



INSTITUTE FOR JUSTICE
WASHINGTON CHAPTER

December 3, 2008

VIA electronic mail to landerson@pdc.wa.gov and U.S. Mail

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

Re: December 4, 2008, PDC meeting regarding Internet Lobbying and Possible Action

Dear Commissioners:

The organizations described in Attachment A to this letter submit the following comments for consideration at the Commission's December 4, 2008, meeting. Specifically, this letter comments on the memorandum from Nancy Krier, General Counsel for the Commission, dated November 25, 2008, concerning "Continued Discussion of Internet Lobbying and Possible Action-December 4, 2008 Meeting" and the draft interpretation attached thereto.

In general, we believe that the recommendations of PDC Staff and the Commission's "light touch" approach are to be commended. We agree wholeheartedly with the comments by other stakeholders that a restrained regulatory approach is the correct course for the Commission to take. We have two comments on the draft interpretation and recommend that the draft interpretation be revised to take these comments into account.

First, the draft interpretation and the memo proceed from an assumption that interactions between the public and government officials in order to address specific legislation are rightfully subject to regulation and restriction unless a specific exemption applies. We recognize that, to a certain extent, this approach is dictated by the statutory language of Chapter 17 of Title 42 of the Revised Code of Washington, which contains incredibly broad definitions mitigated by statutory exemptions. However, even the broadest statutory directive must be read in conjunction with the First Amendment to the U.S. Constitution and article I, section 5 of the Washington Constitution, which place the burden of demonstrating the necessity of a restriction on speech on the government. It is not the individual's burden to demonstrate why restriction is *not* needed. See *United States v. Playboy Entm't Group*, 529 U.S. 803, 816 (2000). In short, the U.S. and Washington Constitutions assume that free speech and association are the norm and regulation is the exception.

The Commission's approach should reflect this constitutional reality. The Commission's analysis should not focus on whether a particular activity that could be classified as "internet lobbying" falls within a particular exemption or not. Rather, the first question the Commission

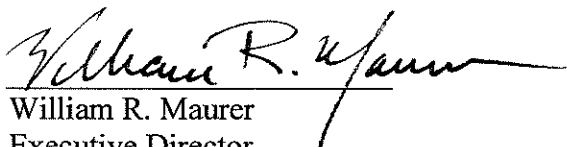
should ask is, "Is there a compelling governmental interest in regulating such speech or association and are our actions narrowly tailored to achieve such an interest?" In that regard, the Commission has identified no compelling need to regulate activities that meet the definition of "internet lobbying." Quite simply, there is nothing in the record before this Commission that suggests that "internet lobbying" is a significant problem, much less one that is "compelling." Because there is no compelling interest that requires regulation, a "hands off" approach is not only the correct policy, it is constitutionally mandated.

Second, the draft interpretation rewrites the "media exemption" contained in Washington law to add a number of restrictions that are not contained in the statute. The draft interpretation applies the media exemption to "working members of the press, radio or television preparing news reports, feature articles or editorial comment and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station, or television station." Draft interpretation at 4. However, the statute applies the media exemption to exclude the following from the definition of "contribution": "A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee." RCW 42.17.020(15)(b)(iv). Our state supreme court has recognized that this provision protects the press's unique role in informing and educating the public, offering criticism, and providing a forum for discussion and debate. *San Juan County v. NoNewGasTax.com*, 160 Wn.2d 141, 157 (2007). In that regard, the media exemption is not limited only to "working members of the press" or to a "newspaper, book publisher, regularly published periodical, radio station, or television station." The Commission should decline the opportunity to rewrite the media exemption in a manner inconsistent with Washington law. Any final policy should therefore be consistent with the statute and the Washington Supreme Court's interpretation of it.

In summary, we recommend that any final rule on "internet lobbying" take these crucial points into account. We otherwise support the Commission's efforts to establish clear rules and minimal regulation in this area. Should you have any questions about our concerns or recommendations, please do not hesitate to contact us.

Sincerely,

INSTITUTE FOR JUSTICE
Washington Chapter

By: 
William R. Maurer
Its: Executive Director

cc: Entities listed in Attachment A

ATTACHMENT A
Entities Joining In Comments

Evergreen Freedom Foundation
Institute for Justice Washington Chapter
Sound Politics
Washington Coalition for Open Government
Washington Policy Center