
HOUSE BILL 2222

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Manweller, Bergquist, and Freeman

Read first time 01/14/14. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to the definitions of campaign contributions and
2 expenditures involving legal services provided by a licensed attorney;
3 reenacting and amending RCW 42.17A.005; adding a new section to chapter
4 42.17A RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The First Amendment of the United States
7 Constitution prohibits congress from making laws that abridge the
8 freedom of speech; the Fourteenth Amendment prevents the states from
9 abridging those privileges; and Washington Constitution Article I
10 section 5 protects freedom of speech. It is well established that
11 campaign contributions and expenditures are protected forms of speech,
12 that the rights of freedom of speech, association, and expression
13 include the ability to obtain and provide legal advice regarding the
14 exercise of those rights, and that therefore government interference
15 with the ability to hire an attorney also infringes on protected
16 constitutional and other civil rights. Campaign finance and
17 expenditure limits that restrict attorneys from providing their
18 services to campaigns with respect to constitutional and civil rights
19 litigation are contrary and counterproductive to the government's

1 compelling interest of protecting freedom of speech. The limits for
2 in-kind contributions as applied to attorneys are so low that they
3 restrict the attorney to mere hours of service. Government restraint
4 on the ability to obtain attorney representation for candidates, ballot
5 measure campaigns, and others involved in political activities is a
6 direct infringement on the constitutional rights of the attorney and
7 the client with regard to political speech, which receives the
8 strongest constitutional protections.

9 The legislature intends to clarify that legal services provided by
10 a licensed attorney are not regulated campaign contributions or
11 expenditures.

12 **Sec. 2.** RCW 42.17A.005 and 2011 c 145 s 2 and 2011 c 60 s 19 are
13 each reenacted and amended to read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Actual malice" means to act with knowledge of falsity or with
17 reckless disregard as to truth or falsity.

18 (2) "Agency" includes all state agencies and all local agencies.
19 "State agency" includes every state office, department, division,
20 bureau, board, commission, or other state agency. "Local agency"
21 includes every county, city, town, municipal corporation, quasi-
22 municipal corporation, or special purpose district, or any office,
23 department, division, bureau, board, commission, or agency thereof, or
24 other local public agency.

25 (3) "Authorized committee" means the political committee authorized
26 by a candidate, or by the public official against whom recall charges
27 have been filed, to accept contributions or make expenditures on behalf
28 of the candidate or public official.

29 (4) "Ballot proposition" means any "measure" as defined by RCW
30 29A.04.091, or any initiative, recall, or referendum proposition
31 proposed to be submitted to the voters of the state or any municipal
32 corporation, political subdivision, or other voting constituency from
33 and after the time when the proposition has been initially filed with
34 the appropriate election officer of that constituency before its
35 circulation for signatures.

36 (5) "Benefit" means a commercial, proprietary, financial, economic,

1 or monetary advantage, or the avoidance of a commercial, proprietary,
2 financial, economic, or monetary disadvantage.

3 (6) "Bona fide political party" means:

4 (a) An organization that has been recognized as a minor political
5 party by the secretary of state;

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

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

13 (7) "Candidate" means any individual who seeks nomination for
14 election or election to public office. An individual seeks nomination
15 or election when he or she first:

16 (a) Receives contributions or makes expenditures or reserves space
17 or facilities with intent to promote his or her candidacy for office;

18 (b) Announces publicly or files for office;

19 (c) Purchases commercial advertising space or broadcast time to
20 promote his or her candidacy; or

21 (d) Gives his or her consent to another person to take on behalf of
22 the individual any of the actions in (a) or (c) of this subsection.

23 (8) "Caucus political committee" means a political committee
24 organized and maintained by the members of a major political party in
25 the state senate or state house of representatives.

26 (9) "Commercial advertiser" means any person who sells the service
27 of communicating messages or producing printed material for broadcast
28 or distribution to the general public or segments of the general public
29 whether through the use of newspapers, magazines, television and radio
30 stations, billboard companies, direct mail advertising companies,
31 printing companies, or otherwise.

32 (10) "Commission" means the agency established under RCW
33 42.17A.100.

34 (11) "Compensation" unless the context requires a narrower meaning,
35 includes payment in any form for real or personal property or services
36 of any kind. For the purpose of compliance with RCW 42.17A.710,
37 "compensation" does not include per diem allowances or other payments

1 made by a governmental entity to reimburse a public official for
2 expenses incurred while the official is engaged in the official
3 business of the governmental entity.

4 (12) "Continuing political committee" means a political committee
5 that is an organization of continuing existence not established in
6 anticipation of any particular election campaign.

7 (13)(a) "Contribution" includes:

8 (i) A loan, gift, deposit, subscription, forgiveness of
9 indebtedness, donation, advance, pledge, payment, transfer of funds
10 between political committees, or anything of value, including personal
11 and professional services for less than full consideration;

12 (ii) An expenditure made by a person in cooperation, consultation,
13 or concert with, or at the request or suggestion of, a candidate, a
14 political committee, the person or persons named on the candidate's or
15 committee's registration form who direct expenditures on behalf of the
16 candidate or committee, or their agents;

17 (iii) The financing by a person of the dissemination, distribution,
18 or republication, in whole or in part, of broadcast, written, graphic,
19 or other form of political advertising or electioneering communication
20 prepared by a candidate, a political committee, or its authorized
21 agent;

22 (iv) Sums paid for tickets to fund-raising events such as dinners
23 and parties, except for the actual cost of the consumables furnished at
24 the event.

25 (b) "Contribution" does not include:

26 (i) Standard interest on money deposited in a political committee's
27 account;

28 (ii) Ordinary home hospitality;

29 (iii) A contribution received by a candidate or political committee
30 that is returned to the contributor within five business days of the
31 date on which it is received by the candidate or political committee;

32 (iv) A news item, feature, commentary, or editorial in a regularly
33 scheduled news medium that is of primary interest to the general
34 public, that is in a news medium controlled by a person whose business
35 is that news medium, and that is not controlled by a candidate or a
36 political committee;

37 (v) An internal political communication primarily limited to the
38 members of or contributors to a political party organization or

1 political committee, or to the officers, management staff, or
2 stockholders of a corporation or similar enterprise, or to the members
3 of a labor organization or other membership organization;

4 (vi) The rendering of personal services of the sort commonly
5 performed by volunteer campaign workers, or incidental expenses
6 personally incurred by volunteer campaign workers not in excess of
7 fifty dollars personally paid for by the worker. "Volunteer services,"
8 for the purposes of this subsection, means services or labor for which
9 the individual is not compensated by any person;

10 (vii) Messages in the form of reader boards, banners, or yard or
11 window signs displayed on a person's own property or property occupied
12 by a person. However, a facility used for such political advertising
13 for which a rental charge is normally made must be reported as an in-
14 kind contribution and counts towards any applicable contribution limit
15 of the person providing the facility;

16 (viii) (~~Legal or~~) Accounting services rendered to or on behalf
17 of:

18 (A) A political party or caucus political committee if the person
19 paying for the services is the regular employer of the person rendering
20 such services; or

21 (B) A candidate or an authorized committee if the person paying for
22 the services is the regular employer of the individual rendering the
23 services and if the services are solely for the purpose of ensuring
24 compliance with state election or public disclosure laws; (~~or~~)

25 (ix) (A) The performance of ministerial functions by a person on
26 behalf of two or more candidates or political committees either as
27 volunteer services defined in (b)(vi) of this subsection or for payment
28 by the candidate or political committee for whom the services are
29 performed as long as:

30 (~~(A)~~) (I) The person performs solely ministerial functions;

31 (~~(B)~~) (II) A person who is paid by two or more candidates or
32 political committees is identified by the candidates and political
33 committees on whose behalf services are performed as part of their
34 respective statements of organization under RCW 42.17A.205; and

35 (~~(C)~~) (III) The person does not disclose, except as required by
36 law, any information regarding a candidate's or committee's plans,
37 projects, activities, or needs, or regarding a candidate's or
38 committee's contributions or expenditures that is not already publicly

1 available from campaign reports filed with the commission, or otherwise
2 engage in activity that constitutes a contribution under (a)(ii) of
3 this subsection.

4 (B) A person who performs ministerial functions under this
5 subsection (13)(b)(ix) is not considered an agent of the candidate or
6 committee as long as he or she has no authority to authorize
7 expenditures or make decisions on behalf of the candidate or committee;
8 or

9 (x) Legal services, including but not limited to direct
10 representation, provided by or at the direction of a licensed attorney,
11 whether by an attorney individually, or as part of a profit or
12 nonprofit firm, to any person, that assists the person in securing or
13 enforcing any right under the United States or Washington state
14 Constitution, or under federal or state civil rights statutes.

15 (c) Contributions other than money or its equivalent are deemed to
16 have a monetary value equivalent to the fair market value of the
17 contribution. Services or property or rights furnished at less than
18 their fair market value for the purpose of assisting any candidate or
19 political committee are deemed a contribution. Such a contribution
20 must be reported as an in-kind contribution at its fair market value
21 and counts towards any applicable contribution limit of the provider.

22 (14) "Depository" means a bank, mutual savings bank, savings and
23 loan association, or credit union doing business in this state.

24 (15) "Elected official" means any person elected at a general or
25 special election to any public office, and any person appointed to fill
26 a vacancy in any such office.

27 (16) "Election" includes any primary, general, or special election
28 for public office and any election in which a ballot proposition is
29 submitted to the voters. An election in which the qualifications for
30 voting include other than those requirements set forth in Article VI,
31 section 1 (Amendment 63) of the Constitution of the state of Washington
32 shall not be considered an election for purposes of this chapter.

33 (17) "Election campaign" means any campaign in support of or in
34 opposition to a candidate for election to public office and any
35 campaign in support of, or in opposition to, a ballot proposition.

36 (18) "Election cycle" means the period beginning on the first day
37 of January after the date of the last previous general election for the
38 office that the candidate seeks and ending on December 31st after the

1 next election for the office. In the case of a special election to
2 fill a vacancy in an office, "election cycle" means the period
3 beginning on the day the vacancy occurs and ending on December 31st
4 after the special election.

5 (19)(a) "Electioneering communication" means any broadcast, cable,
6 or satellite television or radio transmission, United States postal
7 service mailing, billboard, newspaper, or periodical that:

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

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

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

19 (b) "Electioneering communication" does not include:

20 (i) Usual and customary advertising of a business owned by a
21 candidate, even if the candidate is mentioned in the advertising when
22 the candidate has been regularly mentioned in that advertising
23 appearing at least twelve months preceding his or her becoming a
24 candidate;

25 (ii) Advertising for candidate debates or forums when the
26 advertising is paid for by or on behalf of the debate or forum sponsor,
27 so long as two or more candidates for the same position have been
28 invited to participate in the debate or forum;

29 (iii) A news item, feature, commentary, or editorial in a regularly
30 scheduled news medium that is:

31 (A) Of primary interest to the general public;

32 (B) In a news medium controlled by a person whose business is that
33 news medium; and

34 (C) Not a medium controlled by a candidate or a political
35 committee;

36 (iv) Slate cards and sample ballots;

37 (v) Advertising for books, films, dissertations, or similar works

1 (A) written by a candidate when the candidate entered into a contract
2 for such publications or media at least twelve months before becoming
3 a candidate, or (B) written about a candidate;

4 (vi) Public service announcements;

5 (vii) A mailed internal political communication primarily limited
6 to the members of or contributors to a political party organization or
7 political committee, or to the officers, management staff, or
8 stockholders of a corporation or similar enterprise, or to the members
9 of a labor organization or other membership organization;

10 (viii) An expenditure by or contribution to the authorized
11 committee of a candidate for state, local, or judicial office; or

12 (ix) Any other communication exempted by the commission through
13 rule consistent with the intent of this chapter.

14 (20) "Expenditure" includes a payment, contribution, subscription,
15 distribution, loan, advance, deposit, or gift of money or anything of
16 value, and includes a contract, promise, or agreement, whether or not
17 legally enforceable, to make an expenditure. "Expenditure" also
18 includes a promise to pay, a payment, or a transfer of anything of
19 value in exchange for goods, services, property, facilities, or
20 anything of value for the purpose of assisting, benefiting, or honoring
21 any public official or candidate, or assisting in furthering or
22 opposing any election campaign. For the purposes of this chapter,
23 agreements to make expenditures, contracts, and promises to pay may be
24 reported as estimated obligations until actual payment is made.
25 "Expenditure" shall not include:

26 (a) The partial or complete repayment by a candidate or political
27 committee of the principal of a loan, the receipt of which loan has
28 been properly reported; or

29 (b) Any legal services that are described in subsection (13)(b)(x)
30 of this section.

31 (21) "Final report" means the report described as a final report in
32 RCW 42.17A.235(2).

33 (22) "General election" for the purposes of RCW 42.17A.405 means
34 the election that results in the election of a person to a state or
35 local office. It does not include a primary.

36 (23) "Gift" has the definition in RCW 42.52.010.

37 (24) "Immediate family" includes the spouse or domestic partner,
38 dependent children, and other dependent relatives, if living in the

1 household. For the purposes of the definition of "intermediary" in
2 this section, "immediate family" means an individual's spouse or
3 domestic partner, and child, stepchild, grandchild, parent, stepparent,
4 grandparent, brother, half brother, sister, or half sister of the
5 individual and the spouse or the domestic partner of any such person
6 and a child, stepchild, grandchild, parent, stepparent, grandparent,
7 brother, half brother, sister, or half sister of the individual's
8 spouse or domestic partner and the spouse or the domestic partner of
9 any such person.

10 (25) "Incumbent" means a person who is in present possession of an
11 elected office.

12 (26) "Independent expenditure" means an expenditure that has each
13 of the following elements:

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

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

29 (c) The expenditure, alone or in conjunction with another
30 expenditure or other expenditures of the same person in support of or
31 opposition to that candidate, has a value of eight hundred dollars or
32 more. A series of expenditures, each of which is under eight hundred
33 dollars, constitutes one independent expenditure if their cumulative
34 value is eight hundred dollars or more.

35 (27)(a) "Intermediary" means an individual who transmits a
36 contribution to a candidate or committee from another person unless the
37 contribution is from the individual's employer, immediate family, or an
38 association to which the individual belongs.

1 (b) A treasurer or a candidate is not an intermediary for purposes
2 of the committee that the treasurer or candidate serves.

3 (c) A professional fund-raiser is not an intermediary if the fund-
4 raiser is compensated for fund-raising services at the usual and
5 customary rate.

6 (d) A volunteer hosting a fund-raising event at the individual's
7 home is not an intermediary for purposes of that event.

8 (28) "Legislation" means bills, resolutions, motions, amendments,
9 nominations, and other matters pending or proposed in either house of
10 the state legislature, and includes any other matter that may be the
11 subject of action by either house or any committee of the legislature
12 and all bills and resolutions that, having passed both houses, are
13 pending approval by the governor.

14 (29) "Legislative office" means the office of a member of the state
15 house of representatives or the office of a member of the state senate.

16 (30) "Lobby" and "lobbying" each mean attempting to influence the
17 passage or defeat of any legislation by the legislature of the state of
18 Washington, or the adoption or rejection of any rule, standard, rate,
19 or other legislative enactment of any state agency under the state
20 administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor
21 "lobbying" includes an association's or other organization's act of
22 communicating with the members of that association or organization.

23 (31) "Lobbyist" includes any person who lobbies either in his or
24 her own or another's behalf.

25 (32) "Lobbyist's employer" means the person or persons by whom a
26 lobbyist is employed and all persons by whom he or she is compensated
27 for acting as a lobbyist.

28 (33) "Ministerial functions" means an act or duty carried out as
29 part of the duties of an administrative office without exercise of
30 personal judgment or discretion.

31 (34) "Participate" means that, with respect to a particular
32 election, an entity:

33 (a) Makes either a monetary or in-kind contribution to a candidate;

34 (b) Makes an independent expenditure or electioneering
35 communication in support of or opposition to a candidate;

36 (c) Endorses a candidate before contributions are made by a
37 subsidiary corporation or local unit with respect to that candidate or
38 that candidate's opponent;

1 (d) Makes a recommendation regarding whether a candidate should be
2 supported or opposed before a contribution is made by a subsidiary
3 corporation or local unit with respect to that candidate or that
4 candidate's opponent; or

5 (e) Directly or indirectly collaborates or consults with a
6 subsidiary corporation or local unit on matters relating to the support
7 of or opposition to a candidate, including, but not limited to, the
8 amount of a contribution, when a contribution should be given, and what
9 assistance, services or independent expenditures, or electioneering
10 communications, if any, will be made or should be made in support of or
11 opposition to a candidate.

12 (35) "Person" includes an individual, partnership, joint venture,
13 public or private corporation, association, federal, state, or local
14 governmental entity or agency however constituted, candidate,
15 committee, political committee, political party, executive committee
16 thereof, or any other organization or group of persons, however
17 organized.

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

24 (37) "Political committee" means any person (except a candidate or
25 an individual dealing with his or her own funds or property) having the
26 expectation of receiving contributions or making expenditures in
27 support of, or opposition to, any candidate or any ballot proposition.

28 (38) "Primary" for the purposes of RCW 42.17A.405 means the
29 procedure for nominating a candidate to state or local office under
30 chapter 29A.52 RCW or any other primary for an election that uses, in
31 large measure, the procedures established in chapter 29A.52 RCW.

32 (39) "Public office" means any federal, state, judicial, county,
33 city, town, school district, port district, special district, or other
34 state political subdivision elective office.

35 (40) "Public record" has the definition in RCW 42.56.010.

36 (41) "Recall campaign" means the period of time beginning on the
37 date of the filing of recall charges under RCW 29A.56.120 and ending
38 thirty days after the recall election.

1 (42)(a) "Sponsor" for purposes of an electioneering communications,
2 independent expenditures, or political advertising means the person
3 paying for the electioneering communication, independent expenditure,
4 or political advertising. If a person acts as an agent for another or
5 is reimbursed by another for the payment, the original source of the
6 payment is the sponsor.

7 (b) "Sponsor," for purposes of a political committee, means any
8 person, except an authorized committee, to whom any of the following
9 applies:

10 (i) The committee receives eighty percent or more of its
11 contributions either from the person or from the person's members,
12 officers, employees, or shareholders;

13 (ii) The person collects contributions for the committee by use of
14 payroll deductions or dues from its members, officers, or employees.

15 (43) "Sponsored committee" means a committee, other than an
16 authorized committee, that has one or more sponsors.

17 (44) "State office" means state legislative office or the office of
18 governor, lieutenant governor, secretary of state, attorney general,
19 commissioner of public lands, insurance commissioner, superintendent of
20 public instruction, state auditor, or state treasurer.

21 (45) "State official" means a person who holds a state office.

22 (46) "Surplus funds" mean, in the case of a political committee or
23 candidate, the balance of contributions that remain in the possession
24 or control of that committee or candidate subsequent to the election
25 for which the contributions were received, and that are in excess of
26 the amount necessary to pay remaining debts incurred by the committee
27 or candidate with respect to that election. In the case of a
28 continuing political committee, "surplus funds" mean those
29 contributions remaining in the possession or control of the committee
30 that are in excess of the amount necessary to pay all remaining debts
31 when it makes its final report under RCW 42.17A.255.

32 (47) "Treasurer" and "deputy treasurer" mean the individuals
33 appointed by a candidate or political committee, pursuant to RCW
34 42.17A.210, to perform the duties specified in that section.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17A RCW
36 to read as follows:

1 The commission's rule-making authority regarding chapter . . . ,
2 Laws of 2014 (this act) is limited to the minimum necessary to
3 administer the legislation's clear and unambiguous directive.

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