

PDC Interpretation

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REFERENCES: [RCW 42.17A.005\(40\)](#); AGO 1973 No. 14; *State v. Evans*, 86 Wn.2d 503 (1976); *Evergreen Freedom Foundation v. Washington Education Assn.*, 111 Wn. App. 386 (2002); *Human Life of Wash. v. Brumsickle*, 624 F.3d 990 (2010); *Utter v. Bldg. Industry Ass'n of Wash.*, 182 Wn.2d 398 (2015); *State v. Grocery Manufactures Ass'n*, 5 Wn.App.2d 169 (2018).

“Primary Purpose Test” (Definition of Political Committee)

The Public Disclosure Commission enforces Washington State campaign finance, reporting, and disclosure provisions found in [RCW 42.17A](#) (also known as the Fair Campaign Practices Act or “FCPA”) and in [Title 390 WAC](#). This interpretative statement is to provide guidance about how the PDC uses the “primary purpose test” set forth by court decisions as a way to determine whether an entity that participates in campaigns, but whose campaign activities are only an aspect of their organization’s work, is required to register and file reports with the PDC as a “political committee”.

Under the FCPA, an entity (or individual not using their own personal funds) become a political committee and must register and begin reporting with the PDC within two weeks of being organized to initially make expenditures or accept contributions (or within three business days if organized within three weeks of an election).¹ The FCPA defines “political committee” as any individual or entity that has “the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” RCW 42.17A.005(40). There are two independent qualifying activities included in the definition: receiving contributions and making expenditures. The registration requirement can be triggered by either of those activities. See *State v. Grocery Manufactures Ass'n*, 5 Wn.App.2d 169 (2018) (citing *Utter v. Bldg. Industry Ass'n of Wash.*, 182 Wn.2d 398 (2015)).

The contribution prong is met when an individual or entity begins to solicit or otherwise expects to receive contributions to support or oppose an election campaign, *regardless* of any spending activity. The application of the expenditure prong is not as straightforward and has raised questions, particularly for corporations, associations, or similar organizations that do not solicit

¹ See: <https://www.pdc.wa.gov/learn/new-political-committees>

political campaign contributions and are not necessarily created specifically to finance campaign activities, but nevertheless spend money in election campaigns.

Courts have developed a test for determining the threshold of spending activity that meets the expenditure prong. Under this test, an organization making expenditures becomes a political committee only if it is determined that “a primary purpose” of the organization is to affect governmental decision-making by supporting or opposing candidates or ballot propositions. The test has been accepted and expounded by the courts over time to provide guidance on determining who is required to report as a political committee.

The “primary purpose” test first was articulated in a formal Attorney General’s Opinion (AGO) issued within the same year Initiative 276, the ballot measure that created the PDC and Washington State’s campaign finance law, was enacted. (AGO 1973 No. 14.) The question presented in the AGO was whether a corporation, or similar organization, becomes a political committee whenever it makes a contribution to an election campaign. The AGO concluded that the law was intended only to include organizations whose primary purpose was to influence elections, since many of the reporting requirements would be incompatible with an organization whose funding activities are not primarily related to campaign spending.

The State Supreme Court soon adopted the AGO’s conclusion in *State v. Evans*, 86 Wn.2d 503 (1976), by establishing that an organization becomes a political committee when the facts and circumstances indicate that “the primary purpose or one of the primary purposes” support or oppose candidate or ballot measure. *Id.* at 509. The Court, as well as the federal Ninth Circuit Court of Appeals, has since confirmed the constitutionality of this standard and has clarified that campaign financing can be one of several “primary purposes” sufficient to require registration and reporting as a political committee. See *Utter v. Bldg. Industry Ass’n of Wash.*, 182 Wn.2d 398 (2015); and see *Human Life of Wash. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010).

While disclosure serves an important state interest, the *Evans* court cautioned that the law was not intended to indiscriminately capture all entities that engage in political campaign activities. *Evans*, 86 Wn. 2d at 508. The primary purpose test recognizes the need for some balance, but does not include any specific measurement of activity or priority that constitutes a “primary” purpose of an organization. Courts have acknowledged that most organizations do not have one single determinable purpose and therefore consideration of the nuances of organizational structure is important to meet the State’s interest in disclosure of political campaign activities. See *Brumsickle*, 624 F.3d at 1011. If, however, electoral political advocacy is just one of the tools an organization uses to meet its legitimate non-political goals, then such activity may not be a “primary” purpose of the organization. *Evergreen Freedom Foundation v. Washington Ed. Ass’n.*, 111 Wn. App. 586 (Wash. Ct. App. 2002).

In considering this balance, the Court of Appeals, in *Evergreen Freedom Foundation*, 111 Wn. App. at 600, offered a nonexclusive list factors to provide guidance to courts determining when election spending constitutes a primary purpose of an organization, including:

- (1) the content of the stated goals and mission of the organization;
- (2) whether the organization's actions further its stated goals and mission;
- (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election;
- and (4) whether the organization uses means other than electoral political activity to achieve its stated goals and mission.

The Court explained that these factors were not intended to be applied as a formula, but rather to avoid overreliance on the stated purpose of the organization, if its activities reveal that most of its efforts are put toward electoral political activity.

The PDC uses the primary purpose test, as established by the courts, for guidance on determining when an organization's activities require registration and reporting as a political committee under the FCPA. The test provides a meaningful tool to help the public receive information about election campaign spending, while narrowing such requirements so that groups that only incidentally engage in such activity are not included.² The PDC uses the factors provided by the Court of Appeals in the *Evergreen Freedom Foundation* case to help determine the threshold for disclosure for the political campaign activities of organizations engaged in the electoral process. When an organization's expenditure activity rises to the level of becoming a political committee, in some cases such designation may apply for a limited period of time, such as a year, an election cycle, or other relevant timeframe that provides a measurement of the campaign spending activity of the organization in relation to its other priorities.

In order to assist organizations in evaluating whether their election spending activities require registration as a political committee, the organization should assess whether it uses over 30 percent of its general treasury budget or resources on spending in election campaigns as an initial indication whether the election activity may be a primary purpose of the organization. Such an assessment should measure the actual contributions or expenditures made in an election campaign, but also may need to incorporate the administrative and operational resources used specifically to support such activities. This does not mean that the PDC considers that 30 percent is in any way the exclusive factor or threshold for meeting the primary purpose test, but rather it provides a guide to assist organizations when to consider the Court of Appeals factors.

When an organization considers engaging in political contribution or expenditure activities, while maintaining its non-political activities, it should consider creating and registering a separate political committee to manage and report exclusively on the political campaign activities in order to avoid required reporting on non-campaign related activities.

² The enactment of the DISCLOSE Act, SSB 5991 (2018) requires registration and limited reporting for nonprofit organizations who make expenditures in political campaigns, but do not qualify as a political committee under the FCPA.