

Presentation of  
Petition for  
Declaratory  
Order

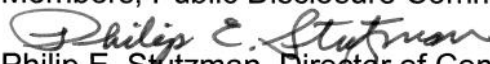


STATE OF WASHINGTON

## PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission

FROM:   
Philip E. Stutzman, Director of Compliance

DATE: July 2, 2014

SUBJECT: Petition for Declaratory Order Regarding Party or Independent Preference Identification Requirements for Political Advertising, including Independent Expenditures and Electioneering Communications

On May 15, 2014, the Public Disclosure Commission (PDC) received from John White, an attorney with Livengood Alskog, a Petition for Declaratory Order Regarding Party or Independent Preference Identification Requirements for Political Advertising, including Independent Expenditures and Electioneering Communications.

### Summary of Petition

Mr. White submitted the petition pursuant to WAC 390-12-250 on behalf of his clients, Human Life of Washington and Human Life PAC (collectively referred to as "HLW" or "Petitioners"). In the petition, Mr. White identified activities concerning political advertising in which HLW had been involved in the past. Mr. White described the issues about which his clients seek a binding declaratory order, assuming the facts presented, as follows:

1. Can HLW lawfully omit a candidate's self-stated party preference from political advertising that HLW sponsors?
2. Does HLW's omission of a candidate's self-stated party preference from political advertising it sponsors constitute a "false statement" in violation of RCW 42.17A.335?
3. Would HLW's intentional omission of a candidate's self-stated party preference be considered a violation with "actual malice" such that HLW could be subject to enforcement or criminal prosecution under RCW 42.17A.335 and/or RCW 42.17A.750(2)?

Mr. White describes in the petition and subsequent communications that HLW does not wish to include any candidate's identified party or independent preference on HLW-

sponsored political advertising for the reasons set forth in HLW's petition. Included in HLW's reasoning is its concern that to require it to include a candidate's self-stated party preference constitutes a constitutional violation of its First Amendment speech rights. Finally, HLW expresses its concern that if it omits this information from its political advertising, it will be subject to enforcement proceedings (brought in an administrative or superior court action) for engaging in false political advertising that might subject it to criminal penalties if it were found to have acted with actual malice.

### **The Declaratory Order Process**

RCW 34.05.240 provides the framework for the Commission's consideration of a declaratory order request. Section 5 provides that within 30 days of receipt of a petition for declaratory order, the Commission shall take one of the following steps:

- a. Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
- b. Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition (a hearing);
- c. Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or
- d. Decline to enter a declaratory order, stating the reasons for its action.

Commission rule, WAC 390-12-250(3), provides that the executive director will present the petition to the Commission at the first meeting when it is practical to do so. At that point, among other options, the Commission may decide that a public hearing is necessary and so order. WAC 390-12-250(6). As you know, you were apprised of the filing of this petition at your May meeting.

Upon receipt of the petition, PDC staff reviewed its contents and the executive director requested additional information from HLW. PDC staff also notified stakeholders that the petition had been received and gave them until June 18, 2014 to provide comment in advance of the scheduled June 26 Commission meeting. This notice was sent by email and posted to the PDC's website and Facebook page.

HLW, through counsel, provided more information by letter dated June 13, 2014 and an email dated June 19, 2014, copies of which are provided with these materials. When the presentation of the petition was continued from June 26 to July 8, with the agreement of Petitioners, PDC staff apprised stakeholders of the date change. To date, the PDC has received 14 comments, copies of which are also provided with these materials.

### **Next Steps and Preliminary Staff Recommendation**

At its July 8 special meeting, the Commission will be asked to determine the next steps in proceeding with HLW's petition. In light of the public interest generated by the petition, Staff recommends the Commission consider holding a public hearing as part of the July 8 special meeting to assist its deliberations and decision as authorized by WAC 390-12-250.

Absent further information received during any hearing process and based on the information received and analyzed to date and the reasons stated below, Staff preliminarily recommends that:

- Concerning Issue 1, the Commission deny Petitioners' request to issue an order holding that HLW may lawfully omit a candidate's self-stated party preference from political advertising HLW sponsors. Staff recommends the Commission decline to enter an order declaring that RCW 42.17A.320(1) and WAC 390-18-020 do not apply to Petitioners' specified circumstances because Petitioners have not demonstrated that uncertainty regarding application of the law necessitating resolution exists. It is staff's view that the plain language of RCW 42.17A.320(1) and WAC 390-18-020 require HLW to include candidates' stated party or independent preference in its proposed political advertising.
- Concerning Issue 2, the Commission consider issuing an order declaring that RCW 42.17A.335 applies only to actual statements or expressions that can be evaluated for their truth or falsity and materiality.
- Concerning Issue 3, the Commission issue an order declaring that RCW 42.17A.335 and RCW 42.17A.750(2) do not apply to Petitioners' specified circumstances.

### **Relevant Statutory and Rule Provisions**

The following statutes or rules are identified by staff as relevant to the Commission's consideration of HLW's petition.

#### **RCW 42.17A.320 – Identification of sponsor (emphasis added)**

- (1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

**RCW 42.17A.005(36) – Definition of political advertising**

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(19) – Definition of electioneering communications**

Any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

**RCW 42.17A.005(26) – Definition of independent expenditure**

An expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other

expenditures of the same person in support of or opposition to that candidate, has a value of \*eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

**WAC 390-05-274** – Party affiliation, party preference, etc.

(1) "Party affiliation" as that term is used in chapter 42.17A RCW and Title 390 WAC means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the commission and in Title 390 WAC refers to the candidate's self-identified party preference.

**WAC 390-18-020** – Advertising – Political party identification

(1) According to RCW 42.17A.320, sponsors of advertising supporting or opposing a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(2) According to RCW 42.17A.320, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(3) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party.

**RCW 42.17A.335** – Political advertising or electioneering communications – libel or defamation per se

(1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

(b) Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising or an electioneering communication that makes either

directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) For the purposes of this section, "libel or defamation per se" means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

**RCW 42.17A.005(1)** – Definition of actual malice

"Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

**RCW 42.17A.750(2)** – Civil Remedies and sanctions – Referral for criminal prosecution

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW.

**Facts Presented by HLW** (as presented by Mr. White)

Petitioner Human Life of Washington considers itself an advocacy group “dedicated to re-establishing respect for life from conception to natural death throughout American culture.” It states it engages in public education campaigns. It takes positions on “life”-related issues, including pro-life advocacy, opposition to the death penalty, support for improved palliative care, and opposition to euthanasia. It states its positions “cut across traditional partisan lines.” It is organized as a 501(c)(4) entity and is a social welfare organization. It states that it is not generally involved in candidate endorsements, and does not produce “large scale political advertising.”

Petitioner Human Life PAC is registered in Washington as a political committee. It states that it does make electoral expenditures, including opposition to the state’s assisted suicide initiatives. It also makes endorsements and “candidate

recommendations” based on candidate responses to questionnaires and support for “life issues.” Human Life PAC states that it makes its endorsements regardless of party preference. Human Life PAC has endorsed candidates in the past and identified the preferred party espoused by the candidate. Human Life PAC provided copies of prior endorsement documents.

Petitioners state that they intend to engage in political advertising as defined by RCW 42.17A.320 and intend to exclude a candidate’s “self-stated party preference” “from at least some of their ‘political advertising.’” They made no statement concerning what might trigger inclusion or exclusion of the information. They also claim that including the “self-stated party preference” interferes with their pro-life message. The reason for this claim is HLW believes there has been a “substantial deterioration of the public’s view of both major parties.” HLW “prefers that its social and political messages not be tainted by association with institutions with such negative public perceptions.”

### **HLW’s Stated Uncertainty About Application of RCW 42.17A.320**

HLW states that it is unclear whether it is required to include a candidate’s “self-stated party preference” on any of its political advertising under RCW 42.17A.320. It bases its confusion and uncertainty on its comparison of the first and last sentences of RCW 42.17A.320(1). HLW contends that because the word “all” is not contained in the last sentence, it could be construed as only requiring the party or independent preference requirement on speech sponsored by the candidate who has expressed the preference and not on all political advertising, such as advertising sponsored by non-candidates.

Additionally, HLW asserts that the “ongoing implementation of I-872” further creates uncertainty about its responsibilities under RCW 42.17A.320. It appears to base this concern on what it claims is confusion between designation of party “affiliation” (under the former state primary system) and party “preference” under the top two primary system. Finally, HLW asserts that it is “left uncertain whether omitting candidate party preference will render its political speech false” under RCW 42.17A.335 subjecting it to enforcement proceedings and potential criminal referral under RCW 42.17A.750.

On HLW’s behalf, Mr. White argues that to force HLW to include a candidate’s “self-stated party preference” in its political advertising constitutes a violation of HLW’s First Amendment speech rights. He argues that a candidate’s statement of party or independent preference is a voluntary candidate position and as such the candidate’s political message. He argues that compelling HLW to include another’s political message in HLW’s own speech is a constitutional violation.

Finally, HLW states that a binding declaratory order approving of HLW’s intended action in omitting any reference to a candidate’s party preference will have no adverse effect on anyone else including the general public. HLW asserts that it wishes to avoid the risk of violating these statutes and being subject to any attendant fines or penalties. Therefore, HLW requests a resolution of the application of RCW 42.17.320, .335, and .750(2) to its intended action.



### **Additional Facts Developed by PDC Staff**

As a result of the original petition, PDC staff sought additional clarification from Petitioners through their counsel. The following is additional information provided by HLW and obtained by staff:

1. HLW believes that the issuance of a binding declaratory order in its favor will not harm any specific person or the general public.
2. HLW has included a candidate's "self-stated party preference" in its political advertising over the past five years.
3. HLW believes the Commission rules "equate 'party preference' with 'party affiliation' by permitting candidates' self-stated preferences to be represented by 'official symbols or logos adopted by the state committee of the party...'"
4. HLW has not had contact with PDC staff inquiring about the issues raised in the petition or its stated confusion about the applicability of the statute to its intended actions.
5. HLW has no current plan to publish political advertising in county or local partisan races; the current controversy it claims exists because of activity related to state-wide partisan and state legislative candidates.
6. HLW believes that "[n]o other person has a legal or regulatory interest in the non-libelous content" of HLW's political speech.
7. The laws regulating elections in Washington define the content of the state's declaration of candidacy form. RCW 29A.24.031 provides as follows:  
A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:  
...  
(3) A place for the candidate to state a party preference, if the office is a partisan office;
8. The Secretary of State's rule applicable to the declaration of party preference (WAC 454-215-120) states as follows:
  - (1) On a declaration of candidacy, a candidate for partisan congressional, state, or county office may state his or her preference for a political party, or not state a preference. The candidate may use up to sixteen characters for the name of the political party. A candidate's party preference, or the fact that the candidate states no preference, must be printed with the candidate's name on the ballot and in any voters' pamphlets printed by the office of the secretary of state or a county auditor's office.
  - (2) If a candidate does not indicate a party that he or she prefers, then the candidate has stated no party preference and is listed as such on the ballot and in any voters' pamphlets.

...

(4) A candidate's preference may not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. If the name of the political party provided by the candidate implies that the candidate is nominated or endorsed by a political party, or that a political party approves of or associates with that candidate, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited, or rejected and replaced with "states no party preference."

### **Staff Analysis and Recommendations**

HLW's request for a binding declaratory order contains several different issues which will be address separately below.

#### **1. RCW 42.17A.320(1)**

By way of history, state law has long required political advertising to include identification of a candidate's party affiliation (prior to 2005) or the candidate's "party or independent designation" (since 2005). The state Legislature adopted the current language contained in RCW 42.17A.320(1) in 2005 as part of its overhaul of state campaign finance laws, which added the electioneering communications laws. A review of the bill reports related to this enactment provides no insight into the purpose of the change to the last sentence of the statute.<sup>1</sup>

##### **a. Constitutionality of RCW 42.17A.320 as applied to HLW's intended actions**

From the face of its petition and subsequent communications, HLW appears to challenge the constitutionality of requiring it, pursuant to RCW 42.17A.320(1), to include a candidate's identified party or independent preference in HLW's political advertising. HLW argues that it would be a constitutional violation of its right to free speech (*i.e.*, "speaker autonomy") to so require. If this is HLW's request, the Commission should reject this part of the petition because the Commission is prohibited from determining the constitutionality of the state law it administers. *Bare v. Gorton*, 84 Wn.2d 380, 382–83, 526 P.2d 379 (1974) ("An administrative body does not have authority to determine the constitutionality of the law it administers; only the courts have that power."); *Prisk v. City of Poulsbo*, 46 Wn. App. 793, 798, 732 P.2d 1013 (1987).

**Staff Recommendation: Staff recommends the Commission decline to issue a binding declaratory order addressing the constitutionality of RCW 42.17A.320(1) as applied to HLW.**

##### **b. Application of RCW 42.17A.320(1) to political advertising sponsored by non-candidates.**

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<sup>1</sup> The final sentence in previous RCW 42.17.510 read: "The party with which a candidate files shall be clearly identified in political advertising."

HLW also contends that the last sentence of RCW 42.17A.320(1) should only be applicable to candidate-sponsored political advertising. (See petition at 5). HLW's reading would, in essence, eliminate any requirement that sponsors of political advertising, electioneering communications or independent expenditures, who are not candidates, include the candidates' identified party or independent preference. However, a plain reading of the statute and the definitions of political advertising, electioneering communications, and independent expenditures does not support such a limited application.

A candidate cannot make independent expenditures about him/herself. RCW 42.17A.005(26). Also, the definition of electioneering communications specifically excludes "An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office." RCW 42.17A.005(19)(b)(viii). As a result, the sentence at issue here is applicable to non-candidate-sponsored activities.

**Staff Recommendation: Staff recommends the Commission decline to issue a binding declaratory order as requested by Petitioners on that basis that no uncertainty necessitating resolution exists and because RCW 42.17A.320(1) plainly applies to all political advertising, including electioneering communications and independent expenditures sponsored by non-candidates.**

#### c. Application of WAC 390-18-020

HLW claims uncertainty and confusion exists because WAC 390-18-020(3) contains an outdated reference to "party affiliation." What HLW has overlooked for purposes of this review is that the Commission updated definitions that apply to its rules. The definition of "party affiliation" now uses the same terminology for identified party or independent preference as the statute does. See *above* definition of WAC 390-05-274 effective 2/4/12 ("These three rules address the unintended discordance between Initiative 872 – Top Two Primary and RCW 42.17" from minutes of January 27, 2011 Commission meeting). To the extent WAC 390-18-020(3) uses the term "party affiliation," it means the candidate's self-stated party or independent preference.

Importantly, Petitioners have not attempted to deny that WAC 390-18-020 plainly applies to *all* sponsors of political advertising, electioneering communications, and independent expenditures, *without exception*.

**Staff Recommendation: Staff recommends the Commission decline to issue a binding declaratory order as requested by Petitioners because there is no uncertainty necessitating resolution concerning WAC 390-18-020 given the Commission's subsequent definition.**

## 2. RCW 42.17A.335

Next, HLW requests the Commission issue a binding declaratory order that says the omission of candidates' self-stated party or independent preference is not a false statement under RCW 42.17A.335.

Although RCW 42.17A does not define "false statement," a false statement is normally construed as a statement which is not true. The dictionary defines a "statement" as a definite expression or announcement of something in speech or in writing. RCW 42.17A.335, in relevant part, applies to political advertising or electioneering communications that contain a false statement of material fact about a candidate for public office. In light of its context and purpose, staff believes RCW 42.17A.335 requires a definite statement that is reviewable for its veracity and materiality before the statute is implicated or a false advertising violation may be established. Under the scenario posed by HLW, it intends to **omit** information about candidates' party preferences, rather than to make a statement, expression or announcement about the candidates' preferences. As such, it is difficult to see how RCW 42.17A.335 would be implicated. The Commission could advise sponsors of political advertising that a violation of RCW 42.17A.335 requires an actual statement that is subject to testing for its truth or falsity along with its materiality.

**Staff Recommendation: Staff recommends the Commission consider issuing an order declaring that RCW 42.17A.335 applies only to actual statements or expressions that can be evaluated for their truth or falsity and materiality.**

## 3. RCW 42.17A.750

Finally, HLW requests a binding declaratory order, asking the Commission to say that if it intentionally omits a candidate's self-stated party or independent preference, that it will not be subject to referral for criminal prosecution. RCW 42.17A.750(2) provides that the Commission may refer a case for criminal prosecution in a variety of contexts, all of which require showing violations with "actual malice."

Actual malice is different than acting with "intent." The two terms have separate and distinct meanings and comprise different legal standards for purposes of evaluating the nature of a violation. The Act defines actual malice as to "act with knowledge of falsity or with reckless disregard as to truth or falsity." RCW 42.17A.005(1). In the context of HLW's request, it is not suggesting that it is going to make a statement with knowledge of its falsity or reckless disregard for the truth of its expression. Rather, HLW wants to exclude a statement from its political advertising. While HLW's action in purposefully omitting required information concerning candidates' self-stated preferences would likely be an intentional violation of RCW 42.17A.320(1) and WAC 390-18-020, for the reasons explained above, the violation does not involve acting with knowledge of falsity or reckless disregard as to truth or falsity. The plain language of RCW 42.17A.750(2) addresses only violations committed with actual malice and not all intentional, willful, or

*Memorandum to Commissioners*

*Re: Petition for Declaratory Order Regarding Party or Independent Preference Identification*

*Staff Recommendation*

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purposeful violations, which involve acting with a specific intent to violate a law or with deliberate ignorance of the law's requirements.

In the event that HLW is concerned about subsection 2(c) of the referral statute, this provision applies to documents that are filed, registered, or recorded with the Commission. The law does not require any political advertising to be filed, registered, or recorded with the Commission.

**Staff Recommendation: Staff recommends the Commission issue an order declaring that, as a matter of statutory interpretation, RCW 42.17A.750(2) does not apply to Petitioners' specified circumstances.**



# Livengood Alskog

John J. White, Jr.  
white@livengoodlaw.com

May 15, 2014

*Via regular first class mail and electronic mail: andrea.doyle@pdc.wa.gov*

Andrea McNamara Doyle  
Executive Director  
Public Disclosure Commission  
711 Capitol Way, Room 206  
P.O. Box 40908  
Olympia, WA 98504-0908

**Re: Petition for Declaratory Order**

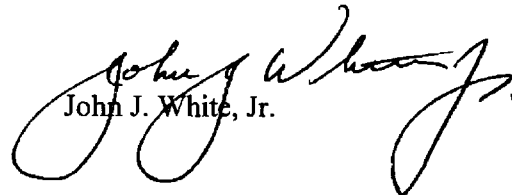
Dear Ms. McNamara Doyle:

Accompanying this letter is a Petition for Declaratory Order on behalf of Human Life of Washington and Human Life PAC. The petitioners seek a binding Declaratory Order from the Commission on the two questions identified in the petition. The petition is submitted under the authority of WAC 390-12-250. Also enclosed is a "Return Copy" of the first page of the petition and an SASE for your convenience in returning a filed copy to me.

If you need additional information, please do not hesitate to contact me.

Very truly yours,

LIVENGOOD ALSKOG, PLLC

  
John J. White, Jr.

JJW/lw

Enclosure: a/s

cc: Dan Kennedy (w/encl.)

BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

In Re:

HUMAN LIFE OF WASHINGTON,  
HUMAN LIFE PAC  
Petitioners.

NO. \_\_\_\_\_

PETITION FOR DECLARATORY  
ORDER

Human Life of Washington and Human Life PAC petition the Commission for a binding Declaratory Order to resolve uncertainty regarding Washington's political advertising statute as it applies after the implementation of Initiative 872 ("I-872") and the effect of candidates' self-stated "preference" for a political party on the content of printed or broadcast political speech by others.

**BACKGROUND OF PETITIONERS AND RELEVANT FACTS**

Human Life of Washington is an advocacy organization dedicated to re-establishing respect for life from conception to natural death throughout American culture. It does so through public education campaigns in print and over the internet – bringing discussion of issues both at home and abroad that touch on the inherent dignity of every human person. For decades, Human Life of Washington has taken positions on a range of issues relating to "life" including pro-life advocacy, opposition to the death penalty, and support for improved palliative care but not

euthanasia. Its positions cut across traditional partisan lines. Respect for the dignity of each human person transcends partisanship.

Human Life of Washington is organized under Section 501(c)(4) of the Internal Revenue Code as a social welfare organization. It is connected to over thirty local Human Life groups across the state. In general, it does not engage in candidate endorsements, or produce large scale political advertising.

Human Life PAC is a Washington state political committee registered with the PDC. From time to time it undertakes electoral expenditures on life issues. It opposed each of the assisted suicide initiatives presented to the voters. It issues periodic reports on votes taken by legislators on “life” issues and makes endorsements and candidate recommendations based on the candidates’ support for life principles. It makes its endorsements in part based on candidate responses to a questionnaire circulated to candidates. Human Life PAC has endorsed both Democratic and Republican candidates for partisan office. The PAC issues press releases on its endorsements usually within 60 days of the primary and general election. The purpose of the releases is to inform the public, press and other political actors of those office-seekers, regardless of party affiliation, who are committed to support for life principles and to encourage their election. Attached as **Exhibit A** is a copy of Human Life PAC’s endorsements in 2013 special elections for state legislature. **Exhibit B** is a copy of the PAC’s endorsed candidate list for the 2012 general election and primary election. The PAC endorsed candidates who stated both Republican and Democratic Party preferences.

**Hyperpartisanship interferes with the pro-life message.**

At both the state and national level it is widely recognized that bridging the divide between candidates elected as Republicans or Democrats has become increasingly difficult. Literature describes the political climate as one of “hyperpartisanship.” Voting behaviors are



likewise reported to have hardened, with fewer voters supporting candidates affiliated with the “other” party.

**Majorities of Americans view the two parties unfavorably.**

The partisan rancor of the last several years has resulted in substantial deterioration of the public’s view of both major parties. Gallup recently reported that the Republican Party is viewed favorably by only 28% of survey respondents. The Democratic Party was viewed unfavorably by 49% of survey respondents. Human Life prefers that its social and political messages not be tainted by association with institutions with such negative public perceptions. The Gallup Survey results are attached as **Exhibit C**.

**Candidates’ party preferences on the ballot no longer connote affiliation with their “preferred” party.**

The state has maintained, consistently, since the adoption of I-872 that candidates’ statements of party preference are not statements of affiliation, endorsement or nomination by a political party. Instead, they represent only the candidate’s personal preference. Forced inclusion of candidates’ self-stated “preference” for a political party, Democratic, Republican, or even a “Good Budweiser Party” interferes with Human Life’s right to speaker autonomy. Party preference is irrelevant to Human Life’s political and social speech and objectives, but under current law, it appears its election-related speech must include a candidate’s “speech” on this issue.

Candidates’ “party preference” may change, even if their position on the core “life” issues does not. For example, in 2012, Mark Miloscia ran for State Auditor stating a Democratic Party preference. This was the same “party preference” he stated in prior elections. Human Life endorsed Mr. Miloscia in 2012, as it had in prior elections because of his views on life issues, not his party affiliation or “preference.” In 2014, Mr. Miloscia has indicated he will seek office

again, but state a Republican Party “preference.” Form C-1, PC ([www.pdc.wa.gov](http://www.pdc.wa.gov), last visited April 8, 2014). If Human Life or Human Life PAC endorses his candidacy, or engages in public communications that refer to Mr. Miloscia, it would be for his stand on life issues, not party.

#### **PLANNED COMMUNICATIONS FOR 2014**

Both the PAC and Human Life of Washington plan to disseminate materials that would be “political advertising” as defined by RCW 42.17A.320. Both the PAC and Human Life of Washington intend to exclude candidates’ party preference from at least some of their “political advertising.”

#### **ISSUES PRESENTED FOR DECLARATORY RULING**

Human Life and Human Life PAC seek a binding Declaratory Order that omitting candidates’ self-stated party preference from 2014 “political advertising” will not constitute a violation of RCW 42.17A.320(1) or WAC 390-18-020.

Human Life and Human Life PAC are concerned additionally that intentional omission of candidates’ self-stated party preference from political advertising might be construed by the PDC as a statement that the candidate has no self-stated party preference, and expose the organizations and their volunteers to criminal prosecution under RCW 42.17A.750’s “actual malice” standard. Human Life and Human Life PAC seek a Binding Declaratory Order that omitting candidates’ self-stated party preference will not constitute “actual malice” under RCW 42.17A.750(2)(a).

#### **ANALYSIS**

##### **Jurisdiction**

The Public Disclosure Commission has jurisdiction over this Petition for Declaratory Order under RCW 34.05.240 and WAC 390-12-250.

**Reasons a Declaratory Order is appropriate.**

There is uncertainty whether the requirement that a candidate's self-stated party preference must be included on only the candidate's political advertising or whether the Commission will interpret the last sentence of RCW 42.17A.320(1) to extend to political advertising by persons other than the candidate. The first sentence of RCW 42.17A.320(1) requires "all written political advertising" to include the sponsor's name and address. However, the descriptor "all" does not appear in the last sentence.

There is an actual controversy, not a mere advisory opinion, because the petitioners intend to publish during the upcoming election cycle materials that would be considered "political advertising" under the statute and intend to omit candidates' self-stated party preference because it interferes with the petitioners' pro-life, rather than partisan, message. If the descriptor "all" is imported from the first to last sentence of the political advertising statute, then petitioners must include the candidate's party preference or face civil or criminal penalty under RCW 42.17A.750. Even without the potential for criminal prosecution, the maximum civil penalty represents a substantial portion of Human Life PAC's annual receipts, as shown in its filings with the PDC.

Uncertainty exists because of the inconsistent language used in RCW 42.17.320 and because of the ongoing implementation of I-872. Washington's election and campaign finance system includes elements of actual party affiliation, as well as treating party preference as a mere self-statement. The Commission has provided no additional guidance or clarification regarding inclusion of candidates' self-statement of party preference in independent political speech, even though this is the fourth election cycle implementing I-872.

The addition of criminal penalties when Ch. 42.17A RCW was recodified creates uncertainty that adversely affects the petitioners. The Commission has not adopted regulations or provided other guidance regarding the “actual malice” standard. Without the Declaratory Order, petitioners will be left uncertain whether omitting candidate party preference will render their political speech false under the statutory regime.

The petitioners are adversely affected by the possibility they may be required to include candidate self-stated party preferences in their communications. Requiring political speech by the candidates be included in petitioners’ speech violates the rule of speaker autonomy. This situation would be analogous to the requirement struck down by the United States Supreme Court in *Pacific Gas & Elec. v. Publ. Util. Comm’n*, 475 U.S. 1, (1986) (forced inclusion of another’s message violates the First Amendment). Compelled speech about candidates’ party preference represents a real injury which would adversely affect the petitioners.

[W]e disagree with the [ . . . ] view that [speakers] can still speak by changing what they say to avoid mentioning candidates, [internal citation omitted]. That argument is akin to telling Cohen that he cannot wear his jacket because he is free to wear one that says “I disagree with the draft,” *cf. Cohen v. California*, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971), or telling 44 Liquormart that it can advertise so long as it avoids mentioning prices, *cf. 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996). Such notions run afoul of “the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995).

*FEC v. Wisconsin Right to Life*, 551 U.S. 449, 477 (2007). *Accord Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

The risk of substantial fine or criminal prosecution for not repeating “party preference” similarly constitutes an adverse effect. *See e.g. Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995) (the First Amendment protects the right to decide

what speech to include and what speech to exclude); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988) (explaining that the freedom of speech guaranteed by the First Amendment comprises the decision of both what to say and what *not* to say). The petitioners do not want to speak about candidates' party preferences. They wish to speak about protecting life. It would be no defense to assert that candidates' self-stated party preference is important because may affect the public's perception of the candidates about whom petitioners want to speak. That is the very reason petitioners want the ability to *not* speak about partisanship.

Issuing the Declaratory Order will have no adverse effect on others or the general public. There is no constitutionally cognizable interest for either a candidate or any other person in compelling the inclusion of a particular message (*e.g.* a self-stated party preference) in the political speech of another.

The binding Declaratory Order would have the same effect as an adjudicative proceeding before the Commission. RCW 34.05.250(8). The binding order, by resolving uncertainty about the post-I-872 construction of the political advertising statute, would protect petitioners from action by the Commission or by political opponents who might otherwise bring a "private attorney general" action against petitioners, either of which could be expensive to defend. The specter of enforcement action itself has a chilling effect on political speech where the statutory boundaries are uncertain.

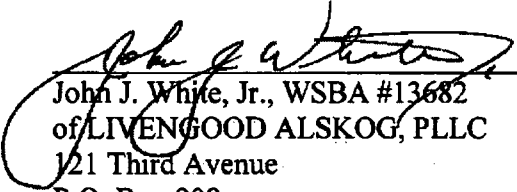
## CONCLUSION

The Commission should enter a binding Declaratory Order holding that:

1. Omission of candidates' self-stated party preference under I-872 from political advertising sponsored by Human Life and Human Life PAC will not constitute a violation of RCW 42.17A.320(1) or WAC 390-18-020; and

2. Omission of candidates' self-stated party preference under I-872 from political advertising is not a false statement and will not expose Human Life and Human Life PAC to criminal prosecution under RCW 42.17A.750's actual malice standard.

DATED this 15th day of May, 2014



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Attorneys for Petitioner

**EXHIBIT A**

HUMAN LIFE POLITICAL ACTION COMMITTEE  
14400 Bel-Red Road, Suite 207, Bellevue, WA 98007 – 425-641-9345

Press Release: July 1, 2013

Contact: Gerri (425) 681-8761 [agduz@comcast.net](mailto:agduz@comcast.net)

CANDIDATE ENDORSEMENTS and SURVEY RESPONSES  
HUMAN LIFE POLITICAL ACTION COMMITTEE, Primary, 2013

VOTE TUESDAY, August 6, 2013 Primary Election

Human Life Political Action Committee has surveyed candidates for the State Legislature. **More endorsements may be made as surveys are returned.**

**We urge citizens to review all candidates listed below. Some candidates have a complete pro-life position and have received the Human Life PAC endorsement. Other candidates responding to the survey are in substantial or partial agreement with Human Life PAC's pro-life positions, and they deserve your consideration.**

Human Life PAC endorses pro-life incumbents in races where the incumbent faces a pro-life challenger. When a previously endorsed candidate and current office holder runs for a higher/different office, that candidate is treated as an incumbent, and receives the endorsement.

The care of all human life and happiness, and not their destruction is the first and only legitimate object of good government," Thomas Jefferson. The Declaration of Independence affirms that Life is first necessary before liberty or the pursuit of happiness can exist. Talk of human rights is but a charade, if it is only for the "chosen" of the human family.

Based on qualifying criteria, Human Life PAC has endorsed candidates who assent to the truth that all human beings are valuable – the woman, her preborn child, those with disabilities, the elderly and the terminally ill.

CODE: D = Democrat; R = Republican

STATE LEGISLATIVE CANDIDATES

[Endorsed candidates are indicated by YES in the endorsed column.]  
Candidates who are in substantial or partial agreement are included in this list.

District	Position	Endorsed	Candidate	PARTY
7th	Senate	Yes-Joint Endorsement	Michael Brunson	R
7th	Senate	Yes-Joint Endorsement	John Smith	R
26th	Senate	Yes	Jan Angel	R



**EXHIBIT B**

**LifePac.org**  
*Family Friendly Candidates*

Life Issues / Family Ethics Political Action Committee  
of Southwest Washington

## 2012 Human Life PAC Endorsements



**HUMAN LIFE**  
WASHINGTON

Human Life PAC Website

### 2012 General Election Endorsements

HUMAN LIFE POLITICAL ACTION COMMITTEE

14400 Bel-Red Road, Suite 207, Bellevue, WA 98007 – 425-641-9345

Press Release: September 14, 2012

Contact: Gerri (425) 681-8761 [agduz@comcast.net](mailto:agduz@comcast.net)

### CANDIDATE ENDORSEMENTS and SURVEY RESPONSES HUMAN LIFE POLITICAL ACTION COMMITTEE, 2012

**VOTE TUESDAY, NOVEMBER 6, 2012**

Human Life Political Action Committee has surveyed candidates for the U. S. House, Senate, and the State Legislature. More endorsements may be made as surveys are returned.

**We urge citizens to review all candidates listed below. Some candidates have a complete pro-life position and have received the Human Life PAC endorsement. Other candidates responding to the survey are in substantial or partial agreement with Human Life PAC's pro-life positions, and they deserve your consideration.**

Human Life PAC endorses pro-life incumbents in races where the incumbent faces a pro-life challenger. When a previously endorsed candidate and current office holder runs for a higher/different office, that candidate is treated as an incumbent, and receives the endorsement.

The care of all human life and happiness, and not their destruction is the first and only legitimate object of good government," Thomas Jefferson. The Declaration of Independence affirms that **Life** is first necessary before liberty or the pursuit of happiness can exist. Talk of human rights is but a charade, if it is only for the "*chosen*" of the human family.

Based on qualifying criteria, Human Life PAC has endorsed candidates who assent to the truth that all human beings are valuable – the woman, her preborn child, those with disabilities, the elderly and the terminally ill.

**CODE: D = Democrat; R = Republican**

**NATIONAL RIGHT TO LIFE PAC ENDORSES MITT ROMNEY  
On April 12, National Right to Life PAC announced its endorsement  
of Mitt Romney for President of the United States.**

**Comparison of Presidential Candidates on the Life Issues  
<http://www.nrlpac.org/pdf/POTUS%20Comparison.pdf>**

\*\*\*

**COMPARISON ONLY OF CANDIDATES FOR US SENATE**

**MICHAEL BAUMGARTNER – R**

U.S. Senate candidate Michael Baumgartner, the Republican challenging Sen. Maria Cantwell, said his views on abortion are closely aligned with the national party. He opposes abortion, with virtually no exceptions. As for Baumgartner's own position: "I am still a Catholic. I still believe life begins at conception. That is consistent with my Catholic beliefs. And I believe we must protect life."

Baumgartner added: "Whenever abortion comes up, we get questioned about the exceptions, but no one ever questions the extreme positions on the other side, late-term abortions, no on parental notification."

Source: <http://publicola.com/2012/08/20/one-question-for-gop-senate-candidate-michael-baumgartner/>

**MARIA CANTWELL – D**

**Endorsed by major groups which favor abortion.**

[www.prochoicewashington.org/in-our-state/vote-pro-choice.shtml](http://www.prochoicewashington.org/in-our-state/vote-pro-choice.shtml)  
 and [www.ppvotesnw.org/elections-and-politics/candidate-endorsements/](http://www.ppvotesnw.org/elections-and-politics/candidate-endorsements/)

**US HOUSE OF REPRESENTATIVES**

National Right to Life has endorsed the following incumbents who compiled a **100% pro-life voting record in the current 112th Congress:**

- Rep. Jaime Herrera Beutler - Cong District 3
- Rep. Doc Hastings - Cong District 4
- Rep. Cathy McMorris Rodgers - Cong Dist 5
- Rep. Dave Reichert - Cong District 8

**HUMAN LIFE PAC HAS ENDORSED THE FOLLOWING CONGRESSIONAL CANDIDATES**

[Endorsed candidates are indicated by YES in the endorsed column.]

	District	Endorsed	Candidate	Party
1	Yes		John Koster	R
2	Yes		Dan Matthews	R
3	Yes		Jamie Herrera Beutler	R
4	Yes		Doc Hastings	R
5	Yes		Cathy McMorris Rodgers	R
10	Yes		Dick Muri	R

**COMPARISON ONLY OF CANDIDATES FOR GOVERNOR**  
**ROB MCKENNA - R**

August 21, 2012, *Seattle Times* – By jim brunner and Emily Heffter *Seattle Times* staff reporters

Washington's Republican gubernatorial candidate, **Rob McKenna** ... says his position on abortion is the same one

he's had since he ran for the Metropolitan King County Council in the 1990s. While he personally opposes abortion,

he said, "I support a woman's right to choose under the laws in this state."

**JAY INSLEE - D**

**Endorsed by major groups which favor abortion.**

[www.prochoicewashington.org/in-our-state/vote-pro-choice.shtml](http://www.prochoicewashington.org/in-our-state/vote-pro-choice.shtml)  
 and [www.ppvotesnw.org/elections-and-politics/candidate-endorsements/](http://www.ppvotesnw.org/elections-and-politics/candidate-endorsements/)

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**STATE SUPREME COURT – Richard Sanders, Position 9 – Endorsed**

**STATE TREASURER – Sharon Hanek , R – Endorsed**

**STATE AUDITOR – James Watkins, R – Endorsed**

\*\*\*

**STATE LEGISLATIVE CANDIDATES**

**[Endorsed candidates are indicated by YES in the endorsed column.]**  
 Candidates who are in substantial or partial agreement are included in this list.



<b>District</b>	<b>Position</b>	<b>Endorsed</b>	<b>Candidate</b>	<b>PARTY</b>
2	Senate	Substantial agreement	Randi Becker	R
3	Pos. 1	YES	Tim Benn	R
3	Pos. 2	Substantial agreement	Dave White	R
3	Senate	YES	Nancy McLaughlin	R

4	Pos. 1	YES	Larry Crouse	R
4	Pos. 2	YES	Matt Shea	R
4	Senate	YES	Mike Padden	R
6	Pos. 2	YES	Jeff Holy	R
7	Pos. 1	YES	Shelly Short	R
8	Pos. 1	YES	Brad Klippert	R
8	Pos. 2	YES	Larry Haler	R
10	Pos. 2	YES	Dave Hayes	R
11	Pos. 2	YES	Sarah Sanoy-Wright	R
11	Senate	YES	Kristin Thompson	R
12	Pos. 1	YES	Cary Condotta	R
13	Pos. 1	YES	Judy Warnick	R
13	Pos. 2	Partial agreement	Matt Manweller	R
15	Pos. 1	YES	Bruce Chandler	R
15	Pos. 2	YES	David Taylor	R
16	Pos. 1	YES	Mary Ruth Edwards	R
17	Pos. 1	YES	Julie Olson	R

17	Pos. 2	YES	Paul Harris	R
17	Senate	YES	Don Benton	R
18	Pos. 1	YES	Brandon Vick	R
18	Pos. 2	YES	Liz Pike	R
18	Senate	YES	Ann Rivers	R
19	Pos. 1	YES	Dixie Kolditz	R
19	Senate	YES	Rick Winsman	R
20	Pos. 2	YES	Ed Orcutt	R
20	Senate	YES	Dan Swecker	R
23	Pos. 2	YES	James Olsen	R
24	Senate	YES	Jim Hargrove	D
25	Pos. 2	Substantial agreement	Hans Zeiger	R
25	Senate	YES	Bruce Dammeier	R
26	Pos. 1	YES	Jan Angel	R
26	Pos. 2	YES	Doug Richards	R
27	Pos. 1	YES	Steven Cook	R
28	Pos. 1	YES	Steve O'Ban	R
28	Pos. 2	YES	Paul Wagemann	R

28	Senate	YES	Mike Carrell	R
30	Pos. 1	YES	Linda Kochmar	R
31	Pos. 1	YES	Cathy Dahlquist	R
32	Pos. 1	YES	Randy Hayden	R
35	Pos. 2	YES	Drew MacEwen	R
38	Pos. 2	Partial Agreement	Michael Casey	R
39	Pos. 1	YES	Dan Kristiansen	R
39	Pos. 2	YES	Elizabeth Scott	R
39	Senate	YES	Kirk Pearson	R
40	Senate	Partial Agreement	John Swapp	R
42	Pos. 1	YES	Jason Overstreet	R
42	Pos. 2	YES	Vincent Buys	R
44	Pos. 1	YES	Mark Harmsworth	R
47	Pos. 1	YES	Mark Hargrove	R
47	Pos. 2	YES	Andy Massagli	R



49	Pos. 1	YES	Debbie Peterson	R
49	Pos. 2	YES	Carolyn Crain	R
49	Senate	YES	Eileen Qutub	R

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## 2012 HLPAC Primary Election Endorsements:

**STATE SUPREME COURT – Richard Sanders, Position 9 – Endorsed**

**GOVERNOR – Shahram Hadian - R – Endorsed**

**ATTORNEY GENERAL – Stephen Pidgeon – R – Endorsed**

**AUDITOR**

**\*\* Mark Miloscia, D – Qualifies and Endorsed**

**James Watkins, R – Qualifies**

**US SENATE – Dr. Art Coday R – Endorsed**

**US HOUSE OF REPRESENTATIVES**

District	Position	Endorsed	Candidate	Party	Comments
1		Yes	John Koster	R	
2		Yes	Dan Matthews	R	Joint Endorsement
2		Yes	John Shoop	R	Joint Endorsement
3		Yes	Jamie Herrera	R	
4		Yes	Doc Hastings	R	

4			Jamie Wheeler	R	Substantial Agreement
4			Mohammed Said	D	Partial Agreement
5		Yes **	Cathy McMorris Rodgers	R	
5			Randall Yearout	R	Complete Agreement
6		Yes	Jesse Young	R	
6			Stephen A Brodhead	R	Substantial Agreement
6			David (Ike) Eichner	R	Substantial Agreement
8		Yes	Keith Swank	R	
8			Ernest Huber	R	Substantial Agreement
10		Yes	Dick Muri	R	
10			Stan Flemming	R	Partial Agreement

### STATE LEGISLATIVE CANDIDATES

District	Position	Endorsed	Candidate	Party
1	Pos. 1	YES	Brian Travis	R
2	Senate	Substantial Agreement	Randi Becker	R
3	Pos. 1	YES	Tim Benn	R
3	Pos. 2	Substantial Agreement	Dave White	R
3	Senate	YES	Nancy McLaughlin	R
4	Pos. 1	YES	Larry Crouse	R
4	Pos. 2	YES	Matt Shea	R
4	Senate	YES	Mike Padden	R
6	Pos. 2	YES	Jeff Holy	R
7	Pos. 1	YES	Shelly Short	R
8	Pos. 1	YES	Brad Klippert	R
8	Pos. 2	YES	Larry Haler	R
10	Pos. 2	YES	Dave Hayes	R
11	Pos. 2	YES	Sarah Sanoy-Wright	R
11	Senate	YES	Kristin Thompson	R
12	Pos. 1	YES	Cary Condotta	R
13	Pos. 1	YES	Judy Warnick	R
13	Pos. 2	Partial Agreement	Matt Manweller	R

15	Pos. 1	YES	Bruce Chandler	R
15	Pos. 2	YES	David Taylor	R
16	Pos. 1	YES	Mary Ruth Edwards	R
17	Pos. 1	YES	Julie Olson	R
17	Pos. 2	YES	Paul Harris	R
17	Senate	YES	Don Benton	R
18	Pos. 1	YES	Brandon Vick	R
18	Pos. 2	YES	Liz Pike	R
18	Senate	YES	Ann Rivers	R
19	Pos. 1	YES	Dixie Kolditz	R
19	Senate	YES	Rick Winsman	R
20	Pos. 2	YES	Ed Orcutt	R
20	Senate	YES	Dan Swecker	R
23	Pos. 2	YES	James Olsen	R
24	Senate	YES	Jim Hargrove	D
25	Pos. 1	YES Joint Endorsement	Carole Sue Braaten	R
25	Pos. 1	YES Joint Endorsement	Michele Smith	R
25	Pos. 2	Substantial agreement	Hans Zeiger	R
25	Senate	YES	Bruce Dammeier	R
26	Pos. 1	YES	Jan Angel	R
26	Pos. 2	YES	Doug Richards	R
27	Pos. 1	YES	Steven Cook	R
28	Pos. 1	YES	Steve O'Ban	R
28	Pos. 2	YES	J. Paul Wagemann	R
28	Senate	YES	Mike Carrell	R
30	Pos. 1	YES Joint Endorsement	Linda Kochmar	R
30	Pos. 1	YES Joint Endorsement	Tony Moore	R
31	Pos. 1	YES	Cathy Dahlquist	R
32	Pos. 1	YES	Randy Hayden	R
35	Pos. 2	YES	Drew MacEwen	R
38	Pos. 1	Substantial Agreement	Sam Wilson	R
38	Pos. 2	Partial Agreement	Michael Casey	R
39	Pos. 1	Yes	Dan Kristiansen	R
39	Pos. 2	YES Joint Endorsement	Elizabeth Scott	R
39	Pos. 2	YES Joint Endorsement	Gregory Lemke	R

39	Pos. 2	YES Joint Endorsement	Robert Zimmerman	R
39	Senate	YES	Kirk Pearson	R
40	Senate	Partial Agreement	John Swapp	R
42	Pos. 1	YES	Jason Overstreet	R
42	Pos. 2	YES	Vincent Buys	R
44	Pos. 1	YES	Mark Harmsworth	R
47	Pos. 1	YES	Mark Hargrove	R
47	Pos. 2	YES	Andy Massagli	R
49	Pos. 1	YES	Debbie Peterson	R
49	Pos. 2	YES	Carolyn Crain	R
49	Senate	YES	Eileen Qutub	R

HLPAC endorsements retrieved 7/5/12 from [http://humanlife.net/view\\_reports.htm?repid=41](http://humanlife.net/view_reports.htm?repid=41)

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# **EXHIBIT C**

October 9, 2013

# Republican Party Favorability Sinks to Record Low

Falls 10 percentage points from September's 38%

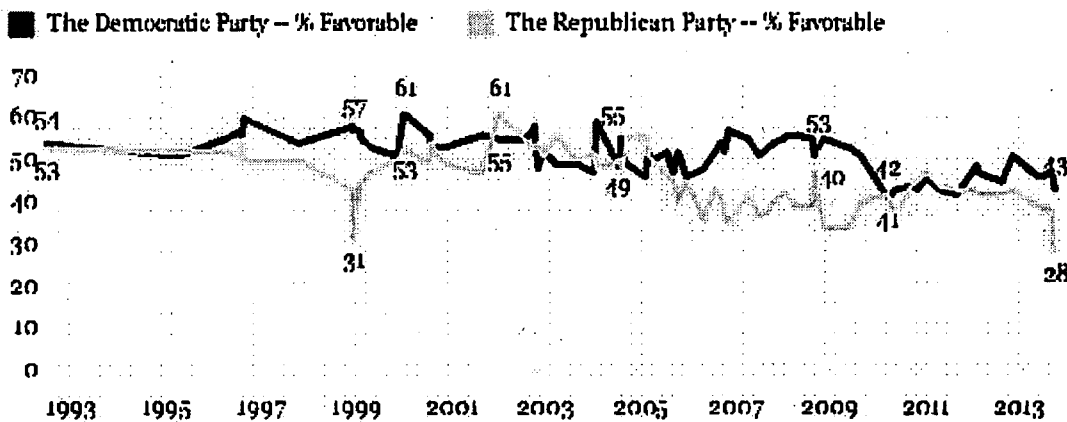
by Andrew Dugan

*This article is part of an ongoing series analyzing how the government shutdown and the debate over raising the debt ceiling are affecting Americans' views of government, government leaders, political parties, the economy, and the country in general.*

WASHINGTON, D.C. -- With the Republican-controlled House of Representatives engaged in a tense, government-shuttering budgetary standoff against a Democratic president and Senate, the Republican Party is now viewed favorably by 28% of Americans, down from 38% in September. This is the lowest favorable rating measured for either party since Gallup began asking this question in 1992.

## Republican and Democratic Party Favorables, 1992-2013

Next, we'd like to get your overall opinion of some people in the news. Please say if you have a favorable or unfavorable opinion of



GALLUP

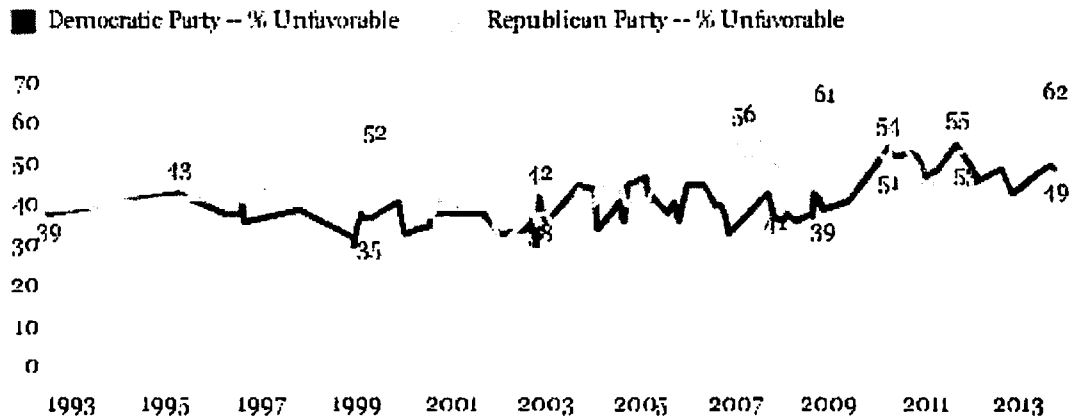
The Democratic Party also has a public image problem — although not on the same elephantine scale as that of the Republican Party -- with 43% viewing the Democratic Party favorably, down four percentage points from last month.

These findings come from a Gallup poll conducted Oct. 3-6 that followed the Oct. 1 partial government shutdown after lawmakers in Washington were unable to pass a spending plan for the federal government.

More than six in 10 Americans (62%) now view the GOP unfavorably, a record high. By comparison, nearly half of Americans (49%) view the Democratic Party unfavorably. Roughly one in four Americans see both parties unfavorably.

## Republican and Democratic Party Unfavorables, 1992-2013

Next, we'd like to get your overall opinion of some people in the news. ... Please say if you have a favorable or unfavorable opinion of



GALLUP

**GALLUP ANALYTICS:** [Sign up to learn how you can access Gallup's global database >](#)

### Republicans More Likely to See Own Party Unfavorably

Self-identified Republicans are more than twice as likely to view their own party unfavorably (27%) as Democrats are to see their own party unfavorably (13%). The GOP's unfavorable rating among Republicans is up eight points from September, compared with a one-point rise in Democratic Party unfavorables among Democrats. These findings may be consistent with the widely circulated narrative that the Republican Party is internally splintered on how best to handle the budgetary negotiations.

Independents, meanwhile, remain unimpressed with both parties: Thirty-two percent view the Democratic Party favorably, while 27% view the Republican Party favorably.

### Implications

As the two major political parties are locked in a high-stakes political imbroglio that has resulted in a government shutdown and may cause the first-ever default on the national debt, Americans are more likely to view both parties negatively than positively. The Republican Party is clearly taking a bigger political hit from Americans thus far in the unfolding saga, with 28% rating the GOP favorably -- a loss of 10 points from only a month ago. This contrasts with previous Gallup findings from just before the government shutdown showing the Republican Party making up ground on a few key issues. Thus, the Republican Party's current strategy in the fiscal debates may not be paying dividends.

For their part, the Democratic Party has also seen its favorability rating drop since September, though by a smaller four points. Moreover, both parties are down from where they were just after the 2012 elections, indicating the many political battles of 2013 have had a corrosive effect on the two parties' images.

### Survey Methods

Results for this Gallup poll are based on telephone interviews conducted Oct. 3-6, 2013, on the Gallup Daily tracking

survey, with a random sample of 1,028 adults, aged 18 and older, living in all 50 U.S. states and the District of Columbia.

For results based on the total sample of national adults, one can say with 95% confidence that the margin of sampling error is  $\pm 4$  percentage points.

Interviews are conducted with respondents on landline telephones and cellular phones, with interviews conducted in Spanish for respondents who are primarily Spanish-speaking. Each sample of national adults includes a minimum quota of 50% cellphone respondents and 50% landline respondents, with additional minimum quotas by region. Landline and cell telephone numbers are selected using random-digit-dial methods. Landline respondents are chosen at random within each household on the basis of which member had the most recent birthday.

Samples are weighted to correct for unequal selection probability, nonresponse, and double coverage of landline and cell users in the two sampling frames. They are also weighted to match the national demographics of gender, age, race, Hispanic ethnicity, education, region, population density, and phone status (cellphone only/landline only/both, and cellphone mostly). Demographic weighting targets are based on the March 2012 Current Population Survey figures for the aged 18 and older U.S. population. Phone status targets are based on the July-December 2011 National Health Interview Survey. Population density targets are based on the 2010 census. All reported margins of sampling error include the computed design effects for weighting.

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

[View methodology, full question results, and trend data.](#)

For more details on Gallup's polling methodology, visit [www.gallup.com](http://www.gallup.com).

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State of Washington  
PUBLIC DISCLOSURE COMMISSION  
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June 3, 2014

**SENT VIA U.S. MAIL AND EMAIL ([white@livengoodlaw.com](mailto:white@livengoodlaw.com))**

John J. White, Jr.  
Livengood Alskog  
121 Third Avenue  
Kirkland, WA 98083

Re: Petition on Behalf of Human Life of Washington and Human Life PAC for Declaratory Order Regarding Party or Independent Preference Identification Requirements for Political Advertising, including Independent Expenditures and Electioneering Communications

Dear Mr. White:

This letter is a follow up to my May 16, 2014, email confirming receipt of your May 15, 2014, Petition for Declaratory Order that you submitted by email and U.S. mail to the Public Disclosure Commission. This letter also confirms the steps that will occur consistent with the petition process, and includes some additional questions and requests for information to assist us in evaluating your petition.

### **Summary of Petition**

The petition explains that it seeks a binding Declaratory Order from the Commission to resolve uncertainty regarding Washington's political advertising statute as it applies after the implementation of Initiative 872 (I-872, "top-two primary") and the effect of a candidate's self-stated preference for a political party on the content of printed or broadcast political speech by others. In the petition, you present two issues and request a Declaratory Order holding that:

1. Omission of candidates' self-stated party preference under I-872 from political advertising sponsored by Human Life and Human Life PAC will not constitute a violation of RCW 42.17A.320(1) or WAC 390-18-020; and
2. Omission of candidates' self-stated party preference under I-872 from political advertising is not a false statement and will not expose Human Life and Human Life PAC to criminal prosecution under RCW 42.17A.750's actual malice standard.

## **Declaratory Order Process and Scheduling**

### **Public Notice and Scheduling Generally**

The declaratory order process under RCW 34.05.240 contemplates a public process and public notification of the petition. In accordance with RCW 34.05.240(3), PDC has provided notice and a copy of your petition to our agency stakeholder group and also posted notice of the petition on our agency website at [www.pdc.wa.gov](http://www.pdc.wa.gov) and the PDC Facebook page. In addition, the Commission also provides public notice of its meetings and hearings in order to notify the public of anticipated Commission actions. We will follow our regular meeting procedures and make a copy of the petition available to the general public with the June Commission meeting materials.

As you are no doubt aware, RCW 34.05.240 provides the following timeframe for the Commission's action on your petition:

- (5) Within thirty days after receipt of a petition for declaratory order an agency, in writing, shall do one of the following:
  - (a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
  - (b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;
  - (c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or
  - (d) Decline to enter a declaratory order, stating the reasons for its action.
- (6) The time limits of subsection (5)(b) and (c) of this section may be extended by the agency for good cause.

In addition, WAC 390-12-250(3) provides that the executive director will present the petition to the Commission at the first meeting when it is practical to do so. At that point, among other options, the Commission may decide that a public hearing is necessary and so order. WAC 390-12-250(6). The Commission conducts regular public meetings monthly, typically the fourth Thursday of the month except for a combined meeting in November-December. WAC 390-12-010.1

The next scheduled Commission meeting is set for June 26, 2014. The matter of your petition will be presented to the Commission, and possibly heard by the members in a public hearing, at this next regularly scheduled meeting on June 26. This will accomplish the following:

First, it will enable the Commission to determine how it wishes to proceed. See RCW 34.05.240 and WAC 390-12-250(5) and (6). The matter will be listed on the agenda as "Presentation of Petition for Declaratory Order Regarding Political Advertising and Party Preference Requirements" or similar description. This agenda item will notify the public of the possible hearing on June 26 if the Commission so orders that it be held on that date. This letter notifies petitioners of this hearing date, if so ordered. WAC 390-12-250(6). Therefore, please come to

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<sup>1</sup> For 2014, the Commission has adjusted its regular meeting schedule for the month of August. The August meeting is scheduled for Thursday, August 21, 2014, the third rather than fourth Thursday of the month.

the June 26 meeting prepared to respond to Commission questions concerning your petition, if any, and also to participate in a hearing on that date in the event a hearing is ordered.

Second, it will assist in the development of any additional facts if needed. See WAC 390-120-250(2) (authorizing the executive director to conduct an independent investigation in order to fully develop the relevant facts). As we discussed in our telephone conversation of May 29, I will be requesting some additional information in the near future that will assist in fully developing the facts PDC staff determines are relevant to evaluating your petition.

Third, as previously described, it allows time to notify stakeholders as well as the general public. This process will also enable us to identify and notify other potentially interested or necessary parties, to allow them to determine if they will seek to participate before the Commission.

Finally, this process will provide you the opportunity to submit additional information if you choose to do so. See WAC 390-12-250(4) and the scheduling details provided below.

#### **Scheduling details**

The following schedule will be used for processing your petition, in order to allow you and agency staff to prepare for the June 26 meeting, taking into account the above factors as well as your request that this be considered as early as possible in advance of the 2014 general election. It will also provide a process for information to be submitted in a timely and orderly manner for the Commission's consideration at that meeting and in the event a hearing proceeds on that date.

<b>SCHEDULE</b>	
May 30	Date by which PDC staff notified stakeholders of the petition. Additional notifications may be made at a later date as other potentially interested or necessary parties are identified.
June 5	Date by which PDC staff will confirm with you additional questions regarding the petition (if any, beyond those included with this letter), including additional facts and information that may need to be developed to evaluate the petition.
June 16 1:00 p.m.	Date and time by which any supplemental information in response to PDC staff questions is due to PDC staff from petitioners. Date and time by which you are requested to provide PDC staff information concerning who will be participating in the meeting and possible hearing on behalf of the petitioners, and any other written information from the petitioners for Commission consideration.
June 18	Date by which PDC staff will provide you information concerning who will be participating in the meeting and possible hearing on behalf of PDC staff, and any other written information from the staff for Commission consideration. Date by which you and PDC staff will exchange information concerning other known parties who have expressed an interest in participating in the meeting and possible hearing, if any.
June 19-20	Per usual meeting procedure, the meeting materials containing the petition and staff response and other relevant information will be posted on the PDC

	website with the agenda approximately one week before the meeting.
June 26	Date on which the petition will be presented to the Commission. Please note that, as described in RCW 34.05.240 and WAC 390-12-250, the Commission has a number of options on how it may proceed on June 26.

### **Additional Questions and Requests for Information**

In order to fully develop the relevant facts regarding your petition, please respond to the following questions and requests for additional information at your earliest convenience, on or before 1:00 p.m. June 16, 2014:

1. The petition seeks an order holding that omission of a candidate's party preference from political advertising will not expose petitioners to criminal prosecution under RCW 42.17A.750. Although the petition makes no reference to RCW 42.17A.335 (false political advertising law), it raises questions and concerns about "false statements" and "actual malice" which are addressed in RCW 42.17A.335. The petition also includes the statement: "Without the Declaratory Order, petitioners will be left uncertain whether omitting candidate party preference will render their political speech false under the statutory regime." *Petition*, at p. 6. Are you seeking an order declaring whether the omission of a candidate's party preference could be considered a "false statement of material fact" prohibited by RCW 42.17A.335?
2. As required by RCW 34.05.240, please provide the facts and reasons on which you rely to show that the adverse effect of uncertainty on petitioners, if any, outweighs any adverse effects on others or on the general public that may likely arise from the order requested.
3. As required by WAC 390-12-250(9), please confirm whether petitioners have, within the last five years, published political advertising that omits a candidate's party preference or independent status.
4. Did you or your clients review any of the Commission's informational manuals or brochures prior to submitting the petition? If so, please identify which ones.
5. Did you or your clients contact PDC staff for guidance regarding your uncertainty related to RCW 42.17A.320, RCW 43.17A.750, or WAC 390-18-020 prior to submitting the petition? If so, what guidance did you receive, if any?
6. Please identify the language in WAC 390-18-020 you believe is unclear. Since 1999, this provision has directed—without exception—sponsors of political advertising supporting or opposing a candidate to clearly identify a candidate's party preference or independent status; and since 2006 has directed—without exception—sponsors of electioneering communications identifying a candidate to do the same.
7. Please explain how the implementation of I-872 has affected petitioner's desire to omit candidates' party identification on political advertising. How is a "self-stated" party preference materially different from the party identification sponsors of political advertising have been required to include since before I-872?

8. To assist us in identifying potentially interested or necessary parties, please confirm whether petitioners intend to publish political advertising during the upcoming election cycle that identifies candidates other than candidates for Washington State Senate or House of Representatives, such as for any county or other local partisan offices.
9. Please provide copies of all petitioners' political advertising from each election cycle since I-872 in which petitioners participated, including any independent expenditure advertising or electioneering communications.

### **Staff Assistance and Other Materials Available**

I have requested staff to assist you in providing information should you wish such staff assistance, as well as to follow up on any additional information that may be necessary from staff's review of your petition. I have requested Phil Stutzman to be your point of contact. He can be reached via our toll-free number at 1-877-601-2828, at his direct line at (360) 664-8853 or via email at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

In reviewing your petition, I did not see that you referred to agency materials describing political advertising requirements that have been posted on our website and are designed to assist sponsors of political advertising. While you may have consulted them prior to submitting your petition, it was not clear. For your information, the materials are available on the website at [www.pdc.wa.gov](http://www.pdc.wa.gov) under the "Filer Resources" tab, by selecting "Manuals/Brochures" and then "Advertising Sponsors." They include:

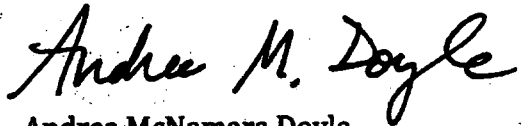
- Political Advertising Requirements brochure (general requirements for political advertising)  
<http://www.pdc.wa.gov/archive/guide/brochures/pdf/2014/2014.Political.advertising.pdf>
- Electioneering Communication (supplement to Political Advertising Brochure)  
<http://www.pdc.wa.gov/archive/guide/brochures/pdf/2014/2014.Independent.Ads.pdf>

If after reviewing such materials or speaking with PDC staff, you determine that you wish to provide additional information regarding your petition, please do so by the dates provided in the schedule above.

I hope the information provided here is helpful, and I encourage you and/or your clients to avail themselves of the assistance that staff routinely provides to persons who have questions regarding compliance with Chapter 42.17A RCW, including the application of political advertising requirements.

John J. White, Jr.  
Page 6  
June 3, 2014

Sincerely,

A handwritten signature in black ink that reads "Andrea M. Doyle". The signature is written in a cursive style with a large, prominent "A" and "D".

Andrea McNamara Doyle  
Executive Director

cc: Phil Stutzman, Director of Compliance  
Linda Dalton, Sr. Assistant Attorney General



# Livengood Alskog

John J. White, Jr.  
white@livengoodlaw.com

June 13, 2014

*Via electronic mail only: [andrea.doyle@pdc.wa.gov](mailto:andrea.doyle@pdc.wa.gov)*

Andrea McNamara Doyle  
Executive Director  
Public Disclosure Commission  
P.O. Box 40908  
Olympia, WA 98504-0908

**Re:** Petition on Behalf of Human Life of Washington and Human Life PAC for Declaratory Order Regarding Party or Independent Preference Identification Requirements for Political Advertising, including Independent Expenditures and Electioneering Communications

Dear Ms. Doyle:

The following is in response to the questions posed in your June 3, 2014, letter.

1. Omission of candidates' self-stated party preference as "false statement."

Yes, Petitioners seek declaratory order that omission of candidates' self-stated party preference would not constitute false political speech under RCW 42.17A.335, as part of a declaratory order that they would not be subject to prosecution under RCW 42.17A.750. The Petitioners seek a binding order on the question of actual malice under the statute as well.

2. Adverse effect on Petitioners and lack of harm to others or general public.

The requested order will cause no harm at all to any specific person or to the public generally.

As Commission staff has previously noted, the State has declared that I-872 "is not a nominating election, and any reference to party on the ballot is an indication of a candidate's preference, as opposed to a formal affiliation between the candidate and that party, or a reflection of an endorsement or support from that party." See Memorandum from Vicki Rippi

to Public Disclosure Commission dated May 14, 2008, copy attached as **Exhibit D**.<sup>1</sup> The Secretary of State's implementing regulations permit a candidate to use any "16 characters" to "state his or her preference for a political party, or not state a preference." That must be printed on the ballot, unless obscene. WAC 434-215-120. The 2014 primary election ballot will include candidates who have expressed preferences for the following parties, in addition to those who have expressed preference for an established party:

National Union Party  
Independent Party  
Work and Wealth Party  
Citizens Party  
The Human Rights Party  
Marijuana Party  
Independent R Party  
Centralist Party  
Framer Party  
Independent Dem Party  
Socialist Altern Party

<https://wei.sos.wa.gov/agency/osos/en/Pages/CandidateFilings.aspx> (last visited June 10, 2014)

Candidates' use of "party preference" as political self-expression is not limited to the current election cycle. Candidates have even appropriated the name of nonpartisan groups as a protest against their actions. See **Exhibit E**, "No Rock Party, But Ballots Still Provide Happiness." *Seattle Weekly*, June 22, 2010. The Secretary of State's election blog has noted that candidates have "listed a preference for a 'party' that doesn't exist at all . . ." **Exhibit F**, " 'The race is on': WA primaries next up," May 21, 2012. Under I-872, "[t]he candidate is only representing himself or herself, not a political party, when he or she appears on the ballot." **Exhibit G**, p.2, Top 2 Primary: FAQs for Candidates.

No person is harmed, nor is the general public harmed by the Commission's entry of a binding declaratory order that one participant in the political process will not face possible civil or criminal prosecution for refusing to repeat someone else's political speech.

3. Prior political advertising omitting a candidate's party preference or independent status.

The Petitioners have not published political advertising that omits a candidate's party preference or independent status within the past five years.

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<sup>1</sup> Exhibits in this supplemental information are designated sequentially with exhibits from the original petition.



4. Commission informational manuals or brochures reviewed before submitting Petition.

The PDC's January 2014 political advertising brochure was reviewed. **Exhibit H.** The brochure states that candidates' "party preference" must be listed, but still appears to equate "party preference" with "party affiliation" by permitting candidates' self-stated preferences to be represented by "official symbols or logos adopted by the state committee of the party . . ." In prior cycles, Petitioners have reviewed the PDC's October 2012 brochure. The brochure, itself, also seemed to confuse "party affiliation" and "party preference" under I-872 as administered by the Commission. **Exhibit J.** That brochure stated that "the candidate's party affiliation must" be included in any political advertising. In the next paragraph, the brochure indicates a candidate's "party preference must be clearly identified in radio and TV political ads." Elsewhere, the brochure stated again that "party preference" as expressed by a candidate must be included in advertising, whether or not it is from the candidate who has expressed the party preference.

5. Staff contact before submission of the petition.

PDC staff was not contacted for guidance before submitting the petition.

6. Lack of clarity in WAC 390-18-020.

The request for additional information contains an error of fact regarding the content of WAC 390-18-020. In 1999, Washington operated under the traditional blanket primary, where candidates sought nomination by a political party in the primary and ran as nominees of that political party in the general election. The 1999 version of the regulation required that the candidate's "party affiliation" be listed. A portion of the current version refers to a candidate's party preference rather than affiliation. The regulation is unclear because it also still appears to equate "party affiliation" and "party preference." *Compare* WAC 390-18-020(3) and WAC 390-18-020(1) & (2). **Exhibit I.**

The last substantive amendment to the regulation was in 2006, after adoption of I-872, but while the State was enjoined from conducting primaries under I-872. The primary election system underlying WAC 390-18-020 has now been statutorily repealed. In 2013, SB 5518 was intended to eliminate any remaining vestiges of the prior partisan primary system, according to its sponsors.

7. Effect of I-872 on Petitioners' desire to admit candidates' party preference.

Please see the response to Item 2 above.

Andrea McNamara Doyle  
June 13, 2014  
Page 4 of 4

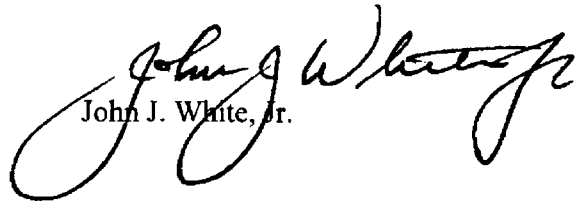
8. Planned political advertising for the 2014 cycle.

At present, the Petitioners do not plan to publish political advertising in county or local partisan offices. The Petitioners do not believe that there are any other "necessary" parties, regardless of the subject of Petitioners' political advertising. No other person has a legal or regulatory interest in the non-libelous content of Petitioners' political speech.

The Petitioners will be represented at the hearing by me. As I mentioned when we met last week, Mr. Kennedy will be out of the state on June 26.

Very truly yours,

LIVENGOOD ALSKOG, PLLC

  
John J. White, Jr.

JJW/

Enclosures: a/s

cc via email:

Phil Stutzman, Director of Compliance (w/encls.)

Linda Dalton, Sr. Assistant Attorney General (w/encls.)

Dan Kennedy (w/encls.)

## Phil Stutzman

---

**From:** Lee Wilson [wilson@livengoodlaw.com]  
**Sent:** Friday, June 13, 2014 1:38 PM  
**To:** Andrea McNamara Doyle  
**Cc:** Phil Stutzman; lindsay@atg.wa.gov; John White  
**Subject:** Human Life of Washington, et al. - Petition for Declaratory Order - Response  
**Attachments:** ltr.Doyle.PDC.Addit.Info.pdf; Exhs.D-J.ltr.to Doyle.PDC.Petition Addit.Info.pdf

Dear Ms. Doyle,

Attached, please find Mr. White's response to your June 3, 2014, with the exhibits referenced in the letter, regarding the above-referenced matter.



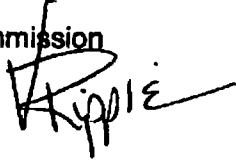
**Lee Wilson**  
Legal Assistant to John J. White, Jr., Kevin B. Hansen  
425.822.9281 Ext. 7305  
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# **EXHIBIT D**



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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Toll Free 1-877-601-2828 \* E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) \* Website: [www.pdcca.wa.gov](http://www.pdcca.wa.gov)

TO: Members, Public Disclosure Commission  
FROM: Vicki Rippie, Executive Director   
DATE: May 14, 2008  
SUBJECT: Initiative 872 (Top Two Primary) and its impact on implementation of campaign finance law provisions in 2008

In March, the U.S. Supreme Court ruled 7-2 that the state's Top Two primary system is constitutional on its face. *Washington State Grange v. Washington Republican Party, et al.* ("Top Two primary decision") This system was enacted into law by the voters in 2004 when I-872 passed. Implementation of the new law was delayed when it was challenged in federal court by the Republican, Democrat and Libertarian parties. The parties prevailed in district court and at the 9<sup>th</sup> Circuit Court of Appeals. But, the U.S. Supreme Court said the parties had not shown that they have been harmed, and reversed the lower court decision. However, a future "as applied" challenge to the law is a possibility.

The Legislature has not had an opportunity to respond to the Top Two decision to address any impacted laws. It is unclear what the Legislature would direct regarding RCW 42.17 as a result of the decision. In the absence of this direction and in an effort to provide interim guidance and avoid doubt or uncertainty on the part of those subject to chapter 42.17 RCW, three temporary measures are proposed here.

#### Campaign Finance Issues and I-872

Statutory changes made by I-872 have an impact on these three campaign finance provisions.

1. **Party Preference.** Based on the text of Initiative 872, the administrative rules adopted by the Secretary of State and the new declaration of candidacy form, the primary election is now a runoff election. It is not a nominating election, and any reference to party on the ballot is an indication of a candidate's preference, as opposed to a formal affiliation between the candidate and that party, or a reflection of an endorsement or support from that party.

Two sections of PDC law and two sections of the Commission's rules use the term "party affiliation"<sup>1</sup> as opposed to "party preference."

<sup>1</sup> RCW 42.17.040, Statement of organization by political committees; RCW 42.17.093, Out-of-state political committees—Reports; WAC 390-17-030, Sample ballots and slate cards; and WAC 390-18-020, Advertising—Political party identification.



Staff Recommendation: For purposes of continuity with election law and until the Legislature has an opportunity to modify RCW 42.17, PDC staff is recommending that the Commission adopt an emergency rule effective June 30, 2008, explaining that the Commission adopt an emergency rule effective June 30, 2008, explaining that "party affiliation" means "party preference" and clarifying that when a PDC form calls for "political party affiliation," "party affiliation," "political party" or "party" the information sought is the candidate's self-identified party preference. If you concur with this approach, proposed language will be drafted for consideration next month.

2. **Party Identification.** According to RCW 42.17.510(1), copy attached, if a candidate for partisan office has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

This requirement originated when party designation meant that the candidate was seeking nomination as a candidate of that party (primary election), or was seeking election to office as the standard-bearer of that party (general election). As noted above, party designation no longer means this; any reference to party in election law now simply is a statement of preference by a candidate.

Attached is a copy of the 2008 Declaration of Candidacy form that candidates will file with election officials the first week of June. Please see No. 7. This section of the form gives candidates for partisan office a choice of selecting and identifying his or her party preference in sixteen characters or less, or choosing the box associated with no party preference. There is no box to check for running as an "independent" as contemplated by RCW 42.17.510.

In addition, while most candidates may select as a preference the Republican, Democrat, Libertarian, Green or another common minor party for their preference, they are not restricted to any finite list of party names. One journalist has wondered whether "No New Taxes" or "Anti War Dem" or "A Good Budweiser" party would crop up as party preferences on candidate declarations. See *Spokesman Review* article attached.

My sense of the requirement in RCW 42.17.510(1) is that it is a remnant of the recent past when party identification meant a candidate favored that party and that party favored that candidate (more or less). In addition, subsection .510(1) was added to RCW 42.17 in the mid-1980s when candidate information sources were few, and there were no campaign websites, no party websites, no media outlets available online, no bloggers, and most people cast their ballots at the polls. Now there are numerous easily accessible sources for learning about candidates and who supports them, including PDC's own website. And, many people vote at home with their voter pamphlet handy to help them make their choices.

Staff Recommendation: Until the Legislature has an opportunity to revisit the party identification requirement and examine its purpose and efficacy in light of the U.S. Supreme Court's Top Two primary decision and the new meaning of party preference, staff recommends that the Commission temporarily suspend enforcement of RCW 42.17.510(1) with respect to party preference identification in

electioneering communications, independent expenditures, and other political advertising. Since candidates and independent spenders are currently ordering their advertising for this year's election, it would be helpful if the Commission adopted a motion at the May meeting regarding this topic if the Commission believes such action is warranted.

3. **Bona Fide Political Parties.** When I-134 passed in 1992 it established limits on the amounts most sources could contribute to a bona fide political party and it also imposed limits on how much a bona fide party could give to a candidate for state office. For example, this calendar year a party non-exempt fund may receive up to \$4,000 from a union, corporation or other entity. In turn, that party non-exempt fund may contribute up to \$.80 per registered voter to a candidate for statewide or legislative office. That means, for example, that a state party non-exempt fund could give up to \$59,964 to a Senate candidate from the 22<sup>nd</sup> legislative district, and just over \$2.6 million to a candidate for statewide office. However, a PAC may only give that Senate candidate \$800 per election, or the statewide candidate \$1,600 per election. The chart summarizing contribution limits is attached.

As such, it is very important that there is a clear distinction between an organization that qualifies as a bona fide political party and one that is a political committee (PAC), or the contribution limits of I-134 could be undermined severely.

RCW 42.17.020(6) defines "bona fide political party" as follows:

*(a) An organization that has filed a valid certificate of nomination with the secretary of state under **chapter 29A.20 RCW**;*

*(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or*

*(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.*

This definition relies on the election code, Title 29A RCW, for determining which organizations are bona fide political parties. Subsection (a) addresses minor parties and (b) and (c) relate to major parties. However, according to the federal district court decision in the Top Two primary case, chapter 29A.20 RCW relating to minor parties has been "impliedly repealed" by I-872, and the U.S. Supreme Court decision did not dispute or reverse this conclusion.<sup>2</sup>

In other words, at this point in time, chapter 29A.20 RCW does not exist and there is no way for a minor party to file a valid certificate of nomination with the Secretary of State's Office. And, for PDC purposes, there is no statutory method for recognizing the existence of minor parties or distinguishing between them and political committees for purposes of contribution limits.

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<sup>2</sup> Note that RCW 29A.04 relating to major political parties remains viable.

Again, the Legislature has not addressed these matters in light of the Top Two decision.

**Staff Recommendation:** While any long-term resolution rests with the Legislature, if the Commission believes that, consistent with the intent of I-134 and its implementation since 1993,

- the impact on the definition of "bona fide political party" in chapter 42.17 RCW was an unintended consequence of the repeal of chapter 29A.20 RCW, and
- minor political parties have intrinsic value to the state's political process and should be treated for purposes of chapter 42.17 RCW in the same manner as major political parties,

then staff believes the Commission may want to consider a temporary solution. That solution would be to clarify the definition of "bona fide political party" in rule to include those minor parties which in 2004, 2005, 2006 or 2007 had filed at least one valid certificate of nomination under former chapter 29A.20 as contemplated by chapter 42.17 RCW. The purpose of this clarification is to allow organizations that had officially been designated as minor parties in the recent past to, during the 2008 election cycle, be subject to the same limits with respect to contributions they receive and contributions they make to their own candidates as the major parties. It is a matter of parity and consistency. Grandfathering in minor parties that met the criteria as a bona fide political party in 2004 or later would, as best I can determine, allow the following organizations to qualify as bona fide political parties in 2008: Green Party, Libertarian Party, Socialist Workers Party, and Workers World Party.

If the Commission generally supports this approach, a draft emergency rule will be brought for your consideration at the June 26 meeting. Again, the rule would take effect June 30, 2008.<sup>3</sup>

### **Conclusion**

Staff believes that the Commission has the authority to address, at least on a temporary basis pending further legislative action, the campaign finance and political advertising issues that have arisen as a result of the U.S. Supreme Court's decision regarding the constitutionality of I-872.

While staff is of the opinion that the party identification issue discussed in No. 2 above may warrant action this month, taking formal action on the two other matters in June would provide an opportunity for more public input on these topics.

Please contact me at 360/586-4838 or 1-877-601-2828 if you have questions you would like answered before the May 22 meeting. Thank you.

Attachments:      RCW 42.17.510  
                          2008 Declaration of Candidacy form  
                          *Spokesman Review* article dated April 17, 2008  
                          Contribution Limits Chart

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<sup>3</sup> According to RCW 42.17.370(1) any rule relating to campaign finance, political advertising or related forms must be in effect by June 30 of a given year or it cannot go into effect until the day following the general election.



**RCW 42.17.510**

**Identification of sponsor — Exemptions.**

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. **For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.**

(2) In addition to the materials required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization, and all electioneering communications, must include the following statement as part of the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement or communication.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

(a) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process; and

(c) Be set apart from any other printed matter.

(4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars

reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)."<sup>o</sup> If the independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(6) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(7) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

[2005 c 445 § 9; 1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1.]

(Emphasis added.)

FOR OFFICE USE ONLY

Date \_\_\_\_\_ Fee Paid \$ \_\_\_\_\_ Filing No. \_\_\_\_\_ Office Code \_\_\_\_\_
[ ] Check [ ] Debt/Credit
[ ] Cash [ ] Filing Fee Petition Voter Registration # \_\_\_\_\_ Clerk Initials \_\_\_\_\_

DECLARATION OF CANDIDACY

1. I, \_\_\_\_\_ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. \_\_\_\_\_
(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP)

and, at the time of filing this declaration, I am legally qualified to assume office if elected.

3. My campaign contact information is:

(MAILING ADDRESS) (CITY) (STATE) (ZIP)
(TELEPHONE NUMBER) (EMAIL ADDRESS)

4. I declare myself as a candidate for the office of:

(NAME OF OFFICE including DISTRICT or POSITION NUMBER)
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

5. Filing Fee (check one):

- [ ] There is no filing fee because the office has no fixed annual salary;
[ ] I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less;
[ ] I am submitting a filing fee of \$ \_\_\_\_\_, an amount equal to 1% of the annual salary; or
[ ] I am without sufficient assets or income to pay the filing fee and am submitting a filing fee petition in lieu of this fee.

6. Please print my name on the ballot exactly as follows: \_\_\_\_\_
(PLEASE PRINT)

7. If the office is partisan, your party preference, if any, will be printed on the ballot exactly as follows:

- [ ] (Prefers [ ] Party) or
[ ] (States No Party Preference)

If you fail to check a box or provide a party name, "(States No Party Preference)" will be printed.

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by a notary public or by the officer with whom the declaration is filed.

8. Sign Here X \_\_\_\_\_
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

STATE OF WASHINGTON, COUNTY OF \_\_\_\_\_

Signed or Attested before me on \_\_\_\_\_
(DATE)

(SEAL OR STAMP)

by \_\_\_\_\_
(CANDIDATE)

\_\_\_\_\_  
(SIGNATURE OF NOTARY)

\_\_\_\_\_  
(TITLE)

MY APPOINTMENT EXPIRES: \_\_\_\_\_

# DECLARATION OF CANDIDACY

## FILING FOR OFFICE

**When:**

The filing period begins the first Monday in June and ends the following Friday. All declarations of candidacy must be received no later than the close of business on the last day of the filing period. Filings received after this date, regardless of the postmark, are invalid.

Mailed declarations of candidacy may be received up to ten business days before the filing period begins. Declarations of candidacy filed in person must be filed during normal business hours.

**Where:**

The declaration of candidacy must be filed with the Office of the Secretary of State if the office sought is federal, statewide, or is a legislative, Court of Appeals, or Superior Court office that includes more than one county.

The declaration of candidacy may be filed with either the Office of the Secretary of State or the County Auditor if the office sought is a legislative, Court of Appeals, or Superior Court office that includes only one county.

The declaration of candidacy must be filed with the County Auditor for all other offices. If the office sought is a junior taxing district located in more than one county, the candidate should check with the County Auditor to determine which county is accepting filings. In King County, the office is called the King County Elections Division.

Declarations of candidacy filed with the Office of the Secretary of State may be filed online at [www.secstate.wa.gov](http://www.secstate.wa.gov).

**Cost:**

The filing fee is 1% of the salary of the office if the office has a fixed annual salary of more than \$1,000. The filing fee is \$10 if the office has a fixed annual salary of \$1,000 or less. There is no filing fee if the office has no fixed annual salary. The fee is based on the salary in effect at the time of filing. Filing fees are not refundable.

Candidates with insufficient assets or income to pay the filing fee may instead submit a filing fee petition that contains the valid signatures of registered voters equal to the dollar amount of the filing fee.

**Withdrawals:**

A candidate for partisan office has until the Thursday following filing week to withdraw.

Once filed, a declaration of candidacy may not be altered. If a candidate decides during the filing period to change the declaration of candidacy, the candidate must withdraw and re-file, which includes the payment of any filing fees.

## PUBLIC DISCLOSURE AND CAMPAIGN FINANCE REPORTS

INITIAL PUBLIC DISCLOSURE REPORTS MUST BE FILED WITHIN TWO WEEKS OF BECOMING A CANDIDATE.

Candidates for federal office, precinct committee officer, cemetery districts, and districts where voters must have special qualifications such as the ownership of land are exempt from state public disclosure requirements.

IF THE OFFICE SOUGHT HAD, AS OF THE LAST GENERAL ELECTION:	PUBLIC DISCLOSURE REPORTS REQUIRED
Fewer than 1,000 registered voters, and the candidate has not received and does not expect to receive contributions of \$5,000 or more in the aggregate.	None.
1,000-4,999 registered voters and an area less than the entire county, and the candidate has not received and does not expect to receive contributions of \$5,000 or more in the aggregate.	Financial Affairs Statement (Form F-1).
5,000 or more registered voters or a countywide area or larger.	Financial Affairs Statement (Form F-1). Campaign Finance Reports ("C" series forms).
The candidate has received or expects to receive contributions of \$5,000 or more in the aggregate.	Financial Affairs Statement (Form F-1). Campaign Finance Reports ("C" series forms).

## INSTRUCTIONS FOR COMPLETING THE DECLARATION OF CANDIDACY

**Line 1.** Print your name as you are registered to vote.

**Line 2.** Print the address at which you are registered to vote. Each candidate is responsible for ensuring that he or she meets all the qualifications of the office sought at the time he or she files the declaration of candidacy.

**Line 3.** Print your campaign's mailing address, telephone number, and e-mail address. Providing a telephone number and e-mail address is recommended, but not required. Contact information will be made available to the public. The election administrator and the Public Disclosure Commission may use the telephone number or e-mail address to provide campaign information to you.

A government office telephone number or e-mail address cannot be used for campaign purposes according to RCW 42.17.130 and RCW 42.52.180.

**Line 4.** Print the name of the office for which you are a candidate. For example, "State Representative...22nd District ...Position 1" or "City Councilman...Olympia...Position 4." Find out prior to the filing period for which offices you are eligible to file. Responsibility for filing for the correct office is yours.

**Line 5.** Check the appropriate box. If you assert that you have insufficient assets or income to pay the filing fee, you must submit a filing fee petition, as described in RCW 29A.24.101, with the declaration of candidacy.

**Line 6.** Print your name exactly as you wish it to appear on the ballot. Nicknames are acceptable. You may not use any nickname or title that denotes past or present occupation, including military rank, your position on issues, your political affiliation, or anything intentionally designed to mislead voters.

**Line 7.** If the office is a partisan office, you may state a political party that you personally prefer. Your preference does not imply that you have been nominated or endorsed by the party, or that the party approves of or associates with you. You also have the option of not stating a political party preference.

If you would like to state your preference, fill in the name of the party, up to 16 characters. The first letter of the party preference will be capitalized (e.g., Democratic). If you want to use initials, separate each letter with a period (e.g., G.O.P.) Your personal party preference will be printed on the ballot as follows:

JOHN SMITH  
(Prefers Example Party)  
JANE DOE  
(States No Party Preference)

If no party name is provided, "(States No Party Preference)" will be printed on the ballot. If you qualify for the general election, the party preference printed on the primary election ballot will be printed the same on the general election ballot.

**Line 8.** Read the oath. Sign the declaration of candidacy only in the presence of a notary public or the officer with whom the declaration is filed.

**SPOKESMANREVIEW.COM**

Friday, April 18, 2008

SPOKANE

## Washington ballots could get interesting

Richard Roesler  
Staff writer  
April 17, 2008

OLYMPIA – Heads up, voters: Your ballot might look a little strange this August.

Don't be surprised, for example, if you find unusual slogans and shameless commercial pitches beneath some candidate names.

Secretary of State Sam Reed on Wednesday proposed rules for the state's first-ever Top Two primary. In a move designed to avoid another court challenge by political parties, the new rules allow candidates to indicate a "preferred party."

But under the proposed rules, candidates are free to write virtually anything they wish in the space between "prefers" and "party." The only limits: it can only total 16 characters and can't be obscene.

"People can describe themselves however they wish," explained Trova Heffeman, a spokeswoman for Reed. "It's their First Amendment right."

In between "prefers" and "party," candidates could write "NO NEW TAXES," or "ANTI WAR DEM" or even a short commercial pitch such as "A GOOD BUDWEISER" which would appear as "Prefers A GOOD BUDWEISER Party" when printed on ballots.

Far-fetched? Perhaps.

But Washington's ballot is no stranger to theatrics. A man named Mike the Mover has run for more than a dozen offices over two decades, largely as cheap advertising. And Michael Goodspaceguy Nelson has also run repeatedly on a platform that includes interplanetary colonization. In 2004, the two ran against each other in the gubernatorial primary.

The state's major political parties find nothing funny about the proposed change. Saying it's unfair to allow non-party-members to pick their standard bearers in the November election, they successfully sued to overturn the "blanket primary" that for decades allowed Washington voters to hopscotch between parties on a primary ballot. Voters responded by overwhelmingly approving the similar-looking Top Two primary in 2004. The parties sued again. Ever since, Washington voters have had to pick a party in the primary and choose only among candidates from that party.

Last month, the U.S. Supreme Court gave a 7-2 green light to the Top Two primary, saying the parties haven't shown that they've been harmed. Only Louisiana has a similar system. Washington's first such primary is slated for Aug. 19.

The parties want to be able to designate their nominee on the ballot. Reed's proposed rules don't allow that. They also point out that the change results in fewer choices – just two – on the November ballot.

Democratic Party Chairman Dwight Pelz also said Wednesday that the new primary would effectively "outlaw" minor parties. They were once guaranteed a spot on the November ballot. Now they only make it if they're in the top two vote-getters, which is highly unlikely in most races.

"The Libertarian, Green, Independent and Progressive parties can sell their office furniture and computers, because they will never again see their names on a meaningful ballot in our state," Pelz said in a statement.

The system gives the parties no way to repudiate a racist or otherwise objectionable candidate using their name, he said. And the top-two rules make it likely that in very liberal and very conservative enclaves, the two candidates facing off in November will both be Democrats or both be Republicans.

Still, neither the state Democratic nor Republican party has spelled out their next move, if any. Heffeman said the parties got the proposed rules on Wednesday and that her office received no immediate reaction.

Reed, for his part, predicts voters will be "thrilled" with a system that resembles the popular old blanket primary.

"Freedom on the ballot is the core of Washington's political heritage," he said. The Supreme Court ruling in March told the state to craft the rules carefully so the party's constitutional rights aren't stepped on, he said.

"We're paying attention and we'll get it right," he said.

Richard Roesler can be reached at (360) 664-2598 or by e-mail at [richr@spokesman.com](mailto:richr@spokesman.com)



**PURELY DISCLOSURE COMMISSION**  
 711 CAPITOL WAY RM 206  
 PO BOX 40908  
 OLYMPIA WA 98504-0908  
 (360) 753-1111 or 1-877-691-2828 (toll free in WA State)

# CONTRIBUTION LIMITS

(Effective February 28, 2008)

## CONTRIBUTORS

		State Party	County and LD Party Committees	Caucus Political Committee (House or Senate)	Candidate Committees	Pacs, Unions, Corps and other entities		Individuals
RECIPIENTS	State Party	Not Applicable	No Limit	No Limit	Only from Surplus Funds No Limit	\$4,000 per calendar year (non-exempt)	No Limit (exempt)	No Limit
	County or LD Committee	No Limit	No Limit	No Limit	Only from Surplus Funds No Limit	\$4,000 per calendar year (non-exempt)	No Limit (exempt)	No Limit
	Caucus Political Committee	No Limit	No Limit	No Limit	Only from Surplus Funds No Limit	\$800 per calendar year		No Limit
	Statewide Executive Candidate Committee	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$1,600 per election		\$1,600 per election
	Legislative Candidate Committee	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$800 per election		\$800 per election
	Judicial	\$1,600 per election	\$1,600 per election	\$1,600 per election	Prohibited	\$1,600 per election		\$1,600 per election
	County office and port commissioner candidates running for office in jurisdictions with more than 200,000 registered voters are subject to contribution limits.	King, Pierce, Spokane, or Snohomish County Office Candidate Committee	\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$800 per election	
Port of Seattle or Tacoma Commissioner Candidate Committee		\$0.80 per Reg. Voter per cycle	\$0.40 per Reg. Voter per cycle (Joint Limit)	\$0.80 per Reg. Voter per cycle	Prohibited	\$1,600 per election		\$1,600 per election
PACS		No Limit	No Limit	No Limit	Prohibited	No Limit		No Limit

- Per cycle means aggregate during the period from January 1 after the date of the previous general election for the office through December 31 after the upcoming general election for the office.
- Per election means per each primary, general, or special election for that office.
- Per calendar year means aggregate during the period from January 1 through December 31 each year.
- Contributions designated for the exempt account of a bona fide political party are NOT subject to limit, except during the 21 days before the general election when the \$5,000 maximum applies. See next column.

- During the 21 days before the general election, no contributor may donate over \$50,000 in the aggregate to a candidate for statewide office, or over \$5,000 in the aggregate to a candidate for any other office or to a political committee. This includes contributions to a party committee, as well as a candidate's personal contributions to his/her own campaign. It does not apply to contributions from the state committee of the WA State Democratic, Republican or Libertarian Party or from a minor party.

# **EXHIBIT E**



# Seattle **KOREAN CULTURAL WEEKS** JUNE 1-29, 2014

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## No Rock Party, But Ballots Still Provide Happiness.

By Krist Novoselic Tue., Jun 22 2010 at 12:00AM

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Krist Novoselic writes about music and politics every Tuesday and Friday on Reverb

The period to declare candidacy for public office in our state is over. Here's the **Rock Party** update for election 2010: no candidates running in Washington state. I could have paid the \$1,740.00 and filed to run for US Senator: Krist Novoselic *Prefers* ROCK Party, but that would have been counterproductive for at least three reasons.

First, **I couldn't get it together to help start a political party.** Where does all the time go? Blogging for *Seattle Weekly*, tending to planting and other chores on the homestead, playing finger-style guitar, visiting Grange meetings and organizing farmers markets, relaxing with my lovely wife--and there's plenty more I've left off! Here's what's at the heart of my political beliefs/motivations: People need to get together and engage the system. That's why I think political association is so important. It's a simple equation--power in numbers. How could I run as *Prefers* ROCK Party when that entity never formed? No nominations, no rallies, no platform committees--not even a fundraiser BBQ! As a citizen or a candidate, you want to feel you're part of something larger.

Second, **I already did my protest candidacy last year.** If you recall, I ran as *Prefers* GRANGE Party candidate for the position of Wahkiakum County clerk. I ran under this banner to call attention to how important private association is. The Grange is a *non-partisan* group that doesn't run candidates for office. The point to my campaign, which I voluntarily suspended, was to protest certain state election rules.

In brief, current law allows a rogue candidate to glom onto any existing organization--Grange, Democrat, or Republican--on the ballot. If a voter misses any information that draws attention to such a ploy, the candidate gets a free boost and the party's reputation may be smirched. That's why I dropped out of the race. It would have been wrong to confuse citizens voting in good conscience for the Grange Party.

Running for office is a big commitment, and you run to win. It's one thing to protest, it's another to really run in an attempt to add to the political dialogue. Besides, these party-association issues with the current system will be weighed in federal court this November.

Third, **there are good things about current Washington state election law.** Many other states have erected hurdles to exclude minor parties, including signature

requirements and other thresholds. Washington State, on the other hand, is pretty much wide-open about letting candidates and parties on the ballot. It's a new and unique system that seeks to provide voters with information. It's basically a *non-partisan* voting system that allows candidates to send a message to voters in sixteen characters or less. There are plenty of *Prefers* Democratic (or Republican) Party candidates, but some are getting creative with the message they want to convey. In my 19th legislative district there's a candidate that *Prefers* Lower Taxes Party. I've been aware of this candidate's political work, and that statement is a pretty good indicator of what he's about. Someone in another race is identifying *Prefers* Neither Party. So what if he prefers neither party, what is he for? There's a *Prefers* Reluctantly (R) candidate and also a *Prefers* Problem Fixer Party. Here's a weird one: *Prefers* Senior Side Party???. There's even someone who *Prefers* Happiness Party. Cute, but unhelpful to voters.

If you can't find happiness by association, you can always run as *Prefers* Vote for Me Party! I'm fine with that, or other cues that do not infringe on the name of a private group. Real political parties, large and small, ought to be able to have a say about how their names are invoked on the ballot.

Lastly, there could be a ROCK Party—if you want it. In the meantime, I'll just vote in the August primary and November general election. In the future, it's possible that someone could run as *Prefers* ROCK Party in protest of bass players promoting private association. But I'm really not a party boss, unless it's backstage, a birthday celebration or some other kind of fun get-together.

0 Comments



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# **EXHIBIT F**



WA Secretary of State Blogs

# From Our Corner

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## 'The race is on': WA primaries next up

by David Ammons | May 21st, 2012

elections  
news

Washington's campaign season is **officially underway**, with hundreds of candidates signed up for 364 offices, from the U.S. Senate and statewide offices to key races that will determine control of the state Legislature and the future of 10 congressional districts.

Secretary of State Sam Reed said he was pleased with the **remarkable rush** of interest in state and local office, given the difficult problems facing Washington state and the sometimes harsh nature of modern campaigning and the unpredictable influence of powerful independent interest groups.

Reed said it may be a record for turnover of statewide, congressional and legislative offices. He predicted heavy voter interest in the upcoming campaigns and elections.

Last week was **Filing Week** at the State Elections Division and county election offices. Many candidates filed online, and others showed up in person for the time-honored ritual of rallying with supporters and using the official filing as an opportunity to try out campaign messages and fundraising. Monday was the final day for candidates to withdraw; the final list of candidates will be official on Tuesday.

Next stop is the Top 2 Primary.

Under the 2004 citizen initiative that created the new system, the two most popular candidates for each office will advance to the General Election, without regard to party label. Candidates designated their party preference last week, most selecting traditional Republican or Democratic Party as their preference. Some designated no party preference or listed a preference for a "party" that doesn't exist at all, Independent GOP or (R) Hope&Change or Democratic-Repub Party.

The party preference doesn't mean the party has endorsed or recognized the candidate. The Primary is a winnowing process, not a nominating process. No party is guaranteed a runoff spot; indeed some districts will have finalists from the same party preference.

Primary ballots go out by July 20, with a postmark or dropoff box return deadline of Aug. 7. The General Elections deadline is Nov. 6.

Large numbers of candidates lined up for most of the marquee races, although many races have clear frontrunners for the two runoff spots. Democrat Jay Inslee and Republican Rob McKenna have largely had the gubernatorial field to themselves for the past year. Democratic incumbent Chris Gregoire is stepping down after eight years in office. Three other statewide offices are guaranteed to turn over: Attorney General, Secretary of State, and Auditor.

Treasurer Jim McIntire, a Democrat, drew no opposition from either party, a rarity. Democratic Sen. Maria Cantwell and Republican state Sen. Michael Baumgartner, were leaders among the crowd filing for the Senate seat.

Congressional races firmed up, including a sudden gusher of candidates who signed up for a one-month term remaining on Inslee's term in the 1st District. Democratic State Chairman Dwight Pelz had hoped to clear the field for a temporary seatholder, Snohomish County Council Chairman Brian Sullivan, but Darcy Burner and other candidates jumped in on Friday. Sullivan said he's staying in. The race will be decided by the old 1st District voters. The full two-year term will be filled by voters in the new 1st District drawn by the state Redistricting Commission.

Washington also is guaranteed two other new congressmen: in the newly awarded 10th District in central Puget Sound, and Norm Dicks' successor in the 6th.

Legislative races also shaped up. The **biggest surprise**: the decision by Senate GOP budget Chairman Joe Zarelli to forgo another four-year term, and to anoint Rep. Ann Rivers as his favored successor.

5 0

Like 8+1

## One Response to "The race is on': WA primaries next up"

1. *Justice Steve Gonzalez* says:  
[June 18, 2012 at 8:09 AM](#)

This story does not mention judicial races and the Supreme Court. The Supreme Court races are state wide and may be decided in the primary. The top two do not go on to the general election in November in my campaign to retain

position 8 on the Supreme Court because there are just two of us in the race. The race will be decided August 7th. Unfortunately, the SOS will not publish a voter's pamphlet for the primary this year so many voters will have to do research on their own. Please take a look at <http://www.votingforjudges.org> to get unbiased information about judge races.

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*Washington Secretary of State*

*Legislative Building · PO Box 40220*

*Olympia, WA 98504-0220*

*Phone Numbers*



# **EXHIBIT G**

# Top 2 Primary: FAQs for Candidates

## **What is a Top 2 Primary?**

The Washington Top 2 Primary allows voters to choose among all candidates running for each office. Voters do not have to declare a party affiliation to vote in the primary.

Candidates for partisan office may state a preference for a political party, which is listed on the ballot. The two candidates who receive the most votes in the Primary Election qualify for the General Election. Candidates must also receive at least 1% of the votes cast in that race to advance to the General Election.

## **What does the candidate's "party preference" mean in a Top 2 Primary?**

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.

## **How did the Top 2 Primary become law?**

The Top 2 Primary was passed by the people in 2004 as an initiative. I-872 passed by almost 60%. This system was upheld by the U.S. Supreme Court in March 2008 and used for the first time in the 2008 primary. It has been in effect for all partisan elections since 2008.

## **Could a race in the General Election include two candidates who prefer the same party?**

Yes. The candidates in each race who advance to the General Election will be the two who receive the most votes in the Primary. It is possible that both candidates who advance to the General Election prefer the same party.

## **Can a voter still write in a candidate?**

Yes. Each race on the ballot will still have a write in line for a voter to write in the name of a candidate.

## **What offices are affected?**

The Top 2 Primary applies to elections for partisan office. This includes the U.S. Senate and House of Representatives, the State Legislature, partisan statewide offices such as Governor, and partisan county offices such as County Commissioner or County Treasurer.

The Top 2 Primary does not apply to elections for

- President and Vice President;
- Nonpartisan offices, such as judicial office, municipal office, or a district such as fire district or school board;
- Precinct Committee Officers (PCOs);

**Are minor party candidates still required to conduct conventions and collect signatures to run for office?**

No. All candidates use the same procedures to file for office and appear on the Primary Election ballot. The Top 2 Primary evens the playing field for candidates. Candidates may list any party as the party that they prefer.

Minor party and independent candidates for President and Vice President are an exception. They must still collect signatures and obtain the consent of the candidates.

**Can the political parties prevent a candidate from expressing a preference for their party?**

No. Candidates are permitted to express a preference for any political party. The candidate is only representing himself or herself, not a political party, when he or she appears on the ballot.

**Can political parties still nominate candidates?**

Yes. State law no longer dictates how political parties conduct their nominations. Now, the state and local parties decide how to conduct their nominations. The rules for party-run nominations vary party to party, and even between the state and local parties. Political parties can nominate multiple candidates for the same race. The Supreme Court stated:

"Whether parties nominate their own candidates outside the state-run primary is simply irrelevant. In fact, parties may now nominate candidates by whatever mechanism they choose because I-872 repealed Washington's prior regulations governing party nominations."

**Can the political parties demand that their nominees be distinguished on the ballot?**

No. The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

The Supreme Court ruled the political parties do not have a constitutional right to have their nominees distinguished on the ballot.

Candidates can promote themselves in voters' pamphlets, advertisements, and other forums as the nominees of a political party.

**Once candidate filing week is over, can a major party fill vacancies on the major party ticket?**

No. This process was specifically repealed in I-872 because there is no major party ticket in a Top 2 Primary. All candidates are treated the same.

A race will only be reopened for a special filing period if there is a void in candidacy meaning no candidate filed during the regular filing period.

**In races where only one or two candidates filed, will that race skip the Primary and only appear on the General Election ballot?**

No. Even in races where only one or two candidates filed for a partisan office, that race will still appear in the Primary Election.

**If a candidate for partisan office who was one of the top two vote-getters in the Primary dies or is disqualified before the General Election, will the party be allowed to name a replacement?**

No. In a Top 2 Primary, a candidate's party preference is purely for informational purposes and does not play any role in the administration of the election. Because the candidates are not representatives or nominees of a political party, a party is not allowed to name a replacement candidate. The laws that previously allowed the political parties to replace deceased or disqualified candidates was repealed in 1-872.

**How do candidates place information in the State Voters' Pamphlet?**

Candidates for the following offices may place biographical information, a campaign statement, and a photograph in the State Voters' Pamphlet.

- President
- U.S. Senator
- U.S. Representative
- Governor
- Lt. Governor
- Secretary of State
- State Treasurer
- State Auditor
- Attorney General
- Commissioner of Public Lands
- Superintendent of Public Instruction
- Insurance Commissioner
- State Supreme Court Justice
- Court of Appeals Judge
- Superior Court Judge
- State Senator
- State Representatives

Candidates must submit their material by May 25, 2012. All statements and photographs submitted will be reviewed by the Elections Division of the Office of the Secretary of State to ensure that the information meets Voters' Pamphlet requirements.

**How do county candidates get information into local Voters' Pamphlets?**

Contact your local County Elections Office (<http://www.sos.wa.gov/elections/auditors.aspx>) to inquire about getting your information into a local online or printed Voters' Pamphlet.

**Where can I find more information about the Top 2 Primary?**

The Secretary of State's Office posts information about Initiative 872, the administrative rules to implement Initiative 872, and the court documents in the legal challenge on its website at:

<http://www.sos.wa.gov/elections/toptwo.aspx> (<http://www.sos.wa.gov/elections/toptwo.aspx>) .

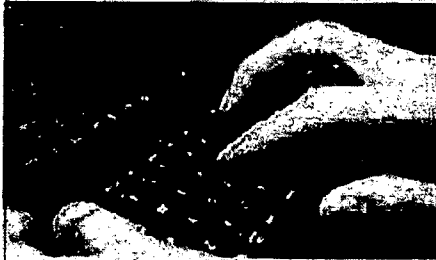
Washington Secretary of State  
Elections Division  
520 Union Ave SE  
PO Box 40229  
Olympia, WA 98504-0229  
(360) 902-4180

# **EXHIBIT H**

### **Political Advertising is ...**

*advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or TV 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 an election campaign.*

*"Mass communication" is a message intended to reach a large audience through any of the methods described above as well as periodicals, sample ballots, web sites, e-mails, text messages, social media, and other online or electronic formats enabling the exchange of communication.*



**Sending 100 or more identical or substantially similar letters, e-mails or text messages to specific recipients within a 30-day period is an example of mass communication.**

### **FALSE POLITICAL ADVERTISING:**

It is illegal to sponsor a political ad, with actual malice, that contains a statement constituting libel or defamation per se\* if the statement:

- directly or indirectly implies a candidate has the support or endorsement of any person or organization when the candidate does not (unless the statement is made by the person or organization),
- is a false statement of material fact about a candidate,\*\* or
- falsely represents that a candidate is an incumbent.\*\*

\*See RCW 42.17A.335(2) for a definition of libel and defamation per se.

\*\*Unless a candidate is making a statement about him or herself or the statement is made by the candidate's agent about the candidate.

It is also illegal to:

- use an assumed name for sponsor identification in a political ad;
- distribute campaign material deceptively similar in design or appearance to the voter and candidate pamphlets published by the Secretary of State, or
- use the state seal or its likeness to assist or defeat a candidate.

Other political advertising brochures available from the Public Disclosure Commission:

Independent Expenditure Ads & Electioneering Communications

Electioneering Communications Guide

## **POLITICAL ADVERTISING GUIDE**

**January 2014**



**Public Disclosure Commission**  
Shining Light on Washington Politics Since 1972

711 Capitol Way Rm 206  
P O Box 40908  
Olympia WA 98504-0908

(360) 753-1111  
Toll-free 1-877-601-2828  
[www.pdc.wa.gov](http://www.pdc.wa.gov)  
e-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov)

## GENERAL REQUIREMENTS

**Party preference** must be included in any form of advertising about a candidate seeking election to a partisan office, regardless of who sponsors the ad. Acceptable abbreviations that may be used for party preference are:

Communist—Com  
 Constitution—CP  
 Democrat—D, Dem, Demo  
 Independent or unaffiliated—Ind, Indep  
 Libertarian—L, LP, LBT, LBTN  
 Progressive—P, PP, Prog  
 Republican—R, GOP, Rep (use Rep only if it does not falsely imply the candidate is an incumbent State Representative)  
 Socialist—Soc  
 Socialist Workers—Soc Workers, SWP  
 Official symbols or logos adopted by the state committee of the party may be used in lieu of other identification

**Sponsor identification** is required for political advertising, except for certain types of ads that are listed in the far-right column. (There are no exemptions for party preference.) The "sponsor" is the candidate, committee, or other person who pays for the ad. When the person buying the ad is an agent for another person or is otherwise reimbursed, the sponsor is the ultimate spender. When no payment is demanded or the cost is not readily ascertainable, the sponsor is the person who arranges for the ad to be displayed or broadcast.

The PDC's Independent Expenditure Ads & Electioneering Communications brochure explains the unique Sponsor ID requirements for those types of ads.

When **candidate photos** are used in an ad, at least one of them must have been taken within the last five years and it can be no smaller than the largest candidate photo in the ad.

**Do not falsely imply incumbency** in a political advertisement about a candidate who does not hold the office.

## MORE ABOUT SPONSOR ID

Use the words "paid for by" or "sponsored by" followed by the sponsor's name & address. Include all sponsors' names & addresses, if there are multiple sponsors. A political committee must include its Top 5 contributors' names when sponsoring an ad about a ballot measure with a cost of at least \$1,000 in the aggregate. (Top 5 = the five largest contributors who gave more than \$700 during the 12 months before the ad appears.)

**PRINT ADS & WEBSITES**—display sponsor ID and any party preference in an area set apart from the ad text on the first page of the ad. Use at least 10-point type; do not screen or half-tone the text. Exceptions—

**BILLBOARDS/POSTERS:** Use type that is at least 10% of the largest size type used in the ad.

**SMALL ONLINE ADS WITH LIMITED CHARACTERS** may display sponsor ID & party preference in an automatic display such as a mouse tip/rollover or nonblockable pop-up that remains visible for at least 4 seconds OR on a webpage that is conspicuously linked to the small ad and reached with one mouse click.

**BROADCAST ADS, VIDEOS, and ONLINE AUDIO ADS**—Clearly speak the sponsor's name and any party preference. (Sponsor's address not required) When necessary in TV or video ads, a political committee has the option of displaying its Top 5 contributor names on the screen for at least 4 seconds in letters greater than 4% of the visual screen height at a reasonable color contrast with the background. An abbreviations may be used when naming a Top 5 contributor, if the full name of the contributor has already been clearly spoken in the ad.

### DESCRIBING CANDIDATES IN ADS

**Incumbent** is the person who is in the office now, regardless of whether s/he was appointed or elected.

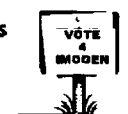
**Re-Elect** means that the candidate holds the office now and is seeking another term in the same office OR that the candidate was elected to the office in the past, but is not the incumbent, in which case the ad must clearly state that the candidate is not the incumbent.

**Retain** can be used for any incumbent.

**Return** represents that the candidate holds, or has previously held the office being sought.

## EXEMPT FROM SPONSOR ID

badges & badge holders	nail clippers & files
balloons	print newspaper ads (≤ one column inch)
brushes	noisemakers
bumper stickers (≤ 4"x15")	official voter pamphlet
business cards	paper & plastic cups and plates
buttons	paperweights
cigarette lighters	pencils
clothing	pendants
coasters	pens
combs	pinwheels
cups	pocket protectors
emery	reader boards with moveable letters
boards	ribbons
envelopes	rulers (≤ 12")
erasers	shoe horns
Frisbees	skywriting
glasses	stickers (≤ 2-3/4"x1")
golf balls & tees	sunglasses
hand-held signs	sun visors
hats	swizzle sticks
ice scrapers	tickets to fund raisers
key rings	whistles
knives	yard signs (≤ 8'x4')
labels	yo-yos
letter openers	all similar items
matchbooks	



The sponsor's name & address may be left off of a political ad that meets **all** of the following criteria:

- the sponsor is an individual acting on his or her own behalf, independent of any candidate, political committee or organization, who personally produces and distributes the ad (or pays for it to be produced and/or distributed);
- the sponsor receives no contributions or other support to produce and distribute the ad;
- no more than \$50 in the aggregate is spent for online advertising or \$100 in the aggregate for any other type of advertising; and
- the advertising is EITHER distributed through the individual's social media site, personal website, or similar online forum where information is produced and disseminated only by the individual OR a letter, flier, handbill, text or e-mail from the individual that does not appear in a newspaper or comparable mass publication.



# **EXHIBIT I**

AMENDATORY SECTION(Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-18-020 Advertising -- Political party identification.** (1) According to RCW ((42.17.510)) 42.17A.320, sponsors of advertising supporting or opposing a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(2) According to RCW ((42.17.510)) 42.17A.320, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(3) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party.

[Statutory Authority: RCW 42.17.370 and 42.17.562, 06-11-132, § 390-18-020, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1), 99-12-067, § 390-18-020, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370, 93-16-064, § 390-18-020, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1), 85-15-020 (Order 85-03), § 390-18-020, filed 7/9/85.]

AMENDATORY SECTION(Amending WSR 99-12-067, filed 5/27/99, effective 6/27/99)

**WAC 390-18-020 ((Political)) Advertising -- Political party identification.** (1) According to RCW 42.17.510, sponsors of ((political)) advertising supporting or opposing a candidate ((for partisan office)) who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(2) According to RCW 42.17.510, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(3) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors ((of political advertising)) to identify a candidate's political party.

[Statutory Authority: RCW 42.17.370(1), 99-12-067, § 390-18-020, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370, 93-16-064, § 390-18-020, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1), 85-15-020 (Order 85-03), § 390-18-020, filed 7/9/85.]

**EXHIBIT J**

## ID Size and Placement

According to state law, on written or printed political advertising, the sponsor's full name and address and the candidate's party affiliation must:

- appear on the first page of the communication in at least 10 point type, or
- for ads such as billboards or posters, appear in type at least 10% of the largest size type used in the ad, and
- not be screened or half-toned (i.e., not made lighter through some printing or photographic process), and
- be set apart from any other ad text.

**The sponsor's full name and candidate's party preference must be clearly identified in radio and TV political ads.**

Follow these size and placement standards for sponsor ID, Top 5 Contributors, and controlling individual/entity ID requirements in independent expenditure ads and electioneering communications.

## Abbreviations

The following abbreviations may be used in advertising. PDC believes they clearly identify political party preference.

**Communist—Com**

**Constitution—CP**

**Democrat—D, Dem, Demo**

**Independent or unaffiliated—Ind, Indep**

**Libertarian—L, LP, LBT, LBTN**

**Progressive—P, PP, Prog**

**Republican—R, GOP, Rep** (Use the latter only when it could not erroneously imply the candidate is a State Representative.)

**Socialist—Soc**

**Socialist Workers—Soc Workers, SWP**

Official symbols or logos adopted by the state committee of the party may be used in lieu of other identification; a copy of the symbol or logo should be provided to PDC.

## Independent Expenditure Advertising & Electioneering Communications

Political advertising that meets either set of criteria below must include more details about the sponsor(s):

- 1) the ad supports or opposes a candidate for state or local office;
- 2) the ad is paid for by someone other than a candidate, a candidate's committee or agent;
- 3) the sponsor does the advertising completely independently of any candidate supported in the ad (or the opponent of the candidate opposed), or a candidate's committee or agent;
- 4) the sponsor did not receive the candidate's encouragement or approval to do the ad; and
- 5) the ad costs at least \$900, or the cost of this ad when combined with the cost of earlier ads supporting or opposing the candidate total \$900 or more.

- A) clearly identifies at least one candidate for state, local, or judicial office;
- B) appears within 60 days of an election in the candidate's jurisdiction;
- C) is produced through radio, TV, postal mailing, billboard, newspaper, or periodical; and
- D) either alone, or in combination with other communications by the sponsor identifying the candidate, has a fair market value of \$1,000 or more.

If conditions 1-5 or A-D are met, the ad must contain the following:

### FOR WRITTEN ADS –

"No candidate authorized this ad. It is paid for by (name, address, city, state)"

Further, if this type of ad is sponsored by a political committee required to file with the PDC, the following must also appear:

- "Top Five Contributors" followed by a list of the names of the five persons or entities making the largest contributions in excess of \$700 to the PAC during the 12 months before the ad runs. If a political committee keeps records necessary to track contributions according to the use intended by contributors, that committee may identify the top five contributors giving for that purpose; AND
- The full name of the individual or entity that established or directly maintains or controls the sponsoring committee (or indirectly maintains or controls the sponsoring committee through the formation of one or more political committees).

Recommended format:

**No candidate authorized this ad. It is paid for by The Committee for Good Government (Gotham City Merchants Assn.) Top Five Contributors: ....**

Bona fide political parties must include a standard sponsor ID (*Paid for by* with name & address), but not a special notice to voters or their Top 5 contributors on written independent ads & electioneering comm.

### FOR RADIO, TV, AND TELEPHONE ADS –

The following statement must be clearly spoken, or for TV advertisements, appear in print and be visible for at least four seconds, appear in letters greater than 4% of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." The Top 5 contributor names, as discussed under "written advertisements," are necessary if the ad is sponsored by a political committee required to file with the PDC. The top 5 contributor names are also required for telephone transmissions.

Bona fide political parties are required to include the Notice to Voters statement in radio or TV ads that they sponsor, but not the Top 5 contributors.

Independent expenditure advertising in the form of yard signs, bumper stickers, skywriting or other items exempt from sponsor ID (as discussed on the reverse), is also exempt from the Notice to Voters, Top Five Contributors, and controlling individual/entity ID requirements.

### REPORTING:

#### ELECTIONEERING COMMUNICATIONS –

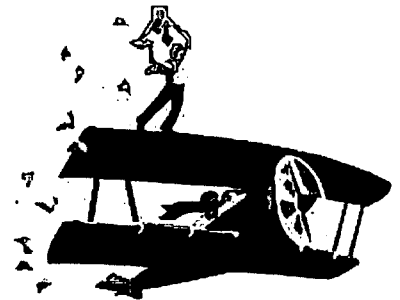
Anyone that sponsors an advertisement that meets all conditions A-D must file electioneering communication reports (Form C-6) within 24 hours.

#### INDEPENDENT EXPENDITURES –

Anyone (except a committee already filing with PDC) that spends \$100 or more supporting or opposing a candidate or ballot measure—and the expenditures are not made in conjunction with a candidate or ballot issue committee—must file independent expenditure reports (Form C-6). All sponsors of last minute independent expenditure political ads valued at \$1,000 or more presented to the public within 21 days of an election must report within 24 hours.

Any business, union, association or other entity that makes independent expenditures totaling over \$800 in a calendar year supporting or opposing state office candidates and statewide ballot measures must also file PDC Form C-7 (unless the entity reports the expenditures as a political committee or lobbyist employer).

# Political Advertising



**PUBLIC DISCLOSURE COMMISSION**  
**pdc**  
711 CAPITOL WAY RM 204  
PO BOX 40908  
OLYMPIA WA 98504-0908  
(360) 753-1111  
TOLL FREE 1-877-601-2828

October 2012

*"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 in any election campaign.*

## General Requirements:

**Sponsor ID:** Written ads must identify the sponsor's name and address unless exempt.\* Political committees must include contributor names for certain ads – see "What's Needed" section and the reverse side of this brochure.

**Exempt From Sponsor ID:** Yard signs (8' x 4' or smaller) and some other items are exempt. See list at far right.

**Broadcast Ads:** The sponsor's full name and any party preference must be clearly spoken in radio & TV ads. The address is not required..\*

**Party Preference:** All forms of advertising must clearly state a candidate's party preference if the candidate is seeking partisan office. This requirement applies regardless of whether the ad is sponsored by the candidate or someone else.

**Size and Placement:** See back side of brochure for size and placement criteria regarding sponsor and party ID.

**Photographs:** If candidate photos are used in any ad, at least one of them must have been taken within the last 5 years and be no smaller than the largest candidate photo in the ad.

**Office Sought:** State law does not require ads to include the office or position a candidate is seeking.

\*Advertising that qualifies as an "independent expenditure" or "electioneering communication" is subject to different sponsor ID requirements (unless the sponsor is a political party). See reverse side.

## The Law Forbids:

- Sponsoring an ad, with actual malice, that contains a statement constituting libel or defamation per se\* if the statement:
  - Directly or indirectly implies a candidate has the support or endorsement of any person or organization when the candidate does not (unless the statement is made by the person or organization),
  - Is a false statement of material fact about a candidate\*\*, or
  - Falsely represents that a candidate is an incumbent.\*\*

\*See RCW 42.17.530 for definition of libel and defamation per se.

\*\*Unless a candidate is making a statement about him or herself or the statement is made by the candidate's agent about the candidate.

- Using an assumed name when identifying the sponsor.
- Distributing campaign material deceptively similar in design or appearance to the voters and candidate's pamphlets published by the Secretary of State.
- Using the state seal or its likeness to assist or defeat a candidate.

These definitions apply in political ads:

**"Incumbent"** means a person who holds an elected office.

**"Re-elect"** represents that a candidate holds the office being sought, was elected to it, and seeks another term in that same office in the same district or political subdivision – OR – the candidate is not the incumbent but was elected to the office in the past, provided the ad clearly states that the candidate is not the incumbent.

**"Retain"** represents that the candidate is the incumbent but does not imply that the candidate attained the office by election.

**"Return"** represents that candidate holds, or has previously held, the office being sought, but does not represent that the office was attained by election.

"Sponsor" means the candidate, committee or other person who pays for the advertisement. If a person acts as an agent for another or is reimbursed for payment, the original source of the payment is the sponsor.

To identify the sponsor, use the words "Paid for by" or "Sponsored by" followed by the name and address of the sponsor. \*

## What's Needed for Sponsor ID:

**State, Local & Judicial Candidates**—show the candidate's name and address or the candidate's committee name and address. [Federal candidates are subject to federal law.]

**Political committees**—show the committee's name and address. The treasurer's name is not required. *Include names of Top 5 contributors if ad costs at least \$1,000 and supports or opposes a ballot measure (names of the 5 largest contributors who have given more than \$700 during the 12 months before the ad appears). Clearly say the sponsor's name in TV ads. The Top 5 contributor names, however, may be spoken or appear on the screen, provided they are visible for at least 4 seconds, appear in letters greater than 4% of the visual screen height, and have a reasonable color contrast with the background.\**

**Organizations or businesses**—show the organization or business name and address. President or treasurer's name is not required.\*

**Multiple sponsors**—show each sponsor's name and address. If one person pays for printing and another pays for mailing, list both as sponsors.\*

**Printed ads**—show the sponsor's name, mailing address and, if applicable, the candidate's party affiliation in an area apart from the ad text. If the ad is more than one page, identify the sponsor (and party) on the first page. Identification on a mailing envelope is optional; It's the ad enclosed in the envelope that must be properly identified.\*

**Radio and TV ads**—clearly say the sponsor's name. Address not required.\*

\* "Independent expenditures" and "electioneering communications" are subject to different sponsor ID requirements. See reverse side.

## Items Exempt from Sponsor ID

ashtrays	newspaper ads (one column inch or smaller)
badges & badge holders	noisemakers
balloons	official state or local voter pamphlets
bingo chips	paper & plastic cups
brushes	paper & plastic plates
bumper stickers (4" x 15" or smaller)	paperweights
business cards	pendants
buttons	pens
cigarette lighters	pinwheels
clothes pins	plastic tableware
clothing	pocket protectors
coasters	pot holders
combs	reader boards with moveable letters
cups	ribbons
earrings	rulers (12" or smaller)
emery boards	shoe horns
envelopes	skywriting
erasers	staple removers
Frisbees	stickers (2-3/4" x 1" or smaller)
glasses	sun glasses
golf balls & tees	sun visors
hand-held signs	swizzle sticks
hats	tickets to fund raisers
horns	water towers
ice scrapers	whistles
inscriptions	yard signs (8' x 4' or smaller)
key rings	yo-yo's
knives	all similar items
labels	
letter openers	
magnifying glasses	
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## Phil Stutzman

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**From:** John White [white@livengoodlaw.com]  
**Sent:** Monday, June 16, 2014 10:31 AM  
**To:** Andrea McNamara Doyle  
**Cc:** Phil Stutzman; lindsay@atg.wa.gov  
**Subject:** Human Life of Washington: Susan B. Anthony List v. Driehaus  
**Attachments:** Susan B. Anthony List v. Driehaus.pdf

Dear Ms. Doyle:

I have attached a copy of today's decision by the U.S. Supreme Court in *Susan B. Anthony List v. Driehaus*. I believe the decision is relevant to the upcoming meeting on the petition for a declaratory order.



Livengood Alskog

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## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

SUSAN B. ANTHONY LIST ET AL. *v.* DRIEHAUS ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT

No. 13–193. Argued April 22, 2014—Decided June 16, 2014

Respondent Driehaus, a former Congressman, filed a complaint with the Ohio Elections Commission alleging that petitioner Susan B. Anthony List (SBA) violated an Ohio law that criminalizes certain false statements made during the course of a political campaign. Specifically, Driehaus alleged that SBA violated the law when it stated that his vote for the Patient Protection and Affordable Care Act (ACA) was a vote in favor of “taxpayer funded abortion.” After Driehaus lost his re-election bid, the complaint was dismissed, but SBA continued to pursue a separate suit in Federal District Court challenging the law on First Amendment grounds. Petitioner Coalition Opposed to Additional Spending and Taxes (COAST) also filed a First Amendment challenge to the Ohio law, alleging that it had planned to disseminate materials presenting a similar message but refrained due to the proceedings against SBA. The District Court consolidated the two lawsuits and dismissed them as nonjusticiable, concluding that neither suit presented a sufficiently concrete injury for purposes of standing or ripeness. The Sixth Circuit affirmed on ripeness grounds.

*Held:* Petitioners have alleged a sufficiently imminent injury for Article III purposes. Pp. 7–18.

(a) To establish Article III standing, a plaintiff must show, *inter alia*, an “injury in fact,” which must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560. When challenging a law prior to its enforcement, a plaintiff satisfies the injury-in-fact requirement where he alleges “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution

## Syllabus

thereunder." *Babbitt v. Farm Workers*, 442 U. S. 289, 298. Pp. 7–11.

(b) Petitioners have alleged a credible threat of enforcement of the Ohio law. Pp. 11–17.

(1) Petitioners have alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest" by pleading specific statements they intend to make in future election cycles. Pp. 11–12.

(2) Petitioners' intended future conduct is also "arguably . . . proscribed by [the] statute." The Ohio false statement statute sweeps broadly, and a panel of the Ohio Elections Commission already found probable cause to believe that SBA violated the law when it made statements similar to those petitioners plan to make in the future. *Golden v. Zwickler*, 394 U. S. 103, is distinguishable; the threat of prosecution under an electoral leafletting ban in that case was wholly conjectural because the plaintiff's "sole concern" related to a former Congressman who was unlikely to run for office again. Here, by contrast, petitioners' speech focuses on the broader issue of support for the ACA, not on the voting record of a single candidate. Nor does SBA's insistence that its previous statements were true render its fears of enforcement misplaced. After all, that insistence did not prevent the Commission from finding probable cause for a violation the first time. Pp. 12–13.

(3) Finally, the threat of future enforcement is substantial. There is a history of past enforcement against petitioners. Past enforcement against the same conduct is good evidence that the threat of enforcement is not "chimerical." *Steffel v. Thompson*, 415 U. S. 452, 459. The credibility of that threat is bolstered by the fact that a complaint may be filed with the State Commission by "any person," Ohio Rev. Code Ann. §3517.153(A), not just a prosecutor or agency.

The threatened Commission proceedings are of particular concern because of the burden they impose on electoral speech. Moreover, the target of a complaint may be forced to divert significant time and resources to hire legal counsel and respond to discovery requests in the crucial days before an election. But this Court need not decide whether the threat of Commission proceedings standing alone is sufficient; here, those proceedings are backed by the additional threat of criminal prosecution. Pp. 14–17.

(c) The Sixth Circuit separately considered two other "prudential factors": "fitness" and "hardship." This Court need not resolve the continuing vitality of the prudential ripeness doctrine in this case because those factors are easily satisfied here. See *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U. S. \_\_\_\_\_. Pp. 17–18.

525 Fed. Appx. 415, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.



Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

No. 13–193

SUSAN B. ANTHONY LIST, ET AL., PETITIONERS *v.*  
STEVEN DRIEHAUS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[June 16, 2014]

JUSTICE THOMAS delivered the opinion of the Court.

Petitioners in this case seek to challenge an Ohio statute that prohibits certain “false statements” during the course of a political campaign. The question in this case is whether their preenforcement challenge to that law is justiciable—and in particular, whether they have alleged a sufficiently imminent injury for the purposes of Article III. We conclude that they have.

I

The Ohio statute at issue prohibits certain “false statement[s]” “during the course of any campaign for nomination or election to public office or office of a political party.” Ohio Rev. Code Ann. §3517.21(B) (Lexis 2013). As relevant here, the statute makes it a crime for any person to “[m]ake a false statement concerning the voting record of a candidate or public official,” §3517.21(B)(9), or to “[p]ost, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether

## Opinion of the Court

it was false or not,” §3517.21(B)(10).<sup>1</sup>

“[A]ny person” acting on personal knowledge may file a complaint with the Ohio Elections Commission (or Commission) alleging a violation of the false statement statute. §3517.153(A) (Lexis Supp. 2014). If filed within 60 days of a primary election or 90 days of a general election, the complaint is referred to a panel of at least three Commission members. §§3517.156(A), (B)(1) (Lexis 2013). The panel must then hold an expedited hearing, generally within two business days, §3517.156(B)(1), to determine whether there is probable cause to believe the alleged violation occurred, §3517.156(C). Upon a finding of probable cause, the full Commission must, within 10 days, hold a hearing on the complaint. §3517.156(C)(2); see also Ohio Admin. Code §3517-1-10(E) (2008).

The statute authorizes the full Commission to subpoena witnesses and compel production of documents. Ohio Rev. Code Ann. §3517.153(B) (Lexis Supp. 2014). At the full hearing, the parties may make opening and closing statements and present evidence. Ohio Admin. Code §§3517-1-11(B)(2)(c), (d), (g). If the Commission determines by “clear and convincing evidence” that a party has violated

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<sup>1</sup>Section 3517.21(B) provides in relevant part:

“No person, during the course of any campaign for nomination or election to public office or office of a political party, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

“(9) Make a false statement concerning the voting record of a candidate or public official;

“(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate.”

## Opinion of the Court

the false statement law, the Commission “shall” refer the matter to the relevant county prosecutor. Ohio Rev. Code Ann. §§3517.155(D)(1)–(2) (Lexis Supp. 2014). Alternatively, the Commission’s regulations state that it may simply issue a reprimand. See Ohio Admin. Code §3517–1–14(D). Violation of the false statement statute is a first-degree misdemeanor punishable by up to six months of imprisonment, a fine up to \$5,000, or both. Ohio Rev. Code Ann. §§3599.40 (Lexis 2013), 3517.992(V) (Lexis Supp. 2014). A second conviction under the false statement statute is a fourth-degree felony that carries a mandatory penalty of disfranchisement. §3599.39.

## II

Petitioner Susan B. Anthony List (SBA) is a “pro-life advocacy organization.” 525 Fed. Appx. 415, 416 (CA6 2013). During the 2010 election cycle, SBA publicly criticized various Members of Congress who voted for the Patient Protection and Affordable Care Act (ACA). In particular, it issued a press release announcing its plan to “educat[e] voters that their representative voted for a health care bill that includes taxpayer-funded abortion.” App. 49–50. The press release listed then-Congressman Steve Driehaus, a respondent here, who voted for the ACA. SBA also sought to display a billboard in Driehaus’ district condemning that vote. The planned billboard would have read: “Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion.” *Id.*, at 37. The advertising company that owned the billboard space refused to display that message, however, after Driehaus’ counsel threatened legal action.

On October 4, 2010, Driehaus filed a complaint with the Ohio Elections Commission alleging, as relevant here, that SBA had violated §§3517.21(B)(9) and (10) by falsely

## Opinion of the Court

stating that he had voted for “taxpayer-funded abortion.”<sup>2</sup> Because Driehaus filed his complaint 29 days before the general election, a Commission panel held an expedited hearing. On October 14, 2010, the panel voted 2 to 1 to find probable cause that a violation had been committed. The full Commission set a hearing date for 10 business days later, and the parties commenced discovery. Driehaus noticed depositions of three SBA employees as well as individuals affiliated with similar advocacy groups. He also issued discovery requests for all evidence that SBA would rely on at the Commission hearing, as well as SBA’s communications with allied organizations, political party committees, and Members of Congress and their staffs.

On October 18, 2010—after the panel’s probable-cause determination, but before the scheduled Commission hearing—SBA filed suit in Federal District Court, seeking declaratory and injunctive relief on the ground that §§3517.21(B)(9) and (10) violate the First and Fourteenth Amendments of the United States Constitution. The District Court stayed the action under *Younger v. Harris*, 401 U. S. 37 (1971), pending completion of the Commission proceedings. The Sixth Circuit denied SBA’s motion for an injunction pending appeal. Driehaus and SBA eventually agreed to postpone the full Commission hearing until after the election.

When Driehaus lost the election in November 2010, he moved to withdraw his complaint against SBA. The Commission granted the motion with SBA’s consent. Once the Commission proceedings were terminated, the District Court lifted the stay and SBA amended its complaint. As

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<sup>2</sup>The dispute about the falsity of SBA’s speech concerns two different provisions of the ACA: (1) the subsidy to assist lower income individuals in paying insurance premiums, and (2) the direct appropriation of federal money for certain health programs such as community health centers. See Brief for Petitioners 4–5.

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relevant here, the amended complaint alleged that Ohio Rev. Code Ann. §§3517.21(B)(9) and (10) are unconstitutional both facially and as applied. Specifically, the complaint alleged that SBA's speech about Driehaus had been chilled; that SBA "intends to engage in substantially similar activity in the future"; and that it "face[d] the prospect of its speech and associational rights again being chilled and burdened," because "[a]ny complainant can hale [it] before the [Commission], forcing it to expend time and resources defending itself." App. 121–122.

The District Court consolidated SBA's suit with a separate suit brought by petitioner Coalition Opposed to Additional Spending and Taxes (COAST), an advocacy organization that also alleged that the same Ohio false statement provisions are unconstitutional both facially and as applied.<sup>3</sup> According to its amended complaint, COAST intended to disseminate a mass e-mail and other materials criticizing Driehaus' vote for the ACA as a vote "to fund abortions with tax dollars," but refrained from doing so because of the Commission proceedings against SBA. *Id.*, at 146, 148, 162. COAST further alleged that it "desires to make the same or similar statements about other federal candidates who voted for" the ACA, but that fear "of finding itself subject to the same fate" as SBA has deterred it from doing so. *Id.*, at 149, 157.<sup>4</sup>

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<sup>3</sup>Petitioners also challenged a related "disclaimer provision," App. 126–127, 156–157, under Ohio Rev. Code Ann. §3517.20, and COAST raised pre-emption and due process claims. Reply Brief 21, n. 7. Petitioners do not pursue their "disclaimer," pre-emption, or due process claims before us. *Ibid.* We also need not address SBA's separate challenge to the Commission's investigatory procedures; petitioners have conceded that the procedures claim stands or falls with the substantive prohibition on false statements. *Ibid.*; see Tr. of Oral Arg. 19. Finally, the parties agree that petitioners' as-applied claims "are better read as facial objections to Ohio's law." Reply Brief 19. Accordingly, we do not separately address the as-applied claims.

<sup>4</sup>SBA named Driehaus, the Commission's members and its staff at-

## Opinion of the Court

The District Court dismissed both suits as non-justiciable, concluding that neither suit presented a sufficiently concrete injury for purposes of standing or ripeness. The Sixth Circuit affirmed on ripeness grounds. 525 Fed. Appx. 415. The Court of Appeals analyzed three factors to assess whether the case was ripe for review: (1) the likelihood that the alleged harm would come to pass; (2) whether the factual record was sufficiently developed; and (3) the hardship to the parties if judicial relief were denied.

Regarding the first factor, the Sixth Circuit concluded that SBA's prior injuries—the probable-cause determination and the billboard rejection—“do not help it show an imminent threat of *future* prosecution,” particularly where “the Commission never found that SBA . . . violated Ohio's false-statement law.” *Id.*, at 420. The court further reasoned that it was speculative whether any person would file a complaint with the Commission in the future, in part because Driehaus took a 2-year assignment with the Peace Corps in Africa after losing the election. Finally, the court noted that SBA has not alleged that “it plans to lie or recklessly disregard the veracity of its speech” in the future, but rather maintains that the statements it intends to make are factually true. *Id.*, at 422.

As for the remaining factors, the court concluded that the factual record was insufficiently developed with respect to the content of SBA's future speech, and that withholding judicial relief would not result in undue hardship because, in the time period leading up to the 2010 election, SBA continued to communicate its message even after Commission proceedings were initiated. The Sixth Circuit

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torney (in their official capacities), and the Ohio Secretary of State (in her official capacity) as defendants. COAST named the Commission, the Commission's members and its staff attorney (in their official capacities), and the Ohio Secretary of State (in her official capacity) as defendants. All named defendants are respondents here.

## Opinion of the Court

therefore determined that SBA's suit was not ripe for review, and that its analysis as to SBA compelled the same conclusion with respect to COAST.

We granted certiorari, 571 U. S. \_\_\_\_ (2014), and now reverse.

## III

## A

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U. S. Const., Art. III, §2. The doctrine of standing gives meaning to these constitutional limits by "identify[ing] those disputes which are appropriately resolved through the judicial process."<sup>5</sup> *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992). "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U. S. \_\_\_\_, \_\_\_\_, (2013) (slip op., at 9). To establish Article III standing, a plaintiff must show (1) an "injury in fact," (2) a sufficient "causal connection between the injury and the conduct complained of," and (3) a "likel[ihood]" that the injury "will be redressed by a favorable decision." *Lujan, supra*, at 560–561 (internal quotation marks omitted).

This case concerns the injury-in-fact requirement, which helps to ensure that the plaintiff has a "personal stake in the outcome of the controversy." *Warth v. Seldin*, 422

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<sup>5</sup>The doctrines of standing and ripeness "originate" from the same Article III limitation. *DaimlerChrysler Corp. v. Cuno*, 547 U. S. 332, 335 (2006). As the parties acknowledge, the Article III standing and ripeness issues in this case "boil down to the same question." *Med-Immune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128, n. 8 (2007); see Brief for Petitioners 28; Brief for Respondents 22. Consistent with our practice in cases like *Virginia v. American Booksellers Assn., Inc.*, 484 U. S. 383, 392 (1988), and *Babbitt v. Farm Workers*, 442 U. S. 289, 299, n. 11 (1979), we use the term "standing" in this opinion.

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U. S. 490, 498 (1975) (internal quotation marks omitted). An injury sufficient to satisfy Article III must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan, supra*, at 560 (some internal question marks omitted). An allegation of future injury may suffice if the threatened injury is “certainly impending,” or there is a “‘substantial risk’ that the harm will occur.” *Clapper*, 568 U. S., at \_\_\_, \_\_\_, n. 5 (slip op., at 10, 15, n. 5) (emphasis deleted and internal quotation marks omitted).

“‘The party invoking federal jurisdiction bears the burden of establishing’ standing.” *Id.*, at \_\_\_ (slip op., at 12). “[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan, supra*, at 561.

## B

One recurring issue in our cases is determining when the threatened enforcement of a law creates an Article III injury. When an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law. See *Steffel v. Thompson*, 415 U. S. 452, 459 (1974) (“[I]t is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights”); see also *MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128–129 (2007) (“[W]here threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat”). Instead, we have permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent. Specifically, we have held that a plaintiff satisfies the injury-in-fact



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requirement where he alleges “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Babbitt v. Farm Workers*, 442 U. S. 289, 298 (1979). Several of our cases illustrate the circumstances under which plaintiffs may bring a preenforcement challenge consistent with Article III.

In *Steffel*, for example, police officers threatened to arrest petitioner and his companion for distributing handbills protesting the Vietnam War. Petitioner left to avoid arrest; his companion remained and was arrested and charged with criminal trespass. Petitioner sought a declaratory judgment that the trespass statute was unconstitutional as applied to him.

We determined that petitioner had alleged a credible threat of enforcement: He had been warned to stop handbilling and threatened with prosecution if he disobeyed; he stated his desire to continue handbilling (an activity he claimed was constitutionally protected); and his companion’s prosecution showed that his “concern with arrest” was not “chimerical.” 415 U. S., at 459. Under those circumstances, we said, “it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights.” *Ibid.*

In *Babbitt*, we considered a preenforcement challenge to a statute that made it an unfair labor practice to encourage consumers to boycott an “agricultural product . . . by the use of dishonest, untruthful and deceptive publicity.” 442 U. S., at 301. The plaintiffs contended that the law “unconstitutionally penalize[d] inaccuracies inadvertently uttered in the course of consumer appeals.” *Ibid.*

Building on *Steffel*, we explained that a plaintiff could bring a preenforcement suit when he “has alleged an intention to engage in a course of conduct arguably af-

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fectured with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Babbitt*, *supra*, at 298. We found those circumstances present in *Babbitt*. In that case, the law “on its face proscribe[d] dishonest, untruthful, and deceptive publicity.” 442 U. S., at 302. The plaintiffs had “actively engaged in consumer publicity campaigns in the past” and alleged “an intention to continue” those campaigns in the future. *Id.*, at 301. And although they did not “plan to propagate untruths,” they argued that “‘erroneous statement is inevitable in free debate.’” *Ibid.* We concluded that the plaintiffs’ fear of prosecution was not “imaginary or wholly speculative,” and that their challenge to the consumer publicity provision presented an Article III case or controversy. *Id.*, at 302.

Two other cases bear mention. In *Virginia v. American Booksellers Assn. Inc.*, 484 U. S. 383 (1988), we held that booksellers could seek preenforcement review of a law making it a crime to “‘knowingly display for commercial purpose’” material that is “‘harmful to juveniles’” as defined by the statute. *Id.*, at 386. At trial, the booksellers introduced 16 books they believed were covered by the statute and testified that costly compliance measures would be necessary to avoid prosecution for displaying such books. Just as in *Babbitt* and *Steffel*, we determined that the “pre-enforcement nature” of the suit was not “troubl[ing]” because the plaintiffs had “alleged an actual and well-founded fear that the law will be enforced against them.” 484 U. S., at 393.

Finally, in *Holder v. Humanitarian Law Project*, 561 U. S. 1 (2010), we considered a preenforcement challenge to a law that criminalized “‘knowingly provid[ing] material support or resources to a foreign terrorist organization.’” *Id.*, at 8. The plaintiffs claimed that they had provided support to groups designated as terrorist organizations prior to the law’s enactment and would provide

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similar support in the future. The Government had charged 150 persons with violating the law and declined to disavow prosecution if the plaintiffs resumed their support of the designated organizations. We held that the claims were justiciable: The plaintiffs faced a “credible threat” of enforcement and “should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.” *Id.*, at 15.

## IV

Here, SBA and COAST contend that the threat of enforcement of the false statement statute amounts to an Article III injury in fact. We agree: Petitioners have alleged a credible threat of enforcement. See *Babbitt*, 442 U. S., at 298.

## A

First, petitioners have alleged “an intention to engage in a course of conduct arguably affected with a constitutional interest.” *Ibid.* Both petitioners have pleaded specific statements they intend to make in future election cycles. SBA has already stated that representatives who voted for the ACA supported “taxpayer-funded abortion,” and it has alleged an “inten[t] to engage in substantially similar activity in the future.” App. 49–50, 122. See also *Humanitarian Law Project*, *supra*, at 15–16 (observing that plaintiffs had previously provided support to groups designated as terrorist organizations and alleged they “would provide similar support [to the same terrorist organizations] again if the statute’s allegedly unconstitutional bar were lifted”). COAST has alleged that it previously intended to disseminate materials criticizing a vote for the ACA as a vote “to fund abortions with tax dollars,” and that it “desires to make the same or similar statements about other federal candidates who voted for [the ACA].” App. 146, 149, 162. Because petitioners’ intended future conduct concerns

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political speech, it is certainly “affected with a constitutional interest.” *Babbitt, supra*, at 298; see also *Monitor Patriot Co. v. Roy*, 401 U. S. 265, 272 (1971) (“[T]he constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office”).

## B

Next, petitioners’ intended future conduct is “arguably . . . proscribed by [the] statute” they wish to challenge. *Babbitt, supra*, at 298. The Ohio false statement law sweeps broadly, see *supra*, at 1–2, and n. 1., and covers the subject matter of petitioners’ intended speech. Both SBA and COAST have alleged an intent to “[m]ake” statements “concerning the voting record of a candidate or public official,” §3517.21(B)(9), and to “disseminate” statements “concerning a candidate . . . to promote the election, nomination, or defeat of the candidate,” §3517.21(B)(10). And, a Commission panel here already found probable cause to believe that SBA violated the statute when it stated that Driehaus had supported “taxpayer-funded abortion”—the same sort of statement petitioners plan to disseminate in the future. Under these circumstances, we have no difficulty concluding that petitioners’ intended speech is “arguably proscribed” by the law.

Respondents incorrectly rely on *Golden v. Zwickler*, 394 U. S. 103 (1969). In that case, the plaintiff had previously distributed anonymous leaflets criticizing a particular Congressman who had since left office. *Id.*, at 104–106, and n. 2. The Court dismissed the plaintiff’s challenge to the electoral leafletting ban as nonjusticiable because his “sole concern was literature relating to the Congressman and his record,” and “it was most unlikely that the Congressman would again be a candidate.” *Id.*, at 109 (emphasis added). Under those circumstances, any threat of

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future prosecution was “wholly conjectural.” *Ibid.*

Here, by contrast, petitioners’ speech focuses on the broader issue of support for the ACA, not on the voting record of a single candidate. See Reply Brief 4–5 (identifying other elected officials who plan to seek reelection as potential objects of SBA’s criticisms). Because petitioners’ alleged future speech is not directed exclusively at Driehaus, it does not matter whether he “may run for office again.” Brief for Respondents 33 (internal quotation marks omitted). As long as petitioners continue to engage in comparable electoral speech regarding support for the ACA, that speech will remain arguably proscribed by Ohio’s false statement statute.

Respondents, echoing the Sixth Circuit, contend that SBA’s fears of enforcement are misplaced because SBA has not said it “plans to lie or recklessly disregard the veracity of its speech.” *Id.*, at 15 (quoting 525 Fed. Appx., at 422). The Sixth Circuit reasoned that because SBA “can only be liable for making a statement ‘knowing’ it is false,” SBA’s insistence that its speech is factually true “makes the possibility of prosecution for uttering such statements exceedingly slim.” *Id.*, at 422.

The Sixth Circuit misses the point. SBA’s insistence that the allegations in its press release were true did not prevent the Commission panel from finding probable cause to believe that SBA had violated the law the first time around. And, there is every reason to think that similar speech in the future will result in similar proceedings, notwithstanding SBA’s belief in the truth of its allegations. Nothing in this Court’s decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law. See, e.g., *Babbitt*, 442 U. S., at 301 (case was justiciable even though plaintiffs disavowed any intent to “propagate untruths”).

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## C

Finally, the threat of future enforcement of the false statement statute is substantial. Most obviously, there is a history of past enforcement here: SBA was the subject of a complaint in a recent election cycle. We have observed that past enforcement against the same conduct is good evidence that the threat of enforcement is not “chimerical.” *Steffel*, 415 U. S., at 459; cf. *Clapper*, 568 U. S., at \_\_\_ (slip op., at 12) (plaintiffs’ theory of standing was “substantially undermine[d]” by their “fail[ure] to offer any evidence that their communications ha[d] been monitored” under the challenged statute). Here, the threat is even more substantial given that the Commission panel actually found probable cause to believe that SBA’s speech violated the false statement statute. Indeed future complainants may well “invoke the prior probable-cause finding to prove that SBA *knowingly* lied.” Brief for Petitioners 32.

The credibility of that threat is bolstered by the fact that authority to file a complaint with the Commission is not limited to a prosecutor or an agency. Instead, the false statement statute allows “any person” with knowledge of the purported violation to file a complaint. §3517.153(A). Because the universe of potential complainants is not restricted to state officials who are constrained by explicit guidelines or ethical obligations, there is a real risk of complaints from, for example, political opponents. See Brief for Michael DeWine, Attorney General of Ohio, as *Amicus Curiae* 8 (hereinafter DeWine Brief); see also *id.*, at 6 (noting that “the Commission has no system for weeding out frivolous complaints”). And petitioners, who intend to criticize candidates for political office, are easy targets.

Finally, Commission proceedings are not a rare occurrence. Petitioners inform us that the Commission “handles about 20 to 80 false statement complaints per year,”

## Opinion of the Court

Brief for Petitioners 46, and respondents do not deny that the Commission frequently fields complaints alleging violations of the false statement statute. Cf. *Humanitarian Law Project*, 561 U. S., at 16 (noting that there had been numerous prior prosecutions under the challenged statute). Moreover, respondents have not disavowed enforcement if petitioners make similar statements in the future. See Tr. of Oral Arg. 29–30; see also *Humanitarian Law Project*, *supra*, at 16 (“The Government has not argued to this Court that plaintiffs will not be prosecuted if they do what they say they wish to do”). In fact, the specter of enforcement is so substantial that the owner of the billboard refused to display SBA’s message after receiving a letter threatening Commission proceedings. On these facts, the prospect of future enforcement is far from “imaginary or speculative.” *Babbitt*, *supra*, at 298.

We take the threatened Commission proceedings into account because administrative action, like arrest or prosecution, may give rise to harm sufficient to justify pre-enforcement review. See *Ohio Civil Rights Comm’n v. Dayton Christian Schools, Inc.*, 477 U. S. 619, 625–626, n. 1 (1986) (“If a reasonable threat of prosecution creates a ripe controversy, we fail to see how the actual filing of the administrative action threatening sanctions in this case does not”). The burdens that Commission proceedings can impose on electoral speech are of particular concern here. As the Ohio Attorney General himself notes, the “practical effect” of the Ohio false statement scheme is “to permit a private complainant . . . to gain a campaign advantage without ever having to prove the falsity of a statement.” DeWine Brief 7. “[C]omplainants may time their submissions to achieve maximum disruption of their political opponents while calculating that an ultimate decision on the merits will be deferred until after the relevant election.” *Id.*, at 14–15. Moreover, the target of a false statement complaint may be forced to divert significant time

## Opinion of the Court

and resources to hire legal counsel and respond to discovery requests in the crucial days leading up to an election. And where, as here, a Commission panel issues a preelection probable-cause finding, “such a determination itself may be viewed [by the electorate] as a sanction by the State.” *Id.*, at 13.

Although the threat of Commission proceedings is a substantial one, we need not decide whether that threat standing alone gives rise to an Article III injury. The burdensome Commission proceedings here are backed by the additional threat of criminal prosecution. We conclude that the combination of those two threats suffices to create an Article III injury under the circumstances of this case. See *Babbitt, supra*, at 302, n. 13 (In addition to the threat of criminal sanctions, “the prospect of issuance of an administrative cease-and-desist order or a court-ordered injunction against such prohibited conduct provides substantial additional support for the conclusion that appellees’ challenge . . . is justiciable” (citations omitted)).

That conclusion holds true as to both SBA and COAST. Respondents, relying on *Younger v. Harris*, 401 U. S. 37 (1971), appear to suggest that COAST lacks standing because it refrained from actually disseminating its planned speech in order to avoid Commission proceedings of its own. See Brief for Respondents 26–27, 34. In *Younger*, the plaintiff had been indicted for distributing leaflets in violation of the California Criminal Syndicalism Act. When he challenged the constitutionality of the law in federal court, several other plaintiffs intervened, arguing that their own speech was inhibited by Harris’ prosecution. The Court concluded that only the plaintiff had standing because the intervenors “d[id] not claim that they ha[d] ever been threatened with prosecution, that a prosecution [wa]s likely, or even that a prosecution [wa]s remotely possible.” 401 U. S., at 42.

That is not this case. Unlike the intervenors in *Younger*,



## Opinion of the Court

COAST has alleged an intent to engage in the same speech that was the subject of a prior enforcement proceeding. Also unlike the intervenors in *Younger*, who had never been threatened with prosecution, COAST has been the subject of Commission proceedings in the past. See, e.g., *COAST Candidates PAC v. Ohio Elections Comm'n*, 543 Fed. Appx. 490 (CA6 2013). COAST is far more akin to the plaintiff in *Steffel*, who was not arrested alongside his handbilling companion but was nevertheless threatened with prosecution for similar speech. 415 U. S., at 459.

In sum, we find that both SBA and COAST have alleged a credible threat of enforcement.

## V

In concluding that petitioners' claims were not justiciable, the Sixth Circuit separately considered two other factors: whether the factual record was sufficiently developed, and whether hardship to the parties would result if judicial relief is denied at this stage in the proceedings. 525 Fed. Appx., at 419. Respondents contend that these "prudential ripeness" factors confirm that the claims at issue are nonjusticiable. Brief for Respondents 17. But we have already concluded that petitioners have alleged a sufficient Article III injury. To the extent respondents would have us deem petitioners' claims nonjusticiable "on grounds that are 'prudential,' rather than constitutional," "[t]hat request is in some tension with our recent reaffirmation of the principle that 'a federal court's obligation to hear and decide' cases within its jurisdiction 'is virtually unflagging.'" *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U. S. \_\_\_, \_\_\_ (2014) (slip op., at 6) (quoting *Sprint Communications, Inc. v. Jacobs*, 571 U. S. \_\_\_, \_\_\_ (2013) (slip op., at 6); some internal quotation marks omitted).

In any event, we need not resolve the continuing vitality

## Opinion of the Court

of the prudential ripeness doctrine in this case because the “fitness” and “hardship” factors are easily satisfied here. First, petitioners’ challenge to the Ohio false statement statute presents an issue that is “purely legal, and will not be clarified by further factual development.” *Thomas v. Union Carbide Agricultural Products Co.*, 473 U. S. 568, 581 (1985). And denying prompt judicial review would impose a substantial hardship on petitioners, forcing them to choose between refraining from core political speech on the one hand, or engaging in that speech and risking costly Commission proceedings and criminal prosecution on the other.

\* \* \*

Petitioners in this case have demonstrated an injury in fact sufficient for Article III standing. We accordingly reverse the judgment of the United States Court of Appeals for the Sixth Circuit and remand the case for further proceedings consistent with this opinion, including a determination whether the remaining Article III standing requirements are met.

*It is so ordered.*

## Political Advertising is ...

advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or TV 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 an election campaign.

“Mass communication” is a message intended to reach a large audience through any of the methods described above as well as periodicals, sample ballots, web sites, e-mails, text messages, social media, and other online or electronic formats enabling the exchange of communication.



**Sending 100 or more identical or substantially similar letters, e-mails or text messages to specific recipients within a 30-day period is an example of mass communication.**

## FALSE POLITICAL ADVERTISING:

It is illegal to sponsor a political ad, with actual malice, that contains a statement constituting libel or defamation per se\* if the statement:

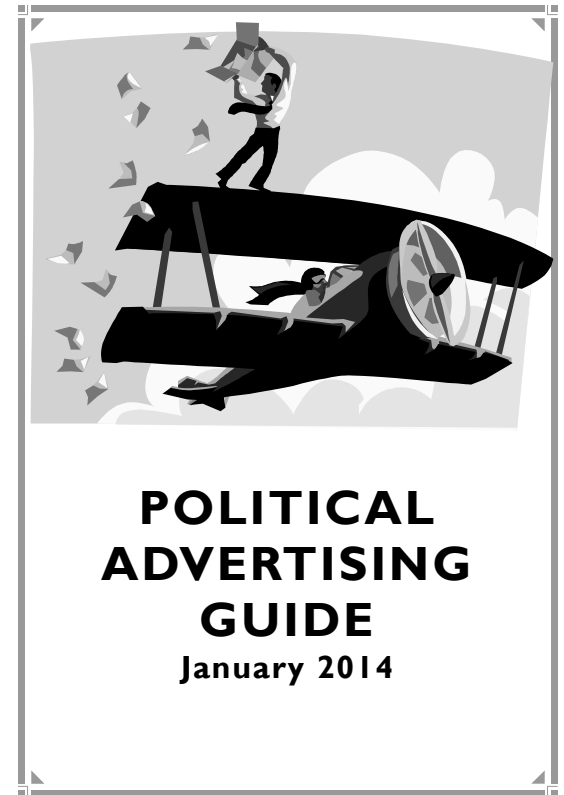
- directly or indirectly implies a candidate has the support or endorsement of any person or organization when the candidate does not (unless the statement is made by the person or organization),
- is a false statement of material fact about a candidate,\*\* or
- falsely represents that a candidate is an incumbent.\*\*

\*See [RCW 42.17A.335\(2\)](#) for a definition of libel and defamation per se.

\*\*Unless a candidate is making a statement about him or herself or the statement is made by the candidate's agent about the candidate.

It is also illegal to:

- use an assumed name for sponsor identification in a political ad;
- distribute campaign material deceptively similar in design or appearance to the voter and candidate pamphlets published by the Secretary of State, or
- use the state seal or its likeness to assist or defeat a candidate.



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P O Box 40908  
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(360) 753-1111  
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e-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov)

Other [political advertising brochures](#) available from the Public Disclosure Commission:

Independent Expenditure Ads & Electioneering Communications

Electioneering Communications Guide

## GENERAL REQUIREMENTS

**Party preference** must be included in any form of advertising about a candidate seeking election to a partisan office, regardless of who sponsors the ad. Acceptable abbreviations that may be used for party preference are:

Communist—Com  
Constitution—CP  
Democrat—D, Dem, Demo  
Independent or unaffiliated—Ind, Indep  
Libertarian—L, LP, LBT, LBTN  
Progressive—P, PP, Prog  
Republican—R, GOP, Rep (use Rep only if it does not falsely imply the candidate is an incumbent State Representative)  
Socialist—Soc  
Socialist Workers—Soc Workers, SWP  
Official symbols or logos adopted by the state committee of the party may be used in lieu of other identification.

**Sponsor Identification** is required for political advertising, except for certain types of ads that are listed in the far-right column. (There are no exemptions for party preference.) The “sponsor” is the candidate, committee, or other person who pays for the ad. When the person buying the ad is an agent for another person or is otherwise reimbursed, the sponsor is the ultimate spender. When no payment is demanded or the cost is not readily ascertainable, the sponsor is the person who arranges for the ad to be displayed or broadcast.

The PDC's Independent Expenditure Ads & Electioneering Communications brochure explains the unique Sponsor ID requirements for those types of ads.

When **candidate photos** are used in an ad, at least one of them must have been taken within the last five years and it can be no smaller than the largest candidate photo in the ad.

**Do not falsely imply incumbency** in a political advertisement about a candidate who does not hold the office.

## MORE ABOUT SPONSOR ID

Use the words “paid for by” or “sponsored by” followed by the sponsor’s name & address. Include all sponsors’ names & addresses, if there are multiple sponsors. A political committee must include its Top 5 contributors’ names when sponsoring an ad about a ballot measure with a cost of at least \$1,000 in the aggregate. (Top 5 = the five largest contributors who gave more than \$700 during the 12 months before the ad appears.)

**PRINT ADS & WEBSITES**—display sponsor ID and any party preference in an area set apart from the ad text on the first page of the ad. Use at least 10-point type; do not screen or half-tone the text. Exceptions—

**BILLBOARDS/POSTERS:** Use type that is at least 10% of the largest size type used in the ad.

**SMALL ONLINE ADS WITH LIMITED CHARACTERS** may display sponsor ID & party preference in an automatic display such as a mouse tip/rollover or nonblockable pop-up that remains visible for at least 4 seconds OR on a webpage that is conspicuously linked to the small ad and reached with one mouse click.

**BROADCAST ADS, VIDEOS, and ONLINE AUDIO ADS**—Clearly speak the sponsor’s name and any party preference. (Sponsor’s address not required) When necessary in TV or video ads, a political committee has the option of displaying its Top 5 contributor names on the screen for at least 4 seconds in letters greater than 4% of the visual screen height at a reasonable color contrast with the background. An abbreviations may be used when naming a Top 5 contributor, if the full name of the contributor has already been clearly spoken in the ad.

## DESCRIBING CANDIDATES IN ADS

**Incumbent** is the person who is in the office now, regardless of whether s/he was appointed or elected.

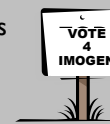
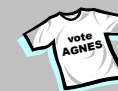
**Re-Elect** means that the candidate holds the office now and is seeking another term in the same office OR that the candidate was elected to the office in the past, but is not the incumbent, in which case the ad must clearly state that the candidate is not the incumbent.

**Retain** can be used for any incumbent.

**Return** represents that the candidate holds, or has previously held the office being sought.

## EXEMPT FROM SPONSOR ID

badges & badge holders	nail clippers & files
balloons	print newspaper ads (≤ one column inch)
brushes	noisemakers
bumper stickers (≤ 4”x15”)	official voter pamphlet paper & plastic cups and plates
business cards	paperweights
buttons	pencils
cigarette lighters	pendants
clothing	pens
coasters	pinwheels
combs	pocket protectors
cups	reader boards with moveable letters
emery boards	ribbons
envelopes	rulers (≤ 12”)
erasers	shoe horns
Frisbees	skywriting
glasses	stickers (≤ 2-3/4”x1”)
golf balls & tees	sunglasses
hand-held signs	sun visors
hats	swizzle sticks
ice scrapers	tickets to fund raisers
key rings	whistles
knives	yard signs (≤ 8’x4’)
labels	yo-yos
letter openers	all similar items
matchbooks	



The sponsor’s name & address may be left off of a political ad that meets all of the following criteria:

- the sponsor is an individual acting on his or her own behalf, independent of any candidate, political committee or organization, who personally produces and distributes the ad (or pays for it to be produced and/or distributed);
- the sponsor receives no contributions or other support to produce and distribute the ad;
- no more than \$50 in the aggregate is spent for online advertising or \$100 in the aggregate for any other type of advertising; and
- the advertising is EITHER distributed through the individual’s social media site, personal website, or similar online forum where information is produced and disseminated only by the individual OR a letter, flier, handbill, text or e-mail from the individual that does not appear in a newspaper or comparable mass publication.

## Political Advertising is ...

advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or TV 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 an election campaign.

“Mass communication” is a message intended to reach a large audience through any of the methods described above as well as periodicals, sample ballots, web sites, e-mails, text messages, social media, and other online or electronic formats enabling the exchange of communication.



**Sending 100 or more identical or substantially similar letters, e-mails, or text messages to specific recipients within a 30-day period is an example of mass communication.**

## Defining independent expenditures and electioneering communications:

Political advertising that contains all of 1-5 OR A-D below, must comply with the disclosure requirements explained on the reverse side.

### Independent Expenditure:

1. the ad supports or opposes a candidate for state, local, or judicial office;
2. the ad is paid for by someone other than a candidate, a candidate's committee or agent;
3. the sponsor does the advertising completely independently of any candidate supported in the ad (or the opponent of the candidate opposed), or a candidate's committee or agent;
4. the sponsor did not receive the candidate's encouragement or approval to do the ad; and
5. the ad costs at least \$900, or the cost of this ad when combined with the cost of earlier ads supporting or opposing the candidate, totals \$900 or more.

### Electioneering Communication:

- A. clearly identifies at least one candidate for state, local, or judicial office;
- B. appears within 60 days of an election in the candidate's jurisdiction;
- C. is produced through radio, TV, postal mailing, billboard, newspaper, or periodical; and
- D. either alone, or in combination with other communications by the sponsor identifying the candidate, has a fair market value of \$1,000 or more.

Sponsor ID requirements for political advertising supporting or opposing just ballot measures are explained in the PDC's Political Advertising Guide.

A sponsor of an independent political ad regarding a ballot measure and a candidate must prorate the cost of the ad to determine if the candidate portion meets either 1-5 or A-D above. If so, the sponsor complies with the disclosure requirements explained on the reverse side.



## Supplement to Political Advertising Guide

January 2014



**Public Disclosure Commission**  
Shining Light on Washington Politics Since 1972

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e-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov)

## SPONSOR REQUIREMENTS:

The statement “No candidate authorized this ad. It is paid for by (name, address, city state)” must be a part of the ad. A political committee, *except for a bona fide party committee*, must also include:

- “Top Five Contributors” followed by a list of the names of the five contributors who made the largest contributions in excess of \$700 to the committee during the 12 months before the ad appears. AND
- The full name of the individual or entity that established or directly maintains or controls the sponsoring committee (or indirectly maintains or controls the sponsoring committee through the formation of one or more political committees).

Recommended format:

**No candidate authorized this ad. It is paid for by The Committee for Good Government (Gotham City Merchants Assn.) Top 5 Contributors . . .**



*Always include the party preference of a candidate running for partisan office.*



### Written ads & websites:

Size & Placement: Party preference and sponsor requirements must:

- appear on the first page of the communication in at least 10 point type, or
- for billboards or posters, appear in type at least 10% of the largest size type used in the ad, and
- be set apart from any other ad text. Do not screen or half-tone the text.

**Exception—small online ads** with limited characters may display the required elements in an automatic display such as a mouse tip/rollover or nonblockable pop-up that remains visible for at least 4 seconds OR on a webpage that is conspicuously linked to the small ad and reached by one click of the mouse.

Yard signs no bigger than 8' x 4', clothing such as T-shirts, and bumper stickers no bigger than 4"x15" are **exempt** from the sponsor requirements. The PDC's Political Advertising Guide has a more complete list of exempt items.

**Broadcast ads, videos, telephone and online audio ads**—Candidate party preference and required disclosures must be clearly spoken. An abbreviation may be used when naming a Top 5 contributor, provided the full name of the contributor has already been clearly spoken in the ad.



### ALTERNATE OPTION FOR TV AND OTHER MEDIUMS WITH A VISUAL IMAGE

—The “paid for by” statement and political committee disclosures may appear in print, so long as they are visible for at least 4 seconds, appear in letters greater than 4% of the visual screen height, and have a reasonable color contrast with the background.



**Exception—Bona fide political party committees** are required to include the “no candidate authorized this ad . . .” statement in broadcast ads, but not the Top 5 contributors or controlling entity.

*“A candidate’s party preference must be clearly spoken in broadcast ads.”*

See the PDC’s Political Advertising Guide for a list of party abbreviations.

Refer to the PDC’s Political Advertising Guide for false political advertising and other prohibitions.



## DISCLOSURE:

**Electioneering Communication:** [Electronically file](#) PDC Form C-6 within 24 hours of when the ad appears to the public.\*

### Independent Expenditure (IE):

Ad appears within 21 days of an election and costs \$1,000 or more, regardless of who is the sponsor

[Electronically file](#) or otherwise deliver Form C-6 to the PDC within 24 hours of when the ad appears to the public.

All other IEs, unless sponsored by a political committee (a political committee will report the expense on a C-4)

[Electronically file](#) or otherwise deliver Form C-6 to the PDC within 5 days of spending \$100 or more. [Political committee reports expenditure on C-4 report.]

\*These sponsors of electioneering communications must file the C-6 and generally have additional reporting requirements:

in-state political committee (C-1, C-3, C-4),  
out-of-state political committee (C-5),  
lobbyist (L-1, L2), and  
grass roots lobbying campaigns (L-6).

Public Comments  
Petition for  
Declaratory Order  
Human Life PAC

**Jon Ammons**

---

**From:** Roger E. Lenk [lenk.roger@gmail.com]  
**ent:** Sunday, June 08, 2014 5:47 PM  
**To:** PDC  
**Subject:** PETITION FOR DECLARATORY ORDER - HUMAN LIFE OF WASHINGTON

Please take notice that I am in support of HUMAN LIFE OF Washington's PETITION FOR DECLARATORY ORDER.

As noted in the Petition, "Forced inclusion of candidates' self-stated "preference" for a political party, Democratic, Republican, or even a "Good Budweiser Party" interferes with Human Life's right to speaker autonomy. Party preference is irrelevant to Human Life's political and social speech and objectives, but under current law, it appears its election-related speech must include a candidate's "speech" on this issue." The issue of Life and activities of Human Life of Washington are not associated with a party designation, but a single non-partisan cause.

I would suggest that the Declaratory Order be unique to Human Life of Washington, and other organizations be required to seek their own orders based on their particular situations and the merits. This will avoid situations whereby PACs are created for the purposes of confusing the voting public on candidate positions and issues.

Thank you for the opportunity to opine.

Roger Erich Lenk  
1817 N. Road 76  
Pasco, Washington 99301  
(509) 542-0489  
[lenk.roger@gmail.com](mailto:lenk.roger@gmail.com)



**Jon Ammons**

---

**From:** Mary Ruth Edwards [jasermom@centurylink.net]  
**Sent:** Tuesday, June 10, 2014 2:47 PM  
**To:** PDC  
**Subject:** Declaratory Order for Human Life Washington and Human Life PAC

It is my wish that the Declaratory Order should be approved, solely for Human Life Washington and Human Life PAC, and that all others must seek their own Declaratory Order based on the merits to avoid the creation of PACs whose purpose may be to confuse the voting public on candidates, issues and positions.

Sincerely,

Mary Ruth Edwards  
1063 Yakima Avenue  
Prosser, WA 99350  
(509) 832-0239

## Jon Ammons

---

**From:** Chris Van Dyk [cvandyk5@msn.com]  
**Sent:** Monday, June 16, 2014 8:20 AM  
**To:** PDC  
**Subject:** Declaration of party affiliation

The governmental sponsorship of political parties should stop, altogether.

There should be no requirement for statement of party affiliation; and, especially so, since it does not seem to be a truthful statement, in many instances, anyway. If they say nothing, at least they will be telling the truth.

Furthermore, the holding of closed door caucuses in the legislature, by political party, ought to end, also, and the people's business done in public. That way, everybody's affiliation or lack thereof, will be known, accurately, for better or worse.

And those of us for whom neither party is an accurate fit, will no longer be left having to adapt, to an anachronistic system that is completely out of sync with the public perception of what happens, in the legislature.

Chris Van Dyk  
Principal Owner,  
Bainbridge Media Group  
223 Island Way NW  
Bainbridge Island, WA 98110  
206-965-0086  
[cvandyk5@msn.com](mailto:cvandyk5@msn.com)



RECEIVED

JUN 16 2014

June 13, 2014

Public Disclosure Commission

Chair Amit Ranade  
Public Disclosure Commission  
711 Capitol Way #206  
Olympia, WA 98504

RE: Human Life PAC Petition for Declaratory Order

Dear Chair Ranade:

I am writing in opposition to Human Life of Washington and Human Life PAC's Petition for Declaratory Order. The request by Human Life of Washington and Human Life PAC seeks to reduce the amount of information provided to Washington State voters.

According to Human Life's petition, "hyperpartisanship interferes with the pro-life message" and "party preference is irrelevant to Human Life's political and social speech objectives." The role of the Public Disclosure Commission is not to help advance the message and objectives of special interest groups, but to provide voters with as much information as possible with regard to political communication, contributions, and expenditures.

Additionally, Human Life's petition requests to remove party preferences based on "majorities of Americans view the two parties unfavorably" and "candidates' party preferences on the ballot no longer connote affiliation with their 'preferred' party."

In Washington State, candidates self-select their party preference, providing a significant amount of information to voters on where that candidate likely stands on several issues. With Washington State's Top-Two Primary system and self-selection of party preference, if a candidate does not feel the party label appropriately demonstrates their viewpoints, they are free to run with any party label they choose. Rep. Christ Hurst has run successfully for the Washington State legislature several times selecting "Prefers Independent Democrat" Party.

It is in the best interest of the voters of Washington State to deny the Human Life of Washington and Human Life PAC's request to reduce the amount of information provided to the public.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Bartz", is written over a large, stylized flourish that extends to the right.

Adam M. Bartz  
WSDC, Executive Director

cc: Grant Degginer, Vice Chair  
Kathy Turner, Member  
Katrina Asay, Member

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin  
James D. Oswald

RECEIVED

JUN 20 2014

DMITRI IGLITZIN  
iglitzin@workerlaw.com

Public Disclosure Commission

Original via email to [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) and  
Via US First Class Mail

June 18, 2014

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

RE: Comments Regarding Petition for Declaratory Order Filed By Human Life of  
Washington and Human Life PAC  
SCBIL File No. 2960-017

Dear Commission Members,


In response to your email of May 29, 2014, we are writing to you on behalf of the Service Employees International Union and the Washington State Labor Council concerning the petition filed by Human Life of Washington and Human Life PAC. Please accept the following as our comments on the matter.

The Petition for Declaratory Order (hereinafter "the Petition"), filed by Human Life of Washington and Human Life PAC (hereinafter "the Petitioners"), seeks a binding order holding that the omission of a candidate's self-stated party preference from advertising sponsored by an advocacy organization and political committee will not constitute a violation of RCW 42.17A.320(1) or WAC 390-18-020 (concerning political advertising and political party identification requirements).

Petitioners' request for a Declaratory Order should be denied. There is no ambiguity in the law requiring clarification by way of a declaratory order. The outcome requested by the Petitioners is unwarranted, unnecessary, and entirely inconsistent with both the laws of Washington State and the policy priorities of transparency and disclosure espoused by the Commission and the voters of Washington.

**The Issues Raised By The Petitioners Do Not Meet The Requirements Of RCW 34.05.240.**

RCW 34.05.240 states that anyone may petition an agency for a declaratory order regarding the applicability of a rule, order, or statute enforceable by that agency to specified circumstances. The petition must show that uncertainty necessitating resolution exists; that there is actual controversy arising from the uncertainty such that a declaratory order will not be merely

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

JUN 20 2014

Public Disclosure Commission

an advisory opinion; that the uncertainty adversely affects the petitioner; and that the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

A declaratory order *only* addresses “the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.” But, as outlined herein, there are no uncertainties within the language of the relevant statutes requiring such clarification. Petitioners seek a declaratory order that goes beyond clarification; instead, Petitioners seek to change the law. The Petitioners’ request must be denied.

**A Candidate’s Self-Stated Party Preference Must Be Included In Sponsored Advertising, Pursuant To RCW 42.17A.320(1) And WAC 390-18-020.**

The Commission cannot issue a declaratory judgment as requested by the Petitioners, because there are no ambiguities or uncertainties in RCW 42.17A.320(1) and WAC 390-18-020 that would require clarification. In order to ascertain the meaning of a statute, courts look first to the language of the statute. “If a statute is clear on its face, its meaning is to be derived from the language of the statute alone.” *Kilian v. Atkinson*, 147 Wn.2d 16, 20 (2002) (citing *State v. Keller*, 143 Wn.2d 267, 276 (2001)). A statute is ambiguous if it is “‘susceptible to two or more reasonable interpretations,’ but ‘a statute is not ambiguous merely because different interpretations are conceivable.’” *Agrilink Foods, Inc. v. State Dept. of Revenue*, 153 Wn.2d 392, 396 (2005). Courts do not subject an unambiguous statute to statutory construction. *Kilian*, 147 Wn.2d at 20. Thus, when a statute is not ambiguous, only a plain language analysis of a statute is appropriate. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201 (2006).

RCW 42.17A.320(1) addresses the identification of the sponsor of political advertising and electioneering communications. It reads:

All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor’s name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor’s name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, *if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.*

*Id.* (emphasis added). There is no ambiguity within the statute: it requires the candidates’ expressed party affiliation be clearly identified in electioneering communications and political advertising.

Further clarification is provided by WAC 390-18-020, which relates to advertising and political party identification. It reads, in relevant part:

(1) According to RCW 42.17A.320, *sponsors of advertising* supporting or opposing a candidate who has expressed a party or independent preference on the declaration of candidacy *must clearly identify the candidate's political party or independent status in the advertising.*

(2) According to RCW 42.17A.320, *sponsors of electioneering communications* identifying a candidate who has expressed a party or independent preference on the declaration of candidacy *must clearly identify the candidate's political party or independent status in the advertising.*

*Id.* (emphasis added). Petitioner asserts that the lack of the word “all” in the fourth sentence of RCW 42.17A.320(1) creates the uncertainty requiring clarification through a declaratory order. Even attempting to humor that tortured interpretation, any conceivable ambiguity evaporates when RCW 42.17A.320(1) is viewed in conjunction with WAC 390-18-020.

The Petitioners assert that there is “uncertainty whether the requirement that a candidate’s self-stated party preference must be included on only the candidate’s political advertising or whether the Commission will interpret the last sentence of RCW 42.17A.320(1) to extend to political advertising by persons other than the candidate.” This assertion is disingenuous. The first and second sentences of RCW 42.17A.320 make it clear that the provisions of that section apply to “[a]ll written” and “[a]ll radio and television” political advertising. No declaratory order to the contrary can be issued, and therefore Petitioners’ request must be denied by the Commission.

### **The Declaratory Order Requested By Petitioners Is Inconsistent With The Goals Of Transparency In Washington State Elections And Public Disclosure Laws.**

The Public Disclosure Law relies on “the antiseptic qualities of sunshine” and several prohibitions to assure citizens of Washington that governmental systems and individuals who operate within it are open and honest.<sup>1</sup> The Public Disclosure Commission itself was created and empowered by Initiative of the People to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with and equitable enforcement of Washington’s disclosure and campaign finance laws.

Washington’s Public Disclosure Law was enacted by ballot initiative in 1972, with the support of 72% of the voting public. It declares as Washington State’s public policy “that secrecy is to be avoided.” RCW 42.17.010(1). The Disclosure Law “enables the public to ‘follow the money’ with respect to campaigns and lobbying.” *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 996–97 (9th Cir. 2010).

Here, the Petitioners seek to avoid this requirement of transparency by demanding that a clear and specific law be interpreted in a manner that would permit them to withhold a candidate’s self-stated party preference, merely because political parties allegedly are polling

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<sup>1</sup> See <http://www.pdc.wa.gov/home/about/history/publicdisclosure.aspx>.

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Public Disclosure Commission  
poorly. Petitioners “prefer[] that its social and political messages not be tainted by association with institutions with such negative public perceptions” as political parties, citing Gallop Surveys as support of negative public perception. Petition at pg. 3; Petition Ex. C. This request, and the Petition containing it, does not align with the policy requirements of Washington State and its people. It must be denied.

**The Positions Outlined By Petitioners Inaccurately Assert That Their First Amendment Rights Are Being Restricted.**

Petitioners assert that the passage of Initiative 872 in 2004 created the ambiguities they want clarified. But the notion of requiring identification of a candidate’s party affiliation in advertisements is nothing new, and certainly is not a product of I-872. For example, in 1974, RCW 29.85.270 read, in pertinent part: “If a candidate or candidates run for partisan political office, they *and their sponsors* shall also designate on all such political advertising clearly in connection with each such candidate the party to which each such candidate belongs.” *Id.* (emphasis added).

The Supreme Court of the United States also dismissed the argument Petitioners are attempting to make here. “[The] assertion that voters will misinterpret the party-preference designation is sheer speculation. It ‘depends upon the belief that voters can be ‘misled’ by party labels.’” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 454–55 (2008), citing *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 220 (1986).

This is not the first time Petitioners have alleged that Washington’s Public Disclosure Law is unconstitutional and infringes on their First Amendment rights in some way. The Ninth Circuit, in *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010), noted that “the Supreme Court’s decision in *Citizens United* ... provides the best guidance regarding the constitutionality of [RCW Chapter 42.17’s] requirements. ... [The Court] underscored the fundamental distinction between the burdens imposed by financial regulations, ... and those imposed by *disclaimer and disclosure requirements*.” *Id.* at 1013 (emphasis added). Recounting the series of Supreme Court cases that had upheld disclosure requirements while simultaneously striking down other regulations on campaign speech, the Court affirmed and reiterated the importance of disclosure requirements—even requirements that apply to issue advocacy—to the government’s interest in informing the electorate. *Id.*

The cases cited by Petitioners allegedly supporting their claim that the requirement to include political party affiliation is a violation of “speaker autonomy” or free speech are entirely distinguishable from the facts present here. Petition at pgs. 6–7. For example, in *Pac. Gas & Elec. Co. v. Pub. Utilities Comm’n of California*, 475 U.S. 1 (1986), the California Public Utilities Commission ordered a utility provider to place a third-party editorial newsletter in its billing envelopes. The Court noted that this case was about the utility being forced “either to appear to agree with [the intruding leaflet and its opinions] or to respond.” *Id.* at 15. That is *not* analogous to identifying a candidate’s self-selected party affiliation.

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Public Disclosure Commission

Furthermore, *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 477 (2007) does not actually stand for the Petitioners' arguments concerning forced speech. That case addressed the prohibition on use of corporate funds to finance "electioneering communications" during pre-federal-election periods.

Petitioners do not, because they cannot, cite to a single case holding that disclosure requirements concerning political party affiliation infringe on First Amendment rights. Petitioners cannot be permitted to attempt to overrule established law through a declaratory order from the Commission, and therefore their Petition must be denied.

### Conclusion

Petitioners are not genuinely seeking to resolve uncertainty, because no uncertainty exists. Instead, they are asking the Commission to override Washington State law in order to work around negative perceptions allegedly associated with political parties today. The Commission's power to issue declaratory orders is not the proper mechanism for such an attempt.

This effort, besides being improper, constitutes an attempt to undermine transparency in Washington State elections. Contrary to the assertions made by the Petitioners, party preference *does* provide significant information to voters about a candidate's general ideology and positions on issues, and is a critical piece of information for voters. The Commission should deny the Petitioners' request for a binding Declaratory Order.

We look forward to the opportunity to discuss this issue with the Commission at greater length in person at the June 26, 2014, meeting.

Very truly yours,



Dmitri Iglitzin  
Laura Ewan

cc: Lynne Dodson  
Mike Nelson



RECEIVED

JUN 20 2014

June 18, 2014

Amit Ranade, Chair  
Public Disclosure Commission  
711 Capitol Way #206  
Olympia, WA 98504

Public Disclosure Commission

RE: Comments Related to Human Life of Washington and Human Life PAC's Petition for Declaratory Order

Dear Chair Ranade:

I am writing in opposition to Human Life of Washington and Human Life PAC's Petition for Declaratory Order. The Democratic Party is a strong proponent of transparency and accountability regarding political communication, contributions and expenditures. The request by Human Life of Washington and Human Life PAC runs counter to this and seeks to reduce the amount of information provided to Washington State voters.

According to Human Life of Washington and Human Life PAC's petition, "hyperpartisanship interferes with the pro-life message" and "party preference is irrelevant to Human Life's political and social speech objectives." The role of the Public Disclosure Commission is not to help advance the message and objectives of special interest groups, but to provide voters with as much information as possible with regard to political communication, contributions, and expenditures.

Specifically the petition of Human Life of Washington and Human Life PAC for a declaratory order exempting them from compliance with RCW 42.17A.320(1) should be denied for the following reasons:

1. The Legislature has determined that it is important for the public to know the political persuasion of the candidates supported or opposed by an organization. This information assists the voter in determining how much weight (positive, negative or none) to give to the fact that the organization has taken a position and is willing to spend money. Human Life is asking the Commission to condone avoidance of the laws passed by the Legislature. The Commission is established to implement and enforce the laws passed by the legislature, not to undermine them.
2. The intentional omission of a candidate's preference from advertising, in the context of Human Life's petition, is a false statement. The public is presumed to know that the law requires advertisers to include a candidate's preference statement if such a statement has been made. The public also assumes the Commission enforces the state's statutes. Accordingly, the public will reasonably conclude that the omission of a party preference statement means no statement was made. This is both a false conclusion and the intended result of Human Life's action: to deceive the public into thinking the candidate had no preference he or she was willing to disclose.

3. Human Life's right to free speech is not unduly restricted: It remains free to articulate its own message as widely as it chooses and in whatever way it chooses. The law impacts Human Life if, and only if, it decides to attack or support a specific candidate. Having chosen freely to include the candidate's name in its message it must also take the modest step of including the candidate's preference statement in addition to the candidate's name. This is not burdensome and it certainly does not justify ignoring the state's statutes.

In the interest of transparency and accountability regarding political communication and subsequently in the best interest of the voters of Washington State I encourage the Public Disclosure Commission to deny the Human Life of Washington and Human Life PAC's request to reduce the amount of information provided to the public.

Sincerely,

**RECEIVED**

JUN 20 2014

Public Disclosure Commission



Jaxon Ravens  
Washington State Democrats, Chair

CC:

Grant Degginger, Vice Chair

Kathy Turner, Member

Katrina Asay, Member



HOUSE DEMOCRATIC CAMPAIGN COMMITTEE

June 18, 2014

Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504

Dear Public Disclosure Commission Commissioners and Staff:

It has recently come to our attention that the Human Life PAC of Washington has issued a Petition for Declaratory Order to set back the advances in disclosure law and transparency in our political campaigns throughout Washington State. On behalf of the entire House Democratic Caucus and its members, I would like to register our very strong opposition to this request.

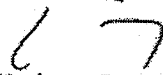
The march of disclosure law since its inception in 1972 has been toward more disclosure, more transparency and more access for the public of information related to all campaign activities. Their specific request to remove party preference from the requirement of political advertising is a step backward toward the days of nefarious and unregulated campaign activities.

We believe their claims against "hyper-partisanship" and "interference with their social goals and objectives" is irrelevant. We also believe if the Republican Party favorabilities were higher and aligned more with their own hyper-partisan tendencies, we don't believe you'd have this petition before you today. According to their own poll numbers, the Human Life PAC cites that Democrats are viewed more favorably than Republicans by 20% of the public. Additionally, according to their 2012 and previous endorsements, 90% of their endorsements are of Republican candidates. That would appear hyper-partisan to us. It is no coincidence, then, that they would be interested in removing Republican Party preferences from their political advertising. That effort would remove the likely unfavorable weight from the candidates for whom they are advertising.

We believe this request is a self-serving step backward to the days when interests groups were able to influence and impact elections without the scrutiny of the public or media. We believe this effort is meant to provide less information to voters, instead of more. And as a result, removing party preferences would not build more trust by the public in our political system, but rather less.

Because this Petition runs counter to the mission and vision of the Public Disclosure Commission, we ask the Public Disclosure Commission deny the Petition for Declaratory Order.

Sincerely,

  
Tony Yuchasz, Executive Director  
House Democratic Campaign Committee

## Jon Ammons

---

**From:** Sam H [samanne@gmail.com]  
**Sent:** Thursday, June 19, 2014 4:09 PM  
**To:** PDC  
**Subject:** Comments related to petition for declaratory order

Dear Commissioners of the Public Disclosure Commission,

I am writing in opposition to the petition for declaratory order from Human Life PAC of Washington to be considered at you June 26<sup>th</sup> commission meeting.

The Public Disclosure Commission was founded through the citizen initiative process in 1972 in order to ensure that citizens in Washington State have the ability to access information about campaign fundraising and expenditures. Removal of party designation as requested by the petition is a gigantic step backward for transparency and open government in our state.

This declaratory petition removes important disclosure requirements for political communications. The goal and vision of the Public Disclosure Commission (PDC) is to shine a bright light on campaign activities so that voters have the appropriate information to make an informed decision. This petition would remove much needed transparency in our political communications and process.

The PDC is not established so one interest group can advance its own particular social goals and agendas. As someone who cares deeply about ensuring that voters have access to as much information as possible, the current RCW that requires a candidates self-stated party preference and seeks to enforce that declaration is needed to ensure that I can make an informed decision as I consider my vote.

In order to ensure we continue to have some of the most transparent political communication and some of the strongest disclosure laws in the country, please vote not to consider or grant this petition.

Thank you.

Sam Hatzenbeler, MPHc  
Community Oriented Public Health Practice  
Co-Director, Committee on Oppression, Racism, and Education (CORE)  
University of Washington  
[samanne@gmail.com](mailto:samanne@gmail.com)  
(206) 949-4476



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

June 23, 2014

Dear Commissioners of the Public Disclosure Commission,

I am writing in opposition to the petition for declaratory order from Human Life PAC of Washington, which is to be considered at the June 26<sup>th</sup> commission meeting.

Washington residents have demonstrated their commitment to election transparency, whether through creation of the PDC itself via citizen initiative in 1972 or a lawsuit demanding disclosure from one of America's largest trade groups in 2013. Removing party designation, as requested in this petition, is a step backwards for transparency.

This declaratory petition seeks to remove important disclosure requirements from political communications. As a network of more than 100,000 people across the state and a robust PAC, we do not feel our member or voter communication has been negatively impacted by the current RCW. Rather, as more organizations and individuals engage in election communication, voters need more information, not less.

The PDC has historically affirmed voters' right to information over the programmatic goals of an agenda-driven interest group. We hope that you will continue to consider voters first and protect the disclosure laws we have in place, which are some of the strongest in the country. Please vote not to consider or grant this petition.

Very sincerely,

Erin Haick  
Political Director  
Fuse Washington

Fuse Washington  
1402 Third Ave, Seattle, WA 98101  
[www.FuseWashington.org](http://www.FuseWashington.org)

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JUN 24 2014

Public Disclosure Commission



To: Public Disclosure Commission  
From: Dana Laurent, Executive Director of Win/Win Network  
Date: June 24, 2014  
Subject: Regarding Declaratory Order Filed By Human Life of Washington and Human Life PAC

I am writing to strongly urge the denial of the Petition for Declaratory Order filed by Human Life of Washington and Human Life PAC. The Public Disclosure Commission was founded through the citizen initiative process in 1972 to ensure that Washington State citizens have the ability to access information about campaign fundraising, campaign expenditures, and political communication to provide transparency in Washington State election process, which is also protected by RCW 42.17A.320 (1) and WAC 390-18.020.

The Commission cannot issue a declaratory judgment as requested by the Petitioners, because there is no ambiguities or uncertainties in RCW 42.17A.320(1) and WAC 390-18-020. RCW 42.17A.320(1) language clearly states that, *"All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address."* Ergo, the petition put forth by the Human Life of Washington and Human Life PAC is in violation of Washington State disclosure laws.

The establishment of PDC was *and is* to give no one interest group an advantage of it's own social goals and agendas. As an organization that seeks to communicate with our members and the public about elections, I can assure you the current RCW that requires a candidate to self-state party preference and seek to enforce that declaration is not a hindrance to our mission.

Historically, the PDC has repeatedly sided with voters and their right to access information; it has always been the priority to support the required disclosure and transparency for groups who fund political advertising the voters receive.

Petitioners are not genuinely seeking to resolve uncertainty, because no uncertainties exist. To grant this request is to override the Washington State law against the will of Washington State citizens.

We must continue to ensure transparency in political communication to our voters of Washington State.  
**Please vote not to consider or grant this petition.**

Sincerely,

A handwritten signature in black ink that reads "Dana Laurent". The signature is written in a cursive, flowing style.

Dana Laurent  
Executive Director  
Win/Win Network



Your Voice — Your Vote

Washington Education Association  
Political Action Committee

June 25, 2014

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

Re: Comments Related to the Petition for Declaratory Order Filed by Human Life of Washington and Human Life PAC

Dear Commissioners,

I am writing to you on behalf of the Washington Education Association Political Action Committee (WEA-PAC) in opposition to the petition filed by the Human Life of Washington and Human Life PAC. WEA-PAC believes the request should be denied as it is unnecessary and it runs counter to the purpose of the Washington State Public Disclosure Law.

Like the Petitioners, WEA-PAC is a non-partisan political action committee that recommends candidates and spends independently on behalf of candidates it recommends based on the candidate's position on issues of importance to the organization. WEA-PAC recommends candidates based solely on their stance on public education issues. WEA-PAC does not consider partisan preference in making its decision whether or not to endorse a candidate.

Petitioners' request should be denied. There is no uncertainty in the requirements of RCW 42.17A.320(1) or WAC 390-18-020. The statute and regulation explicitly require that a partisan candidate's party or independent preference be clearly identified in electioneering communications, independent expenditures, or political advertising. In previous election cycles, most recently in 2012, WEA-PAC made independent expenditures on behalf of partisan candidates and has understood that it must include the candidate's stated party preference. WEA-PAC supports the inclusion of this information and believes it is necessary so that voters can adequately consider the information presented in political advertising.

The policy of the Public Disclosure Law is to facilitate full and transparent disclosure of campaign financing. The purpose of the Public Disclosure Law is thwarted by allowing interest groups to withhold information merely because it believes that information to be unpopular. Requiring the inclusion of a candidate's stated party preference does not infringe on a speaker's constitutional right to free speech. It is merely a way to ensure that voters have the necessary information to allow them to properly identify the candidate in the political advertising.

For these reasons, WEA-PAC urges you to deny the Petitioners' request for a Declaratory Order.

Sincerely,

Kim Mead  
WEA President and Chair of WEA-PAC

RECEIVED

JUN 25 2014



Affiliated with: AFL-CIO  
International Association of Fire Fighters  
Washington State Labor Council

Public Disclosure Commission

## Washington State Council of Fire Fighters

June 25, 2014

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

Re: Comments Regarding Petition for Declaratory Order Filed By Human Life of Washington and Human Life PAC

Dear Commissioners of the Public Disclosure Commission:

I am writing on behalf of the more than 8,000 members of the Washington State Council of Fire Fighters (WSCFF) in opposition to the petition for declaratory order from Human Life PAC of Washington, which is to be considered at your June 26, 2014, Commission meeting.

The citizens of our state rightfully demand transparency when it comes to our political process. We believe a decision by the PDC to allow partisan candidates to conceal their own chosen party affiliation would be a step in the wrong direction.

The electorate deserves to know, in detail, who is seeking to represent them. The WSCFF engages in partisan political races on behalf of our members, and we strongly encourage our members to engage individually.

Only by educating ourselves about each candidate's views, background, political affiliation, voting record and other pertinent information can we make truly informed decisions about who will stand-up for the things we care about and who will not.

If the PDC grants this petition, it will render all voters, including our members, less informed; and our democracy will suffer from it.

The PDC has a long history of standing up for transparency and in favor of more public disclosure--not less, as this petition seeks. We encourage you to reject the subject petition.

Respectfully,

Kelly Fox  
WSCFF President  
opelu23@aficio/dag



## Phil Stutzman

---

**From:** Jennifer Hansen on behalf of PDC  
**Sent:** Wednesday, June 25, 2014 4:55 PM  
**To:** Phil Stutzman  
**Subject:** FW: Comments related to petition for declaratory order

*Jennifer Hansen*

Filer Assistance Specialist

Tel: 360-586-4560

Fax: 360-753-1112



---

**From:** Dustin Lambro [<mailto:Dustin@Teamsters117.org>]  
**Sent:** Wednesday, June 25, 2014 3:06 PM  
**To:** PDC  
**Subject:** Comments related to petition for declaratory order

Dear Commissioners,

I am writing in opposition to the petition for declaratory order from Human Life PAC of Washington to be considered at your commission meeting tomorrow, June 26<sup>th</sup>.

When Washington overwhelmingly approved Initiative 276 in 1972, voters created the Public Disclosure Commission (PDC) to make sure they could access information about fundraising and expenditures in campaigns. The PDC exists to shine a bright light on campaign activities so voters can make an informed decision about who to vote for.

As an organization that seeks to communicate with our members and the public about elections, I can assure you the current RCW that requires a candidate's self-stated party preference is not a hindrance to the mission of Teamsters Local 117.

The PDC has repeatedly sided with voters and their right to know and has affirmed that any concerns regarding hindrance of social or organization goals are secondary to the overwhelming benefit of requiring disclosure and transparency for those groups who fund the political advertising the public receives.

In order to ensure we continue to have some of the most transparent political communication and some of the strongest disclosure laws in the country, please vote not to grant this petition. I'd appreciate my comments being considered and heard at your meeting tomorrow.

Thank you,

**Dustin Lambro** | Political Action Coordinator  
Teamsters Local Union No. 117

14675 Interurban Avenue South, Suite 307 | Tukwila, WA 98168  
Office: 206-441-4860 ext. 1262 | Cell: 206-794-2606 | Toll Free: 888-872-3489 ext. 1262 | Fax: 206-441-3153

*Fighting for workers' rights!*

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

June 26, 2014

Re: Comments Regarding Petition for Declaratory Order Filed By Human Life of Washington and Human Life PAC

Dear Commission Members,

We are writing in opposition to the Petition for Declaratory Order filed by Human Life of Washington and Human Life PAC to be considered at your July 8<sup>th</sup> commission meeting. For the sake of transparency and disclosure, the petitioner's request should be denied.

Since its founding by citizen initiative in 1972, the Public Disclosure Commission (PDC) has worked to guarantee that citizens in Washington State have the ability to access information about campaign fundraising and expenditures. Removal of party designation as requested by the petition goes against the goals and visions of the PDC to expose campaign activities to public scrutiny so that voters have the information they need to make informed decisions.

Human Life of Washington seeks to undermine transparency in Washington State elections citing concerns about "negative public perceptions" of political parties based on recent Gallup Surveys. They cite a specific example of candidate Mark Miloscia who has run for office under the "preference" for the Democratic Party and the Republican Party. Though a candidate's "party preference" may change, the importance of disclosing this preference to voters does not change.

Like the Human Life of Washington and Human Life PAC, NARAL Pro-Choice Washington and NARAL Pro-Choice Washington PAC plan to disseminate materials that will constitute "political advertising." RCW 42.17A.320 and WAC 390-18-020 clearly state that political advertising must identify the candidate's political party or independent status. As an organization that seeks to communicate with our members and the public about elections, we do not find the current RCW to be a hindrance to our mission. The petition to the PDC for a declaratory order is a disingenuous attempt to contort Washington State's political advertising statute to benefit one interest group's particular social goals. In the spirit of transparency and offering voters more information, not less, the Commission should deny the request for a binding Declaratory Order.

We look forward to the opportunity to discuss this issue with the Commission at the July 8, 2014 Commission meeting.

Sincerely,

Rachel Berkson, Executive Director

Suone Cotner, PAC Chair

Catherine Minch, PAC Chair