
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 the campaign disclosure provisions and contribution limits found in [RCW 42.17A](#) and [Title 390 WAC](#). This interpretative statement is a summary of the “primary purpose test” used to determine whether an individual or entity has engaged in sufficient election spending activities to require registration as a “political committee” under the Fair Campaign Practices Act (FCPA).

Under the FCPA, political committees must register with the PDC upon initial engagement in campaign financing and regularly report on such activities. 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 political 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.

This test is not expressly codified in law but was introduced soon after FCPA was enacted to address the questions raised about the scope of coverage. 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 the original Initiative 276 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 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 articulating a standard 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, has since confirmed the constitutionality of this standard and has clarified that campaign financing can be one of several “primary purposes” sufficient to satisfy the requirements 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 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 activities. *See Brumsickle*, 624 F.3d at 1011. If, however, 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 has offered factors to provide guidance to courts determining an organization’s primary purpose. In *Evergreen Freedom Foundation*, 111 Wn. App. at 600, the court of appeals offered a nonexclusive factors to consider:

- (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 as a political committee under the FCPA. The test provides a meaningful tool to help ensure the public receives information that makes political spending a priority, while narrowing such requirements

so that groups that only incidentally engage in such activity are not included.¹ The PDC uses the factors provided by the court of appeals in the *Evergreen Freedom Foundation* case to help determine the proper threshold for disclosure that will satisfy the public's interest in the political activities of organizations engaged in the electoral process. When an organization's expenditure activity raises 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, election cycle, or other specified timeframe related to the spending activity of the organization.

In order to assist organizations in evaluating whether their election spending activities require registration as a political committee, the PDC recognizes that an organization using over 30 percent of its general treasury budget or resources on spending in election campaigns may provide an initial indication that election activity is a primary purpose of the organization. This does not mean that the 30 percent is a ridged threshold or a determining factor to qualify as a political committee, but that measurement will assist in applying the court of appeals factors. When an organization considers engaging in political spending 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 activities in order to avoid required reporting on any non-political activities.

¹ The recent enactment of the DISCLOSE ACT (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.