:Guy@guy4senate.com]
Sent: Wednesday, June 20, 2012 2:00 PM
To: Kurt Young
Subject: Re: Question on online advertising

Kurt,

Thank you for the prompt reply.

In this case, it is a paid ad so the rules will apply.

I know that the PDC reviews it's rules from time to time. I'd like to suggest that this policy be reviewed for the future. In this case, the ad is so tiny that the Paid for language it going to take up most of the ad space I am paying for and limit the ability to include really any worthwhile message in the ad. Additionally, with the advent of programs like Google Adwords which are paid ads and that have a strict character limit, it would be next to impossible to use those ads due to the requirement of including the Paid for language.

Sincerely,
Guy

On Wed, Jun 20, 2012 at 1:54 PM, Kurt Young <kurt.young@pdc.wa.gov> wrote:

Mr. Palumbo,

Your e-mail was forwarded to me.

With respect to political advertising on the Internet, only paid advertising placed on a website is subject to disclosure and reporting by the person paying for the advertising. If a qualifying paid political advertisement under RCW 42.17A.005 is placed on a website, the sponsor identification requirements, including the words "Paid for by" or "Sponsored by" and the candidates name and address must be included, and the disclosure and reporting requirements apply.

The one column inch exemption for newspaper advertising does not apply to online advertisements at this time. Let me know if you have any questions.

Sincerely,

Kurt Young

PDC Compliance Officer

From: Guy [mailto:guy@guy4senate.com]
Sent: Wednesday, June 20, 2012 11:08 AM
To: PDC
Subject: Question on online advertising

PDC,

I have attached the ad I was going to run on a couple of websites.

In looking at the political advertising brochure, there is no mention of online ads. These websites have character limits for their ads so to include "Paid for by Friends of Guy Palumbo P.O. Box 1202 Woodinville, WA 98072-1202" would monopolize almost the entire ad space.

It seems like this ad would fall under the guidelines of one column inch newspaper ads but I am not sure.

Can you please provide guidance before I run this ad?

Thank you for your help.

Guy

Stakeholder Comments - December

Evolving technology and campaigns –

expected meeting participants:

Hyla Wagner (by telephone)
Senior Counsel, California Fair Political Practices Commission

Gerard Keegan (by telephone)
Senior Director, State Legislative Affairs, CTIA – The Wireless Association

Joe Blondin (in person)
T-Mobile

**Campaign activities on the Internet – Stakeholder Meeting
December 4, 2012**

Attending: Art Castle, Building Industry Assn. of Washington
Jan Himebaugh, Building Industry Assn. of Washington
Dimitri Iglitzin, attorney for SEIU and the Washington State Labor Council
Jay Arnold, FUSE
Cody Eccles, Senate Republican Caucus
PDC Staff: Andrea Doyle, Nancy Krier, Lori Anderson, Jana Greer

Summary of comments:

Jan Himebaugh: Most people following campaigns via social media have opted in as followers and the campaigns' and cost of social media is still very little.

Mass Emails

Art Castle agreed with FUSE's written recommendation that mass Emails should include sponsor ID, but that the threshold should be higher, such as 1,000 or more.

Jay Arnold: Someone sending an Email can manipulate how the sender's name appears to the recipient. He believes it's beneficial to accurately identify yourself when sending Emails – FUSE sends mass Emails just members and they have "opted in" to receive the Emails.

Jan Himebaugh & Jay Arnold: 15 – 20% is considered a good open rate for mass Emails and campaigns typically will send a particular Email to 1,000s of recipients.

Jan Himebaugh: Desires uniform standard reporting thresholds and disclaimer requirements – hopes that the commission does not set one standard for state campaigns and another standard for local campaigns. It would be confusing for groups and political committees that are involved in both state and local campaigns.

Dimitri Iglitzen: Agrees with FUSE's interpretation that reporting Emails would be burdensome and would provide value to the public.

Art Castle: Calculating a value for reporting Emails would be very difficult. The costs are negligible. Even when the sender purchasing a list of Email addresses ... the list is going to be used many times for many years.

Online Ads w/ Limited Characters

Art Castle: The sponsor ID should accompany the main message content of the ad.

Jay Arnold: Some ad platforms have non-negotiable parameters and it may not be possible to add a disclaimer on the first tier of a multi-tier click-through ad.

Dimitri Iglitzen: It is not practical to require a disclaimer on a limited-character ad when the only text that appears is a "teaser" to encourage someone to visit the linked webpage. The Commission should exempt these shorts of ads from sponsor ID but require sponsor ID on the linked pages.

Contributions by Text Messaging

None of the groups represented are currently receiving money through text message.

Art Castle: Believes collecting accurate donor information for disclosure would be difficult.

Jan Himebaugh: Believes 2012 federal campaigns had trouble disclosing contributions that were texted through pre-paid cell phones.

Jay Arnold: Text messaging is very expensive – service fees exceeding \$300/month for non-profit contributions. Currently, only a small number of non-profit organizations are able to afford the service fees. On-line contributions are much more cost-effective.

Emphasized his written comments that text messaging should be a communication channel for authorizing contributions that occur in another form, such as an online contribution. Payment by text message is still evolving and the Commission should monitor industry developments, such as cell phone carriers integrating with online transaction processors, such as Google Payments.

If text messaged contributions are allowed, each campaign should not have to have a unique common short code – the current practice for non-profit organizations is to share a CSC. Texters use the CSC and an identifying word or phrase to designate a particular recipient.

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin
James D. Oswald

DMITRI IGLITZIN
iglitzin@workerlaw.com

JAMES D. OSWALD
oswald@workerlaw.com

Sent via email to lori.anderson@pdc.wa.gov

November 30, 2012

Public Disclosure Commission
711 Capitol Way #206
PO Box 40908
Olympia, WA 98504-0908

Re: Response to Request for Comments Regarding Campaign Activities
on the Internet and Campaign Fundraising by Text Message
Our File No. 2800-046

Dear Commissioners:

We write to you on behalf of the Service Employees International Union and the Washington State Labor Council (collectively, "labor organizations"). We will address both the questions posed in Lori Anderson's notice of the December 4 meeting and the need to adjust certain rules regarding labor organization fundraising in light of your proposed changes facilitating fundraising by text message.

Response to Stakeholder Questions

1.a Labor organizations typically use websites to communicate primarily to members. It is typically self-evident that the website is sponsored by the labor organization. Political committees sponsored by labor organizations typically do not maintain websites.

1.a.i Adding a "paid for by" would be superfluous in the case of labor organization websites, as the sponsor is evident and persons viewing the website are typically members of the labor organization.

1.a.ii The cost of political communications by or from a political committee is typically a very small percentage of the total cost of the labor organization's website. We do not have a figure for that very small portion, and do not believe the overall cost of the labor organization website is useful in the analysis.

2.a It does not seem unreasonable to adopt either the 200 or the 500 item threshold, as either of the proposed thresholds is well below the number of identical emails or text messages that would typically be generated by a political committee or candidate using electronic communication to reach potential voters or even potential donors.

18 West Mercer St, Ste 400 | (206) 285.2828 TEL
Seattle, Washington 98119 | (800) 238.4231 TEL
 workerlaw.com | (206) 378.4132 FAX

2.b It is our impression that Washington state campaigns commonly send "blast" electronic communications of the type you describe.

2.c It is our impression that at least campaigns for statewide office typically assign paid staff to maintain an ongoing series of "blast" electronic communications to supporters and potential supporters.

3.a No, we are not aware of campaigns fundraising by text messaging in Washington.

3.b We are not in a position to assess the general level of interest in developing a regulatory system to permit fundraising by text messaging. We envision that such a regulatory system would be of limited utility to labor organizations and political committees sponsored by labor organizations.

3.c We do not have specific questions about fundraising by text messaging.

Need for Clarification of Regulations Regarding
Contribution Withholding Authorizations

Labor organizations appreciate the need to adjust campaign finance statutes and regulations to adapt to changing technology. As the PDC is aware, fundraising via internet communications and websites is well-established. The proposals regarding fundraising by text messaging are a logical next step to that evolution.

In that spirit, labor organizations believe it is appropriate that the PDC clarify the regulations regarding contribution withholding authorizations. Contribution withholding authorizations are, by far, the primary means by which members contribute to union-sponsored political committees. RCW 42.17A.495 requires that a member authorization be "upon the written request of the employee" and "on a form prescribed by the commission." WAC 390-17-100 provides such a form, and requires that the form include the "signature" of the employee. As of this date, the Commission has not clarified that the "signature" required by the WAC may be in electronic form.

To permit employees to authorize political contribution withholding by electronic signature is consistent with the purposes of RCW 19.34.010, which include "facilitating commerce by means of reliable electronic messages." The statute defines "electronic signature" as a signature "in electronic form attached to or logically associated with an electronic record."

Labor organizations believe that the purpose of both RCW 42.17A.495 and RCW 19.34.010 would be served by PDC guidelines that permit employees to electronically authorize contribution withholding deductions. Labor organizations anticipate that such guidelines would require that the labor organization obtain and retain proof that the employee authorizing the deduction both (1) received and read the admonitions included in WAC 390-17-100, and (2) provided the information required on the form by that regulation.

In light of the general rule that electronic signatures are to be accepted in Washington, it is arguable that it is currently permissible for labor organizations to obtain these authorizations electronically. However, to avoid any confusion – and to assure that labor organizations are not

uniquely disadvantaged as the Commission modifies its guidelines to reflect changing technology – labor organizations request that the Commission explicitly permit electronic authorizations.

It is useful to note, in this context, that at the federal level, the Federal Election Commission (“FEC”) has repeatedly stated its acceptance of electronic authorization as an acceptable method by which contributors may indicate their affirmative authorization of a payroll deduction.

Similarly to the law in Washington, when a payroll deduction or other check-off process is used for a contribution related to a federal PAC, there must be an affirmative authorization by the contributor in order for the deduction to be lawful. *Federal Election Commission v. National Education Association*, 457 F. Supp. 1102 (D.D.C. 1978). The specific and voluntary donative intent of the solicited employee needs to be manifested in a written authorization by him or her prior to the actual deduction of any contributions. *See* FEC Advisory Opinion 1997-25.

The FEC has repeatedly held that this written authorization requirement may be satisfied via electronic means. *See, e.g.*, FEC Advisory Opinion 1999-03, Microsoft PAC, which concluded that an eligible Microsoft employee may use her electronic signature to authorize payroll deduction for her contributions to Microsoft PAC, so long as (1) she is able to use her electronic signature or a written signature to revoke or modify the amount of her authorization at any time, and (2) a record of the submission of the authorizing signature, including verification that the signature came from the particular employee, is maintained. “Verification” could be obtained, in this context, by a confirmatory process through which the PAC, upon receiving an electronically approved payroll deduction form by e-mail, will send an e-mail reply to notify the employee of its receipt of the form and to request final confirmation of the employee’s intention to participate in the payroll deduction program.

In approving the use of the electronic signature in that Advisory Opinion, the Commission noted that its advisory opinions have previously interpreted Commission regulations “to be consistent with contemporary technological innovations, including the maintenance of records in non-paper form and the performance of committee transactions, where the use of the technology would not compromise the intent of the Act or regulations.”

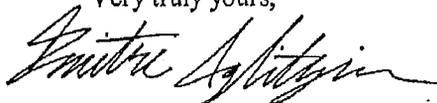
See also FEC Advisory Opinion 2000-22, Air Transportation Association (permitting the use of electronic signatures as a method of granting prior approval for solicitations for SSFs) and FEC Advisory Opinion 2001-04, MSDW PAC (same, noting with approval the use of an “affirmation statement” which requires users to review disclaimers prior to authorizing a deduction, and accepting the typing in of the full name of the employee and his/her Social Security number as constituting an acceptable “electronic signature”).

Labor organizations do not request that contribution withholding authorizations be permitted via text messaging, as the technology is not sufficiently robust to permit labor organizations to provide the disclaimers required or to obtain the information contemplated in WAC 390-17-100.

Public Disclosure Commission
November 30, 2012
Page 4 of 4

We look forward to the opportunity to discuss this issue with you at greater length in connection with the December 4, 2012 meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "James D. Oswald". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James D. Oswald
Dmitri Iglitzin

Schwerin Campbell Barnard Iglitzin & Lavitt, LLP



Date: November 30th, 2012
To: Lori Anderson, Communication and Training Officer
Washington State Public Disclosure Commission
From: Jay Arnold, Technology Director, Fuse Washington
Subject: Response to Stakeholder Input Request

Below is the response from Fuse Washington on requests for stakeholder input on "Campaign Activities on the Internet" and "Campaign Fundraising by Text Message".

STAKEHOLDER QUESTION # 1 – Political Committee Websites:

(a) If you are associated with a candidate or a political committee, do you include a disclaimer ("paid for by") on your website in 2012?

Fuse Votes published several web sites which included a "Paid For" disclaimer at the footer of the web site.

- i. **If not, do you see any problems in adding a "paid for by" on your website?**
- ii. **What does your website cost you to operate?**

Costs include registration of the domain name, set up and design for the site, and cost of "hosting" for the site, usually via a service provider. Depending on the site design, functionality, and scale, this may cost hundreds or thousands of dollars.

(b) Do you pay persons to post Internet content on any campaign's behalf?

No.

(c) Do you have any input on whether disclaimers should be included on political committee or other campaign-related websites?

We believe that a "Paid For" disclaimer should be included on political committee and campaign-related web sites.

1402 Third Ave. #310, Seattle WA 98101
(206) 420-0133 • info@fusewashington.org

*Imagine a world where people power our politics. progressive leadership powers our government,
and the common good drives our public policy.*

STAKEHOLDER QUESTION # 2 - Mass Emails/Text Messages:

(a) The FEC and some jurisdictions use "500 or more" or "200 or more" substantially similar political advertising communications within a one-month period to describe the kinds of mass communications that require sponsor identification or information. Do you have a view on whether the PDC should use a similar standard?

The number of emails sent is a reasonable way to determine whether sponsor identification is required. However, given the size of the electorate and low cost of email, we believe a high threshold is appropriate, and urge consideration of 1000 or more.

While we support disclosure in email, we oppose email reporting requirements. This information is already available. Email already comes from somebody—identified by an email address and a sender name. The distribution costs of sending email, regardless of size of the audience, remains small. We are already reporting staff time to write and send email and other significant costs.

(b) Do you know if Washington State campaigns or political committees send 500+ or 200+ substantially similar emails, text messages, tweets or other "blast" electronic communications?

Fuse Votes sends blast electronic communications that have an audience of 500 or more.

(c) Do you know if Washington state campaigns or political committees pay persons to send electronic communications described above, including paying someone to send "blast communications" (e.g., paying someone to "Tweet" about a campaign)?

Yes. In some cases, campaigns may have an "online director" whose job description includes updating a web site, sending out email, and communicating online on social networks such as Facebook and Twitter.

This person could be a communications specialist that develops a campaign strategy and message, but also could be a ministerial function going through the technical steps in delivering content developed by others.

B. Campaign Fund Raising (Contributions) By Text Messaging

The Federal Election Commission and some states (including California and Maryland), have recently addressed whether campaign contributions by text message may be accepted. Staff's memo to the Commission summarizing these other jurisdictions' opinions is available online here.

The Commission again invites comments from stakeholders as it further considers addressing the issue of whether campaigns registered in Washington State may engage in fund raising through text messaging.

STAKEHOLDER QUESTION # 3 – Contributions Made Via Text Messages:

(a) Are you involved with or aware of any local, state or federal campaigns active (in Washington State or elsewhere) that used fund raising through text messaging in 2012?

The presidential campaigns raised money through text messaging.

(b) What is the level of interest in developing a regulatory system that would allow state and local campaigns in Washington to accept text message contributions?

Currently, the service providers do not provide support for raising money for political campaigns via text message billed to your cell phone. Providers that we are aware of only have this service available this for larger 501(c)3 charities with an established track record. It remains to be seen how fast providers will expand this capability to campaigns, especially state and local campaigns, but we would be interested in deploying such a capability, depending on cost.

In addition, we are interested in an alternative approach where a campaign could store payment information from a previous donation and get an authorization via text to donate on that credit card or other mobile payment processing system (Paypal, Amazon, Google payments, etc.).

Money raised through text messaging is not likely to be significant when it initially rolls out; we do not see a need for regulatory activity here.

(c) Do you have specific questions or concerns about fund raising through text messaging that the Commission should consider?

Any information that is part of a standard donation (donor contact information, employer, occupation, etc.) will need to be tracked part of any text-based donation. However, this information could be known if a campaign has already built a profile on a donor from previous interactions and donations through other methods. We believe it should be acceptable to use previously stored data as part of reporting.

Alternatively, for new donors, the information could be gathered via an automated, interactive text message "conversation". Today, this interactivity commonly asks for information like email or zip code, and provides lookup functionality. We believe it should be acceptable to gather donor disclosure information through such an automated text message interaction.

Since disclaimers are required, given the limited space available for text messages, such disclaimers (or a link to disclaimers) should not have to happen with every text message or every text message conversation. Since text messages are part of an already-established relationship with a donor or member—one that they have to opt-in to receive-

-we believe disclosure should be limited to their initial signup/subscription to receive text messages and make donations.

Finally, for many customers, exchanging text messages has a cost per message for the recipient. Requirements for text message interaction and disclosure should keep in mind the small number of characters but also the potential cost for requiring campaigns to send additional text messages.

C. Evolving Technology

The Commission, as much as possible, would like to keep abreast of how campaigns are using evolving technology.

STAKEHOLDER QUESTION # 4 - Developing Technology:

Are you aware of any new or evolving technology not addressed in this memo or in Interpretation 07-04 that campaigns used this year or are contemplating using?

Online presences for campaigns are happening not only on specific web sites, but also within other social network platforms, such as Facebook, Twitter, Instagram or Pinterest. Candidate and campaign committee pages on social network sites should include "Paid For" disclaimers in their profile information or links to web sites that include that disclaimer information.

December 3, 2012

Ms. Lori Anderson
Washington Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504-0908

Re: Text Message Campaign Contributions

Dear Ms. Anderson:

CTIA-The Wireless Association® (CTIA), a nonprofit membership organization that has represented the wireless communications industry since 1984, respectfully submits these comments in response to a Washington Public Disclosure Commission (PDC) request for stakeholder input concerning campaign contributions made via text message.

The PDC is examining whether to issue interpretive guidance on campaign fund raising using premium messaging to “text” contributions to political candidates, parties, or committees in state elections. During the summer of 2012, the Federal Election Commission (FEC) issued Advisory Opinions on this same issue¹ finding it permissible for federal candidates to collect political contributions through text message campaigns and adopting requirements that candidates and connection aggregators must follow when using such services. In response to the FEC’s actions, CTIA issued “*Guidelines for Federal Political Campaign Contributions via Wireless Carrier’s Bill*.”² The guidelines are consistent with the FEC advisory opinions and recommend “best practices” for carriers to follow when entering into agreements that enable campaign contributions for political candidates, parties, committees, and their connection aggregators.

If the PDC chooses to issue guidelines, CTIA strongly urges it to ensure that those guidelines are consistent with the FEC’s advisory opinions and CTIA’s guidelines referenced above. Specifically, where wireless carriers voluntarily enter into agreements to support campaign contributions made via text messaging, state law or regulation should ensure the following:

- Participation in text messaging for campaign contributions must be voluntary for wireless carriers and participation should not require changes to individual carriers’ customary business practices or terms of service;
- Wireless carriers should have the flexibility to adjust their respective rates or rate structure or implement unique rates for campaign contributions made via text messaging without making an in-kind contribution under state law;
- Wireless carriers should retain the ability to accept or reject proposals from any state political candidate, party, or committee for commercial or other reasons;

¹ See FEC Advisory Opinions 2012-31 (AT&T Inc.), 2012-30 (Revolution Messaging); 2012-28 (CTIA-The Wireless Association); 2012-26 (Cooper for Congress, m-Qube, and Armour Media, Inc.); 2012-17 (Red Blue T LLC, Armour Media, Inc., and m-Qube), available at <http://saos.nictusa.com/saos/searchao>.

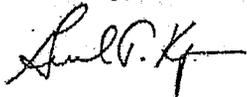
² See CTIA Guidelines for Federal Political Campaign Contributions via Wireless Carrier’s Bill, Version 1.0, available at http://files.ctia.org/pdf/Political_Contribution_Recommendations_FINAL_v_1_0.pdf.

- Each participating state political candidate, party, or committee is solely responsible for ensuring that contributions it requests or receives via premium text messages are lawful under the state's campaign finance laws and regulations;
- The wireless customer contributing to the political campaign must have a U.S. based mobile-number;
- Participating state political candidates, parties, or committees must be registered in good standing with the PDC and have qualified for the state ballot for the current cycle's primary or general election;
- Only one Common Short Code (CSC) may be used by each participating state political candidate, party, or committee;
- When a wireless customer sends a mobile-originated message to a candidate's short code, the connection aggregator, on behalf of the candidate or campaign, must certify the customer's eligibility to make the contribution under the state's campaign finance laws and regulations;
- The connection aggregator must impose a limit on contributions attributed to each mobile phone number to each participating state political candidate, party, or committee consistent with the state's campaign finance laws and regulations; and
- The connection aggregator must keep a running, real-time tally of the dollar amount of contributions made from each mobile phone number to enforce the state's contribution limits.

CTIA believes the provisions outlined above provide a workable framework which ensures consistency with the FEC guidance on this issue and complements CTIA's guidelines. Accordingly, we respectfully urge the PDC, if it decides to issue guidelines, to incorporate these provisions.

If you have questions or need additional information, please do not hesitate to contact me at 202.736.3238 or gkeegan@ctia.org. I want to thank you for your outreach on this issue and consideration of these comments.

Sincerely,



Gerard Keegan
Senior Director, State Legislative Affairs

Interpretation 08-01

RCW 42.17 was recodified to RCW 42.17A effective January 1, 2012 (see the recodification cross-reference table). For this interpretation see:
RCW 42.17.020(15)(b)(v) = 42.17A.005(13)(b)(v) / .020(21)(g) = .005(20)(g) / .020(38) = .005(37)
RCW 42.17.100 = 42.17A.255 RCW 42.17.060 = 42.17A.220 RCW 42.17.080 = 42.17A.235
RCW 42.17.090 = 42.17A.240 RCW 42.17.510 = 42.17A.320 RCW 42.17.180 = 42.17A.630
RCW 42.17.550 has been repealed.

PDC Interpretation

APPROVAL DATE: April 17, 2008

NUMBER: 08-01

STATUS: Effective April 17, 2008

SUPERSEDES: N/A

REFERENCES: Chapter 42.17 RCW,
Title 390 WAC

APPROVED BY: The Commission

SEE ALSO: RCW 42.17.020(15)(b)(v), RCW 42.17.020(21)(g), RCW 42.17.100,
RCW 42.17.020(37), RCW 42.17.510, WAC 390-05-515, WAC 390-05-290
WAC 390-16-313

Internal Political Communications and Sponsor Identification

The Public Disclosure Commission implements and enforces the campaign finance reporting requirements in Chapter 42.17 RCW and Title 390 WAC.

The Commission has been informed that there is confusion as to whether or how certain provisions of RCW 42.17 and Title 390 WAC apply to "internal political communications" and specifically how they apply to sponsor identification (the statements such as "paid for by" or "sponsored by")¹ on such campaign-related communications.

The Commission is providing its interpretation on this subject pending possible rulemaking in order to provide guidance at this time, and invites public comment.

Summary

- **Will sponsor identification be required on internal political communications if the communications otherwise satisfy the definition of "political advertising"?**

The Commission has determined that a sponsor identification is not required on an internal political communication that also constitutes political advertising, if (1) the communication satisfies the definition of "internal political communication" and thus it is directed from the defined entity to the audience defined in statute and rule², and (2) it is otherwise apparent on the face of the communication as to who the true sponsor or sponsors (original source or sources) is of the political advertising. The sponsor identification requirement does not apply if there is already an existing exemption in statute or rule for such a disclaimer to be placed on the communication.

¹ Sponsor identification is also known as a "disclaimer." See RCW 42.17.510; also see WAC 390-18-030.

² Members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization.

Examples of what is “apparent of the face of the communication” include: when the name of the sponsor is placed on a masthead on the internal newsletter or flier, or when the name of the sponsor is placed on the letterhead of the internal letter, or when there is some other obvious statement to the reader of who actually paid for (sponsored) the internal political communication on the face of the communication.³ By way of further example, if the name or location of a person on the masthead (e.g. headquarters office) differs from the name or location of the person who actually paid for the communication (e.g. local office), the person who actually paid for the communication (original source) must be provided in a separate sponsor identification.

The Commission will continue to apply RCW 42.17.020(15)(b)(v), RCW 42.17.020(21)(g), RCW 42.17.100, WAC 390-16-313 and WAC 390-05-515 in determining whether a communication is to a “member” and whether it is primarily limited to the internal audience. The Commission will continue to exclude “internal political communications” from what is considered a contribution, electioneering communication, or an independent expenditure.

Review of Laws, Rules and Analysis

- **What is an “internal political communication”?**

The term “internal political communication” is used three times in the state laws. The term is used to describe what is not otherwise included in definitions of contribution, electioneering communication, or independent expenditure.

RCW 42.17.020(15)(b)(v) states that a contribution does not include:

An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization; ...

RCW 42.17.020(21)(g) states that an electioneering communication does not include:

A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization; ...

RCW 42.17.100 states in part that an independent expenditure under that statute (for persons subject to that statute who do not otherwise file a report under RCW 42.17.060, RCW 42.17.080 or RCW 42.17.090) does not include:

An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff,

³ Also see PDC Interpretation 07-04 for information regarding Campaign Activities on the Internet.

and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; ...

Similarly, WAC 390-16-313(2)(c) provides in pertinent part that:

(2) **Exempt Activities.** The following activities are not considered independent expenditures for purposes of RCW 42.17.100, [42.17].180, [42.17].510 or [42.17].550:

...
(c) An internal political communication primarily limited to (i) the members of or contributors to a political party organization or political committee, (ii) the officers, management staff or stockholders of a corporation or similar enterprise, or (iii) the members of a labor organization or other membership organization ...

By rule at WAC 390-05-515 the Commission has provided factors that will be considered in determining whether a communication is to a "member." The rule also explains what will be considered in determining whether an internal political communication is "primarily" limited to the members of an organization or political committee.⁴

- **What is political advertising?**

"Political advertising" is defined in the law and is also addressed in a rule.

RCW 42.17.020(37) defines "political advertising" as:

"Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

WAC 390-05-290 states:

Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required.

"Mass communication" is not otherwise defined by statute or rule. "Political advertising" does not cross reference "internal political communications" in this statute or rule.

However, given the questions raised regarding sponsor identification and in an effort to provide guidance, at this time, the Commission recognizes the term "mass communication" has a common understanding which implies an external communication to a large population of an

⁴ For example, the Commission has recently determined that communications from mutual insurance companies that satisfy the membership criteria to its member policyholders qualify as "internal political communications."

unspecified number through a mass form of media intended to reach a broad audience.⁵ In effect, the Commission views this type of communication as the opposite of an internal communication directed to a specific membership or similar statutorily defined audience which has a reciprocal, voluntary and mutually-agreed to relationship with the sponsor of the communication, such as those entities listed in RCW 42.17.020(15)(b)(v). These internal communications are also typically sent in a more limited format (newsletter, flier, letter, etc.) unlike radio, television, film, or the like.

This distinction is also consistent with the Commission's statutes and rules which as described treat an internal political communication as a communication that differs from (because it does not qualify as) an electioneering communication, contribution, or independent expenditure under RCW 42.17.100 or WAC 390-16-313(2). Therefore, it is reasonable to conclude that "political advertising" may be interpreted as not including "internal political communications" for the purposes of sponsor identification.

Yet, although there is no current specific exemption in statute or rules except for a reference to independent expenditures in WAC 390-16-313(2), to the extent such a communication satisfies both definitions of "internal political communication" and "political advertising," the Commission has determined it not practical to require sponsor identification on all internal political communications. The Commission has determined the internal political communication should identify the sponsor through a sponsor identification unless otherwise specifically exempted from that requirement in statute or rule,⁶ but only if it is not otherwise apparent on the face of the communication who actually paid for or sponsored it.

⁵ *Wikipedia* (2008) provides:

Mass communication is the term used to describe the academic study of various means by which individuals and entities relay information to large segments of the population all at once through mass media. It is usually understood to relate to newspaper and magazine publishing, radio, television, and film, as they are used both for disseminating news and for advertising.

http://en.wikipedia.org/wiki/Mass_communication. *Wikipedia* also describes that that the term "mass" in "mass communication" "suggests that the recipients of media products constitute a vast sea of passive, undifferentiated individuals." Therefore, a mass communication appears to be a communication unlike one directed to an internal, differentiated audience.

⁶ Sponsor identification requirements are at RCW 42.17.510; also see WAC 390-18-030.

Summary Chart

SUMMARY CHART

June 2012

Internet	Governing Statute or Rule
Question or Issue	
<div style="display: flex; align-items: center; margin-bottom: 10px;">  <div style="color: red; font-weight: bold; margin-left: 5px;">Paid Political Advertising</div> </div> <p>Is a video paid “political advertising” when it is posted on the Internet via YouTube or other means that often allows postings for free but instead the sponsor pays to target an audience?</p> <ul style="list-style-type: none"> * Does it matter if someone originally produced the video for free, or if they instead paid for production costs? * Does it matter if the video was first published somewhere else, or if it was specifically made only for YouTube? * Does it matter if the video was posted with or without the knowledge of the creator? <p>When there is payment to a website host or carrier to direct viewers to a campaign website (and move online search responses up higher on the list of responses a viewer sees), is the website link and one-line description considered “political advertising”?</p> <p>Is a website paid “political advertising” when it collects and processes contributions only for “one side” of a campaign, deducts a processing fee, and advertises this service on the website?</p> <p>Is a paid “mass e-mail” a “mass communication” that is “political advertising”?</p> <p>Currently, a political committee does not need to include disclaimers on its website under Interpretation 07-04. Should that same answer apply in 2012?</p> <p>Currently an individual does not need to include disclaimers on his/her website page supporting or opposing a candidate under Interpretation 07-04. Should that same answer apply to Facebook?</p>	<div style="color: blue; font-weight: bold; margin-bottom: 10px;">Definitions - RCW 42.17A.005</div> <ul style="list-style-type: none"> • “Sponsor” is “the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor”. RCW 42.17A.005(42). • “Political advertising” is “any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.” RCW 42.17A.005(36). <ul style="list-style-type: none"> * In PDC Interpretation 08-01 (Internal Political Communications and Sponsor Identification) the Commission recognized the phrase “mass communication” has a common understanding which implies an external communication to a large population of an unspecified number through a mass form of media intended to reach a broad audience. * In <i>Human Life of Washington v. Brumsickle</i>, the Court gave the phrase “mass communication” its ordinary dictionary meaning. The Court said “mass” is defined as directed at or reaching a large number of people and “communication” is defined as “the exchange of ideas, messages, or information, as by speech, signals or writing” or “a system for sending and receiving messages, as by mail, telephone or television.” The court concluded the “telemarketing campaign” at issue in that case constituted mass communication that qualified as political advertising.



Character & Space Limits for Online Paid Political Ads

If a website or Internet site/carrier only permits limited characters or limited space for a paid ad, how should the ad provide sponsor ID, and where required, Top 5 or party preference?

* Should an ad sponsor be permitted to provide the required information via a link to a landing page or website, or through a rollover, mouse-over or pop-up?

* Or, should the Commission find these ads are equivalent to other items currently exempted from sponsor ID requirements because requiring such disclaimers and disclosures would be "impractical" (such as for small newspaper ads)?

Sponsor ID & Other On-Ad Disclosure Requirements – RCW 42.17A.320, WACs 390-18-010, 390- 18-020, 390-18-025, 390-18-027

● RCW 42.17A.320 requires all written political advertising to **"include"** the sponsor's name and address. That information must be on the "first page" of the advertisement in a certain size. RCW 42.17A.320; WAC 390-18-010.

● Party preference must be **"clearly identified in"** electioneering communications, independent expenditures or political advertising." Independent expenditures and electioneering communications must **"include as part of the communication"** the statement "No candidate authorized this ad. It is paid for by (name, address, city, state)." RCW 42.17A.320; WAC 390-18-010; WAC 390-18-020.

● The "Top 5 Contributors" disclosure for political committees doing independent expenditure ads and electioneering communications must include a **"statement"** of the Top 5, **"followed by a listing"** of those contributors. For a medium that includes a **visual image**, Top 5 must be **"clearly spoken"** or **"appear in print and be visible for at least four seconds"**, along with other size requirements. If the medium does not include a visual image (currently radio and TV), the disclosure must be **clearly spoken**, followed by a **listing** of the Top 5. If the sponsor is a political committee, the sponsor's name must be included. RCW 42.17A.320; WAC 390-18-010; WAC 390-18-025; WAC 390-18-027.

● Ballot measure ads of \$1,000+ sponsored by a political committee must **"include"** Top 5. RCW 42.17A.320.

● Certain political advertising is **exempt** from the disclaimer and disclosure requirements because of its **size or form**. For example, political yard signs of a certain size, campaign buttons, balloons, pens, pencils, skywriting, inscriptions, "and other forms of advertising where identification is **impractical**" as identified by the Commission in rule are exempt. RCW 42.17A.320.

* WAC 390-18-030 provides an additional list of exemptions, including but not limited to bumper stickers 4"x15" or smaller, **newspaper ads of one column inch or less**, others.