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SUPREME COURT OF THE STATE OF WASHINGTON

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RECEIVED BY E-MAIL

GLEENDA NISSEN,

*Respondent,*

v.

PIERCE COUNTY,

*Petitioner,*

v.

MARK LINDQUIST,

*Petitioner.*

Filed *E*  
Washington State Supreme Court

MAY 13 2015

Ronald R. Carpenter  
Clerk *by h*

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BRIEF OF AMICUS CURIAE  
LEAGUE OF WOMEN VOTERS OF WASHINGTON

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ORIGINAL

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## **I. IDENTITY AND INTEREST OF AMICUS**

The League of Women Voters of Washington (the League) was organized in 1920. The League has its roots in the equal suffrage movement that led Washington to grant women the right to vote in 1910, nine years before the 19th Amendment extended the right to vote to all American women. Today the League has twenty local Leagues around the state with over one thousand, seven hundred and fifty Washington members.

The League, a statewide, nonpartisan political organization, encourages the informed and active participation of citizens in government, and influences public policy through education and advocacy. The League was one of the sponsors of Initiative 276, the 1972 ballot measure now codified in Chap. 42.17A and the Public Records Act, Chap. 42.56 RCW.

The League believes that representative government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizens' right to know. The League believes that the public records disclosure laws enacted by Washington voters more than forty years ago must apply to the personal computers, smart phones, and personal email and text message accounts in use today.

The League urges this Court to reject the arguments of Pierce County and Mark Lindquist that would allow public officials to circumvent the PRA.

## II. STATEMENT OF THE CASE

The Court of Appeals correctly held that, for purposes of CR 12(b)(6), at least some of Mark Lindquist's text messages and cellular phone call records may relate to the conduct of government and therefore may be public records. *Nissen v. Pierce County*, 183 Wn. App. 581, 596, 333 P.3d 577 (2014). The Court does not need to resolve the parties' various factual arguments in order to correctly decide the salient legal issues presented.

The County, Lindquist, and their supporting amici variously characterize the application of the PRA to records on Lindquist's smart phone as a "search," a "seizure," a compelled waiver of constitutional rights, and/or a violation of Lindquist's constitutional rights. These characterizations, offered in support of an erroneous facial challenge to the constitutionality of the PRA, have no basis in the record. There is no evidence in the record to suggest that the County has ordered Mark Lindquist to turn over the public records in his possession or taken any sort of legal or employment action to force him to do so. There has not been any search or seizure of Lindquist's smart phone. Lindquist, the elected Prosecutor, has not enforced the PRA against his own smart phone

records. The County agrees that the PRA does not apply to Lindquist's smart phone, and the County has not taken any steps to force Lindquist to comply with the PRA.

Nor has the Thurston County Superior Court issued any sort of writ or order against Lindquist that even implicates, much less violates, Lindquist's constitutional rights. The superior court dismissed this case based on an erroneous conclusion that records on a privately-owned cell phone are not public records at all. VRP 94-95; CP 258-259.

### **III. ARGUMENT**

Lindquist and the County urge this Court to adopt narrow interpretations of "agency" and "public record"—interpretations that would allow public officials to circumvent the PRA—based on the petitioners' erroneous argument that broader interpretations of these terms would be facially unconstitutional. The Court should reject both the narrow interpretation of the PRA offered by petitioners as well as their erroneous facial challenge to the PRA.

The Court should affirm the Court of Appeals' conclusion that records on Mark Lindquist's smart phone (or in his email or text account) relating to the conduct of government are "public records" subject to the PRA. The Court should further hold that the County has violated the PRA by erroneously asserting that the requested records were not public records

subject to the PRA. All remaining issues are not ripe for adjudication and should be remanded to the trial court.

**A. Any record on Mark Lindquist’s smart phone relating to the conduct of government is a “public record,” even under the provisions of the original 1972 initiative.**

The Public Records Act, Chap. 42.56 RCW (“PRA”), was enacted by Washington voters in 1972 as Initiative Measure 276 and codified as Chapter 42.17 RCW. Appendix A; Laws of 1973, ch. 1; see *Progressive Animal Welfare Society v. UW (PAWS II)*, 125 Wn.2d 243, 884 P.2d 592 (1994).<sup>1</sup> The original Act’s provisions included very broad definitions of “agency,” “public record,” and “writing:”

(1) “Agency” includes all state agencies and all local agencies. “State agency” includes every state office, public official, department, division, bureau, board, commission or other state agency. “Local agency” includes every county, city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency...

(24) “Public record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(25) “Writing” means handwriting, typewriting, printing, photostating, photographing, and every other

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<sup>1</sup> In 2005 the public records provisions of Chap 42.17 were re-codified as the Public Records Act, Chap. 42.56 RCW. Laws of 2005, ch. 274.

means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

Laws of 1973, ch. 1, § 2; Appendix A at 4-5; *see* RCW 42.56.010. The original Act further provided that its provisions were to be “liberally construed to effectuate the policies and purposes of this act.” Laws of 1973, ch. 1, § 47; Appendix A at 14; *see* RCW 42.56.030.

Personal computers and smart phones “as a means of recording any form of communication” did not exist in 1973. However, if Lindquist’s 1973 predecessor took a phone call relating to the conduct of the Pierce County Prosecuting Attorney on his home telephone, and made notes of that conversation using his or her own pen and paper, the resulting notes would have been a “public record” subject to the PRA. The Prosecuting Attorney’s notes would meet the PRA’s broad definition of a “writing.” And because the “writing” (notes) was created by the Prosecuting Attorney and related to the conduct of government, those notes would meet the definition of “public record.” If any person had made a PRA request for copies of those notes then the Prosecuting Attorney would have been obligated to provide the notes or explain why they were exempt from public disclosure. Laws of 1973, ch. 1, § 31(4); Appendix A at 12;

*see* RCW 42.56.210(3). Any attempt by the 1973 Prosecuting Attorney to interpret the definitions of “writing,” “agency” or “public record” narrowly to avoid public disclosure of his or her notes would have violated the clear mandate of the PRA to construe those terms liberally to promote the policy of transparent government.

More than 40 years later, the technology available to the Prosecuting Attorney has changed, but the fundamental provisions of the PRA and its policy of promoting accountable, transparent government have not changed. Like his 1973 predecessor, Lindquist must comply with the PRA, even when choosing to use his personal office equipment or supplies.

The Court of Appeals correctly rejected the narrow interpretation of “public record” proffered by the County and Lindquist. As the appellate court noted, the definitions in RCW 42.56.010 must be liberally construed to promote transparency. *Nissen*, 183 Wn. App. at 590; RCW 42.56.030. Consequently, any record on Lindquist’s smart phone is a “writing” under RCW 42.56.010(4). *Id.* at 591. Any record on Lindquist’s smart phone that relates to the conduct of government is a “public record” under RCW 42.56.010(4) because any such record has been “prepared, owned, used or retained” by Lindquist as the Prosecuting Attorney.” *Id.* at 591-594.

The state agencies responsible for preserving public records and enforcing the PRA agree. In its amicus brief (in the Court of Appeals), the Attorney General correctly states that writings created or stored on personally owned devices can be public records. *Amicus Brief of Attorney General* (January 23, 2014) at 4. Likewise, the Secretary of State has clearly stated that text messages relating to government—including text messages on personally-owned devices—are public records.

**Are agency work text messages sent or received to a personally-owned device a public record?**

**YES** – If the text messages relate to the work of the agency, then it does not matter if the device involved is agency-owned or personally-owned; the records are still public records.

If you are conducting public business – it’s a public record.

Appendix B.<sup>2</sup> To hold otherwise would invite public officials and employees to circumvent the PRA through the simple expedient of using their own computers and smart phones. In a recent Seattle Times editorial, former attorney General Rob McKenna and former State Auditor Brian Sonntag reiterated this point:

Public records do not become private property when created and stored on personal devices. The information in

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<sup>2</sup> [http://www.sos.wa.gov/\\_assets/archives/RecordsManagement/Advice-Sheet-Are-Text-Messages-Public-Records-April-2015.pdf](http://www.sos.wa.gov/_assets/archives/RecordsManagement/Advice-Sheet-Are-Text-Messages-Public-Records-April-2015.pdf) (last visited April 22, 2015).

public records belongs to the people, even if accessing it on a private device is inconvenient or embarrassing for the official who created and stored it there.

*Public officials give up some privacy on personal cellphones*, Seattle Times (October 2, 2014).<sup>3</sup>

The narrow interpretation of “public record” proffered by the County and Lindquist would weaken the PRA and reduce transparency, in direct violation of the liberal construction mandated by the PRA. RCW 42.56.030. The County and Lindquist simply ignore RCW 42.56.030 and the requirement of liberal construction in all of their briefs. Instead, the County and Lindquist have argued for a narrow interpretation of “agency” and “public record” based on their erroneous assertion that any broader interpretation would be facially unconstitutional. *See* section III(B) (below).

Both the County and Lindquist challenge the scope of the PRA definitions by arguing that Lindquist is not himself an “agency” for purposes of RCW 42.56.010(1). *Petition for Review (County)* at 10; *Petition for Review (Lindquist)* at 5. An “agency” is neither a particular human being nor a particular office building, file cabinet, or email server. An “agency” is a government entity that acts through its employees and

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<sup>3</sup> <http://www.seattletimes.com/opinion/guest-public-officials-give-up-some-privacy-on-personal-cellphones/> (last visited April 22, 2015).

elected officials. Any record relating to the conduct of government that is “prepared, owned, used, or retained” by Lindquist is necessarily “prepared, owned, used, or retained” by the Pierce County Prosecuting Attorney. RCW 42.56.010(3).

The County and Lindquist posit that Lindquist may avoid the intentionally broad sweep of the PRA’s definitions simply by creating and retaining records relating to the conduct of government on personally-owned devices. If they were correct, then emails relating to the conduct of the foreign policy of the United States would not be public records as long as they remain on a server owned by Hillary Clinton. Such arguments violate both the letter and spirit of the PRA and, if accepted by this Court, would undermine the PRA.

The 1992 legislature enacted RCW 42.56.030 (former RCW 42.17.251) to further drive home the point that the PRA must be liberally construed despite the opposition of public officials and employees:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.

Laws of 1992, ch. 139, § 2; *see* RCW 42.56.030. This Court has cogently observed, on a number of occasions, that “leaving the interpretation of the [PRA] to those at whom it was aimed would be the most direct course to its devitalization.” *Hearst v. Hoppe*, 90 Wn.2d 123, 131, 580 P.2d 246 (1978); *PAWS II*, 125 Wn.2d at 270 n. 17; *Spokane Research & Defense Fund v. Spokane*, 155 Wn.2d 89, 100, 117 P.3d 1117 (2005).

This Court should reject the arguments of Lindquist and other public officials that would weaken the PRA. The Court should affirm the Court of Appeals’ conclusion that records on Mark Lindquist’s smart phone relating to the conduct of government are “public records” subject to the PRA.

**B. The County and Lindquist have presented a meritless facial challenge to the constitutionality of the PRA.**

Challenges to the constitutionality of a statute come in two varieties. The more common variety is an “as applied” challenge which posits that the particular application of a statute in a certain context is unconstitutional. In contrast, a “facial challenge” to the constitutionality of a statute posits that there are no circumstances under which the statute can be constitutionally applied. *Lummi Indian Nation v. State*, 170 Wn.2d 247, 258, 241 P.3d 1220 (2010) (rejecting facial due process challenge to water rights amendment where no water rights had actually been

impaired). “[A] facial challenge must be rejected if there are any circumstances where the statute can constitutionally be applied.” *Id.* at 258 (emphasis added) (quoting *Wash. State Republican Party v. Pub. Disclosure Comm’n*, 141 Wn.2d 245, 282 n.14, 4 P.3d 808 (2000)).

As respondent Nissen has pointed out, the County and Lindquist are making a “facial challenge” to the constitutionality of the PRA. *Nissen Supp. Br.* at 2-3. Lindquist has not presented an as-applied challenge because the County has not taken any action adverse to him, and the superior court has not issued any sort of writ or order against Lindquist that implicates or arguably violates Lindquist’s constitutional rights.<sup>4</sup>

Perhaps the most significant flaw in the facial constitutional challenge presented by the County and Lindquist is their failure to acknowledge that they are making a facial challenge. Indeed, all of the search and seizure cases cited by the County and Lindquist involve as-applied challenges to particular searches or seizures.<sup>5</sup> Similarly, the

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<sup>4</sup> The League anticipates that the County and/or Lindquist may argue that characterizing their constitutional arguments as a facial challenge constitutes a new argument raised for the first time on appeal. But that argument must fail because “facial challenge” is not a new issue; it is merely the correct label for the argument that petitioners have been making throughout this case. This Court is perfectly capable of recognizing a “facial challenge” even where a party presents such a challenge under the guise of an as-applied challenge. See *Cornelius v. Dep’t of Ecology*, \_\_\_ Wn.2d \_\_\_, 344 P.3d 199, 206 (2015).

<sup>5</sup> See *Olmstead v. United States*, 277 U.S. 438 (1928) (upholding convictions based on evidence obtained by wire tapping); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (reversing convictions for violating law forbidding contraceptives); *State v. Boland*, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990) (reversing conviction based on warrantless

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search of garbage can); *State v. Myrick*, 102 Wn. 2d 506, 510-11, 688 P.2d 151 (1984 (upholding conviction based on warrantless aerial surveillance); *State v. Gumwall*, 106 Wn.2d 54, 720 P.2d 808 (1986) (prohibiting use of pen register on telephone line without legal process); *State v. Butterworth*, 48 Wn. App. 152, 737 P.2d 1297 (1987), *rev. denied*, 109 Wn.2d 1004 (1987) (reversing conviction where police obtained defendant's unpublished telephone listing without a warrant); *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 306, 178 P.3d 995 (2008) (warrantless random drug testing of students violated Wash. Const. art. I, § 7); *City of Seattle v. McCreedy*, 123 Wn.2d 260, 868 P.2d 134 (1994) (building inspection warrants issued without probable cause were unconstitutional); *State v. Miles*, 160 Wn.2d 236, 248, 156 P.3d 864 (2007) (suppressing evidence in criminal case obtained by invalid administrative subpoena); *In re Maxfield*, 133 Wn.2d 332, 337, 945 P.2d 196 (1997) (reversing convictions where private electricity consumption records were obtained without a warrant); *Thurston County Rental Owners Ass'n v. Thurston County*, 85 Wn. App. 171, 183, 931 P.2d 208 (1997) (upholding inspection ordinance that required warrants); *Kuehn v. Renton Sch. Dist. No. 403*, 103 Wn.2d 594, 602, 694 P.2d 1078 (1985) (warrantless search of student luggage without particularized suspicion violated 4th Amendment); *Katz v. United States*, 389 U.S. 347, 355 (1967) (reversing convictions based on warrantless eavesdropping); *United States v. Chan*, 830 F. Supp. 531, 534-35 (N.D. Cal. 1993) (upholding examination of pager as valid search incident to arrest); *United States v. Morales-Ortiz*, 376 F. Supp. 2d 1131, 1139 (D.N.M. 2004) (contents of cell phone were admissible in drug prosecution under inevitable discovery doctrine, even though phone was unlawfully searched without a warrant); *United States v. Ortiz*, 84 F.3d 977 (7th Cir. 1996) (examination of pager was valid search incident to arrest); *United States v. Brookes*, CRIM 2004-0154, 2005 WL 1940124 (D.V.I. June 16, 2005) (same); *O'Connor v. Ortega*, 480 U.S. 709 (1987) (remanding determination of whether warrantless search of employee's office violated Fourth Amendment); *State v. Coyle*, 95 Wn.2d 1, 7, 621 P.2d 1256 (1980) (reversing conviction where defendant had not waived his right to privacy); *United States v. Jadowe*, 628 F.3d 1 (1st Cir. 2010) (upholding criminal conviction based on independent source doctrine and harmless error); *Commonwealth v. Rodgers*, 897 A.2d 1253, 1257 (Pa. Super. 2006) (reversing trial court's suppression of evidence); *State v. Thompson*, 760 P.2d 1162 (Idaho 1988) (suppressing evidence based on warrantless use of pen register); *United States v. Finley*, 477 F.3d 250, 258-60 (5th Cir. 2007) (upholding search of defendant's cell phone incident to his arrest); *United States v. Gomez*, 807 F. Supp. 2d 1134 (S.D. Fla. 2011) (same); *United States v. Lynch*, 908 F. Supp. 284, 287 (D.V.I. 1995) (same); *United States v. De La Paz*, 43 F. Supp. 2d 370, 372 (S.D.N.Y. 1999) (upholding warrantless answering of cell phone to preserve evidence of criminal activity); *Cooper v. State*, 587 S.E.2d 605 (Ga. 2003) (excluding blood test results obtained in violation of implied consent statute); *Smith v. Maryland*, 442 U.S. 735 (1979) (use of pen register by telephone company was not a search); *Riley v. California*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014) (reversing criminal conviction based on warrantless search of cell phone); *State v. Jardinez*, 184 Wn. App. 518, 338 P.2d 292 (2014) (upholding suppression of evidence obtained from warrantless search of electronic device); *City of Ontario v. Quon*, 560 U.S. 746, 130 S.Ct. 2619 (2010) (upholding warrantless examination of employee text messages); *State v. Hinton*, 179 Wn.2d 862, 876, 319 P.3d 9 (2014) (reversing conviction based on warrantless search of text messages); *United States v. Jones*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 945, 181 L.Ed.2d 911 (2012) (attachment and use of GPS device on suspect's vehicle was a search).

discovery cases cited by the County and Lindquist involve as-applied challenges to particular discovery orders. But there has not been any search or seizure of Lindquist's smart phone, and no order to conduct such a search or seizure has been issued.<sup>6</sup> Nor has the County taken any sort of legal or employment action to force Lindquist to produce public records that belong to the County (or to waive any rights).

No one disputes the basic proposition that public officials and agency employees have some expectation of privacy in their personal cell phones and text or email accounts under both the Fourth Amendment and/or Const. Art. I, §7. And no party or court has suggested that Lindquist or any other public official or employee gives up all rights to privacy by becoming a public employee. Nonetheless, the County, Lindquist, and the trial court erroneously concluded that any attempt to enforce the PRA with respect to records in such devices or accounts, by either the County or a court, would necessarily result in a violation of Lindquist's rights. Lindquist and the County repeatedly mischaracterize the application of the PRA definitions to records in Lindquist's

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<sup>6</sup> See *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 239, 654 P.2d 673 (1982) (discovery rule and particular discovery order not unconstitutional); *Snedigar v. Hoddersen*, 114 Wn.2d 153, 158, 786 P.2d 781 (1990) (remanding discovery order to trial court to balance the parties' competing interests in discovery and protection of First Amendment rights); *T.S. v. Boy Scouts*, 157 Wn.2d 416, 138 P.3d 1053 (2006) (upholding discovery order in civil case).

possession—without anyone actually obtaining such records or even a court order to produce the records—as a violation of Lindquist’s constitutional rights. The Court of Appeals correctly refused to consider their speculative arguments, albeit without recognizing that Lindquist and the County were making a meritless facial challenge. *Nissen*, 183 Wn. App. at 596.

The petitioners’ facial challenge must be rejected because the County and Lindquist cannot show that there are **no circumstances** under which the PRA could be constitutionally applied to obtain public records in the possession of a public official or employee. For starters, the County, like any employer, has the tools it needs to obtain public records from an agency employee who refuses to provide such records without anyone actually searching the employee’s phone, text messages, or email account, including instructing the employee to produce the records in their possession or be terminated or removed from office. Being told to hand over records to the agency that actually owns those records does not violate (or compel a waiver of) anyone’s rights. In the unlikely event that an agency employee refused to turn over public records in their possession, the County could enforce the PRA by bringing an action against the employee for conversion, contempt, replevin, or writ of mandamus, any of which could result in a lawful court order to return the

records to the agency without anyone searching or seizing the actual records.<sup>7</sup> The County has not taken any of these steps in this case because it erroneously agrees with Lindquist that the PRA does not apply to the records.

Furthermore, an action under the PRA is an ordinary civil case. *Spokane Research*, 155 Wn.2d at 104. Consequently, the superior court has all of its constitutional powers under Const. art. IV, § 6 to enforce the PRA. As parties, both the requester and the County can use any applicable civil rule to enforce the PRA. **“[N]ormal civil procedures are an appropriate method to prosecute a claim under the liberally construed PDA.”** *Spokane Research*, 155 Wn.2d at 105 (emphasis added). The superior courts frequently issue discovery orders, injunctions, writs, subpoenas, search warrants, sanctions, and contempt orders relating to documents and electronic records in the possession of private parties—in both civil and criminal cases—and they manage to do so without violating anyone’s rights. The constitutional arguments presented by the County and Lindquist are nothing more than a meritless facial challenge to the PRA that must be rejected under *Lummi Indian Nation, supra*.<sup>8</sup>

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<sup>7</sup> In addition, unlawful destruction or concealment of a public record is a felony. RCW 40.16.010.

<sup>8</sup> The petitioners’ arguments regarding the application of the Stored Communication Act, 18 U.S.C. § 2701 et seq., are similarly facial, speculative, and meritless. All of the cases

**C. The County has violated the PRA by erroneously asserting that the requested records were not public records subject to the PRA. All the remaining issues should be remanded.**

Despite the apparent agreement between the County and Lindquist on the central issues in this appeal, the Court must not overlook the fact that there are three separate parties to this case. Respondent Nissen is the requester. Petitioner Pierce County is the agency that is ultimately liable for the Prosecuting Attorney's violations of the PRA. Petitioner Mark Lindquist is an intervenor in his personal capacity as a person to whom records pertain. *See* RCW 42.56.540; CP 546.

While the requester (Nissen) has the *right* to enforce the PRA, the County has the *duty* to enforce the PRA. The County has the duty to make public records available for inspection and copying (RCW 42.56.070(1)), to protect public records from damage or disorganization and to prevent the destruction of requested records (RCW 42.56.100), to explain in

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cited by petitioners involve challenges to particular actions or court orders alleged to have violated the SCA. *See J.T. Shannon Lumber Co., Inc. v. Gilco Lumber Inc.*, 2008 WL 4755370 (N.D. Miss. 2008) (quashing subpoenas duces tecum that were issued in violation of the Act); *Pure Power Boot Camp v. Warrior Fitness Boot Camp*, 587 F. Supp. 2d 548 (S.D.N.Y. 2008) (excluding as evidence in civil action employee's personal emails obtained in violation of SCA); *Mintz v. Mark Bartelstein & Assocs., Inc.*, 885 F. Supp. 2d 987 (C.D. Cal. 2012) (granting in part and denying in part motion to quash subpoena); *Doe v. City of San Diego*, 2013 WL 2338713 (S.D. Cal., May 28, 2013) (quashing subpoena); *In re Facebook, Inc.*, 923 F. Supp. 2d 1204 (N.D. Cal. 2012) (quashing subpoena); *Thayer v. Chiczewski*, 2009 WL 2957317 \*5 (N.D. Ill., 2009) (granting motion to compel). Lindquist may still argue the applicability of the SCA on remand, if and when either Nissen or the County actually issues a subpoena or requests a court order alleged to violate the SCA. The Court must reject the erroneous assertion that any application of the PRA to Lindquist's cell phone would violate the SCA.

writing why requested records have not been produced (RCW 42.56.210(3)), to promptly respond to public records requests (RCW 42.56.520), and to prove in court that any refusal to provide public records is in accordance with the PRA (RCW 42.56.550(1)). Any violation of these duties makes the County liable to Nissen for attorney fees as well as penalties for any records actually withheld. RCW 42.56.550(4); *see Sanders v. State*, 169 Wn.2d 827, 240 P.3d 120 (2010). The County also has the duty to preserve, archive, and destroy public records in compliance with state record retention laws. Chap. 40.14 RCW.<sup>9</sup>

The Court of Appeals concluded that additional fact-finding was necessary to determine whether the County has violated the PRA. *Nissen*, 183 Wn. App. at 598. While a remand is required, it is clear from the existing record that the County has already violated the PRA. First, the County has erroneously agreed with Lindquist that the records on his smart phone are not public records at all. The County has therefore done nothing to search for, obtain, and preserve those records in response to

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<sup>9</sup> The Court of Appeals, Division II, has suggested that a violation of Chap. 40.14 is not necessarily a violation of the PRA, and that a PRA requester may lack standing to directly enforce state record retention laws. *See BIAW v. McCarthy*, 152 Wn. App. 720, 741, 748, 218 P.3d 196 (2009) (declining to address interplay of PRA and Chap. 40.14). Assuming, *arguendo*, that this is correct, then it is essential to acknowledge that the duty to enforce Chap. 40.14 falls on the County.

Nissen's request, in violation of *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wn.2d 702, 728, 261 P.3d 119 (2011). Second, the County has apparently failed to fulfill its duty to protect the requested records from destruction under RCW 42.56.100. Third, by erroneously asserting that the records on Lindquist's smart phone are not public records at all, the County has failed to properly explain why those records have been withheld, in violation of RCW 42.56.210(3) and *City of Lakewood v. Koenig*, 182 Wn.2d 87, 99, 343 P.3d 335 (2014).

The County's duties under the PRA and Chap. 40.14 create an obvious conflict of interest between the County and Lindquist. To date, that conflict has been obscured by the erroneous agreement between these petitioners that the PRA does not apply to Lindquist's smart phone. Assuming this Court correctly rejects the petitioners' arguments, then the conflict between the County and Lindquist will come to the fore. The Court should not speculate about how the parties will address that issue on remand.

The parties have addressed a number of additional issues, including specific exemptions, discovery, and *in camera* review, and the County has specifically requested that the Court address certain additional issues. See *Petition for Review (County)* at 8. The League respectfully suggests that the additional issues raised by the parties are not ripe for

adjudication, and the record is not sufficient to address those issues in any event. The Court should remand all remaining issues to the trial court without giving any specific remand instructions because it is useless to speculate about how the County will proceed with enforcing its obligations to obtain and produce records from Lindquist's phone or whether or how Lindquist will continue to oppose the County's efforts.

#### **IV. CONCLUSION**

The Court should affirm the Court of Appeals' conclusion that records on Mark Lindquist's smart phone relating to the conduct of government are "public records" subject to the PRA, and reject the petitioners' facial challenge to the constitutionality of the PRA. The Court should further hold that the County has violated the PRA. All remaining issues should be remanded. The Court should not issue any instructions on remand because it is useless to speculate about how the County might proceed with enforcing its obligations to obtain and produce records from Lindquist's phone or whether Lindquist will oppose the County's efforts.

**V. APPENDICES**

**Appendix A**

Initiative Measure 276 (1972)

**Appendix B**

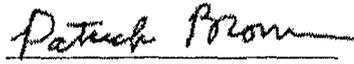
Secretary of State, Records Management  
Advice (April 2015)

RESPECTFULLY SUBMITTED this 4th day of May, 2015.



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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 4th day of May, 2015, true and correct copies of this pleading and the *Motion for Leave to File Brief of Amicus Curiae* were served on the parties as follows:

**Via Email (by agreement)**

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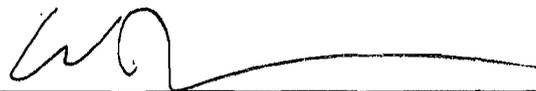
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# Initiative Measure 276

NOTE: New special toll-free telephone service offered to voters requesting in-depth information on state measures. See page 5 for details.

## Statement for

### **The People Have the Right to Know . . .**

Our whole concept of democracy is based on an informed and involved citizenry. Trust and confidence in governmental institutions is at an all time low. High on the list of causes of this citizen distrust are secrecy in government and the influence of private money on governmental decision making. Initiative 276 brings all of this out into the open for citizens and voters to judge for themselves.

### **Where Campaign Money Comes From and Where it Goes!!**

Initiative 276 requires public disclosure of where campaign money comes from, who gets it and how much. All candidates and political committees are required to make regular, detailed reports of contributions and expenditures. Small contributions need not be reported by name. And, spending in any election campaign is limited to whichever is larger: ten cents per registered voter; \$5,000; or a sum equal to the total salary for the term of the office sought.

### **Which Lobbyists Spend How Much For What Purposes!!**

Initiative 276 allows the public to know which special interests are spending how much to influence decisions made by the legislature and various state agencies. Professional lobbyists must register and report year-round (not just during legislative sessions) their terms of employment, legislation to which employment relates, itemized expenditures made, and

## Disclosure—Campaign Finances —Lobbying—Records

AN ACT relating to campaign financing, activities of lobbyists, access to public records, and financial affairs of elective officers and candidates; requiring disclosure of sources of campaign contributions, objects of campaign expenditures, and amounts thereof; limiting campaign expenditures; regulating the activities of lobbyists and requiring reports of their expenditures; restricting use of public funds to influence legislative decisions; governing access to public records; specifying the manner in which public agencies will maintain such records; requiring disclosure of elective officials' and candidates' financial interests and activities; establishing a public disclosure commission to administer the act; and providing civil penalties.

financial transactions with legislators and public employees. Expenditures of state funds for lobbying are prohibited.

### **Where Conflicts of Interest Exist!!**

Initiative 276 permits the voting public to judge for itself where potential conflicts of interest may lie. All elected officials and candidates are required to disclose directorships and offices held and substantial financial or ownership interests in any business, and in real estate investments.

### **How Governmental Decisions Are Really Made!!**

Initiative 276 makes all public records and documents in state and local agencies available for public inspection and copying. Certain records are exempted to protect individual privacy and to safeguard essential governmental functions.

### **The People Have The Right To Know!! Vote For Initiative 276!!**

*Committee appointed to compose statement FOR Initiative 276:*

BENNETT FEIGENBAUM, Coalition for Open Government, Sponsor; NAT WASHINGTON, State Senator, Ephrata; ART BROWN, State Representative, Seattle.

*Advisory Committee:* JOCELYN MARCHISIO, President, League of Women Voters of Washington; MARIANNE NORTON, American Association of University Women; JOAN THOMAS, President, Washington Environmental Council; LOREN ARNETT, Washington State Council of Churches.

## The Law as it now exists:

Presently, candidates seeking nomination at a primary election must file a statement indicating the expenditures made for the purpose of obtaining their nomination. Violation is a misdemeanor. However, present law applies only to primaries and not to general elections; additionally, the present law relates only to campaign expenditures and not to contributions.

Legislative lobbying is now regulated by a 1967 law under which any person who is hired for the purpose of influencing legislation must register with each house of the legislature. In addition, registered lobbyists must file periodic reports of their lobbying expenses, but these reports are not required to be itemized or detailed.

State officers but not those of local governmental units are presently required to file periodic reports of certain of their private financial affairs in January of each year; and candidates for state offices are required to file these same reports at the time they file their declarations of candidacy.

Access to public records is largely governed, under present law, by court decisions under which members of the public having a legitimate interest therein are entitled to examine all records in the custody of a public official which that official is required by law to maintain. However, in the case of records which the official having custody is not required by law to maintain, the disclosure or nondisclosure of information contained therein is largely within the discretion of this official.

## Effect of Initiative Measure No. 276 if approved into Law:

This Initiative is divided into four basic parts:

The first part relates to the financing of electoral campaigns involving both ballot propositions and candidates for most state and local governmental offices (except precinct committeemen and offices in cities or in other less than county-wide local governmental units inhabited by fewer than 5,000 registered voters). This part would require periodic reports from all groups or individuals who attempt to influence the election of candidates or passage of measures. Such reports would disclose the sources and amounts of all campaign contributions in excess of \$5.00 and the objects and amounts of all campaign expenditures in excess of \$25.00.

In addition, this part of the Initiative would limit the total amounts which may be expended in connection with electoral campaigns which it would cover. Expenditures paid in connection with state-wide ballot measures would be limited to \$10,000, and in connection with other ballot measures to 10 cents for every registered voter who votes on the proposition. In the case of campaigns for public offices, the Initiative would impose a limitation of 10 cents per registered voter, or \$5,000, or a figure based upon the salary of the office sought, whichever is the greater. Anonymous contributions in excess of \$1.00 from any individual or in excess of 1% of total accumulated contributions would be prohibited—as would be the use of public office facilities in electoral campaigns.

(Continued on Page 108)

*NOTE: Ballot title and the above explanatory comment were written by the Attorney General as required by state law. Complete text of Initiative Measure No. 276 starts on Page 55.*

## Statement against

Initiative 276 is well-intentioned but certainly over-enthusiastic legislation. It tries to cleanse all evils of our political process by limiting campaign expenditures and requiring disclosure of campaign and lobbying expenditures. But it goes far beyond that.

### How Far Does 276 Go?

Initiative 276 threatens individual privacy. For instance—276 requires public identification of everyone making a political contribution of \$5.00 or more; such personal support then becomes a matter of public records, before the election!

### What Will 276 Cost?

276 doesn't tell the taxpayer about added cost of government. Virtually every office of State and Local Government will incur added expenses—staff, office space, files, supplies and computer time—at a conservatively estimated cost of more than \$2 million dollars annually. Every office holder and candidate will be subjected to countless hours of useless record keeping—thousands of hours of wasted time—merely to fill more filing cabinets in Olympia. It is impossible to estimate the potential cost to State, County and City Government of making all public records available for inspection and copying.

### 276 Discourages Individual Participation in the Political Process.

The reporting burdens of Initiative 276 and constant threat of frivolous or acrimonious citizen suits because of personal, political or business differences, will discourage many people from participating in politics, either as candidates or volun-

teers. It will definitely destroy incentive for anyone to run and serve in low-paying part-time offices.

### Referendum Bills Nos. 24 and 25 far More Practical.

There is real need to place some limits on skyrocketing costs of political campaigns. There is also need for realistic campaign contribution reporting. It should not be aimed at the \$5.00 contribution of individuals, but rather to prevent undue influence on the part of special interest groups. These needs are met in Referendums 24 and 25—strict laws that totally respect individual privacy and freedom of choice, while meeting the reporting and expenditure goals.

*Committee appointed to compose statement AGAINST Initiative Measure No. 276:*

CHARLES E. NEWSCHWANDER, State Senator; JAMES P. KUEHNLE, State Representative.

## Initiative Measure No. 276

(Continued from Page 11)

The second part of this initiative would replace the existing law regulating lobbying activities. Like the present law, it would require lobbyists (with certain exceptions) to register before doing any lobbying. The term "lobbying," however, would be expanded to include activities in connection with all state regulatory agencies as well as the legislature, and also to include lobbying between legislative sessions. Unlike the present law, the initiative would require lobbyists to file itemized and detailed quarterly reports of their lobbying activities as well as weekly reports during legislative sessions. Employers of lobbyists would be required to file additional annual reports concerning their employment or compensating of state officials, and legislators would also file written reports concerning persons employed by them. The use of state funds for lobbying would be prohibited unless expressly authorized by law. All state agencies whose employees communicate with the legislators in accordance with the act would be required to file detailed quarterly reports concerning such employees and communications.

The third part of the initiative pertains to the financial affairs of candidates and elected officials at both the state and local levels. This part would require such candidates and officials to file periodic reports of a number of designated matters relating to their financial and business affairs, and would excuse any persons filing these reports from also filing the financial disclosure reports required by the existing statute pertaining to state officers.

The fourth major part of the initiative relates to "public records," a term which would be defined as including "... any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." The initiative would require all such "public records" of both state and local agencies to be made available for public inspection and copying by any person asking to see or copy a particular record—subject only to certain exceptions relating to individual rights of privacy or other situations where the act deems the public interest would not be best served by open disclosure—regardless of whether or not the particular record is one which the official having custody is required by law to maintain. This part of the initiative would also impose upon all state and local governmental agencies a great number of detailed requirements with respect to the maintenance and indexing of all their records.

The initiative would also establish a "public disclosure commission" to administer and enforce its provisions and would prescribe several procedures and penalties for its enforcement. And finally, the last section of the initiative states that if approved the initiative would repeal the provisions of Referendum Bills 24 and 25 in the event that these measures are also approved at this election. Those measures are discussed on pages 12 and 14 of this pamphlet.

## Referendum Bill No. 24

(Continued from Page 13)

voke lobbyist registration, enjoin lobbying activities, require filing of reports and recover treble damages for failure to file accurate reports. The boards could employ attorneys other than the attorney general. Individuals could also bring suit for damages.

The present law must be strictly construed because of its criminal penalties; however Referendum 24 expressly declares that its provisions shall be liberally interpreted in order to carry out its purposes.

Finally, this act should be compared with Initiative Measure No. 276, as described on page 10 of this voters' pamphlet, a portion of which also covers this same general subject.

## Referendum Bill No. 25

(Continued from Page 15)

scribe to a code of fair campaign practices by which he would promise to uphold the principles of decency, honesty and fair play.

Persons violating the act would be guilty of misdemeanors and in most cases would be punishable by a fine of not more than \$500.

Finally, this act should be compared with Initiative Measure No. 276, as described on page 10 of this voters' pamphlet, a portion of which also covers this same general subject.

## Initiative Measure No. 43

(Continued from Page 33)

lowed to operate a permit system for developments which are not substantial upon delegation of such authority by the department of ecology.

This act would prohibit the issuance of any permits to drill for oil in Puget Sound, or (with certain exceptions) to construct any buildings of more than 35 feet above average grade level on shorelines which obstruct the view of a substantial number of residences on areas adjoining the shoreline. It would also limit commercial timber harvesting in shoreline areas. The initiative further would require a consumer protection notice of the applicability of its provisions to be given in connection with certain transactions pertaining to lands or waters subject to the act's provisions.

Both Initiative Measure 43 and Alternative Measure 43B provide for comprehensive land planning and management programs. The principal differences between the two measures pertain to the relationships of state and local governments in the implementation of the respective acts and to the scope of geographical coverage. Alternative Measure 43B places a greater degree of responsibility and participation in local government than would Initiative Measure 43. Geographically, Initiative Measure 43 would be applicable to all lakes and streams, while Alternative Measure 43B does not apply to lakes of less than 20 acres or (with minor exceptions) to portions of streams with a mean annual flow of 20 cubic feet per second or less. In addition, the initiative would apply to a 500 foot strip of lands adjacent to all waters covered thereby and their underlying beds, whereas the alternative measure applies to a 200 foot strip of such lands together with (in certain instances) other adjacent low lying areas.

Finally, the general consent of the state to the impairment of public navigational rights by the retention of certain existing improvements which is contained in Alternative Measure 43B is not included in Initiative Measure 43. Instead, the initiative states that "except as permitted by it, there shall be no interference with or obstruction of the navigational rights of the public pursuant to common law as stated in such cases as the Washington Supreme Court decision in Wilbour v. Gallagher, 77 Wn. 2d 306 (1969)."

## Alternative Measure No. 43B

(Continued from Page 35)

high water mark. Other activities expressly limited by the act include commercial timber harvesting on designated shoreline areas of state-wide significance and (with certain exceptions) the erection of structures over 35 feet in height above average grade level on shorelines where adjacent residential views on areas adjoining shorelines would be impaired.

This measure also grants the consent of the state to the impairment of the public rights of navigation and corollary rights caused by the retention of any structures, improvements, docks, fills or developments placed in navigable waters prior to December 4, 1969, except where they were placed in navigable waters in violation of state statutes or are in trespass.

Both Initiative Measure 43 and Alternative Measure 43B provide for comprehensive land planning and management programs. The principal differences between the two measures pertain to the relationships of state and local government in the implementation of the respective acts and to the scope of geographical coverage. Alternative Measure 43B places a greater degree of responsibility and participation in local government than would Initiative Measure 43. Geographically, Initiative Measure 43 would be applicable to all lakes and streams, while Alternative Measure 43B does not apply to lakes of less than 20 acres or (with minor exceptions) to portions of streams with a mean annual flow of 20 cubic feet per second or less. In addition, the initiative would apply to a 500 foot strip of lands adjacent to all waters covered thereby and their underlying beds, whereas the alternative measure applies to a 200 foot strip of such lands together with (in certain instances) other adjacent low lying areas.

Finally, the general consent to the impairment of public navigational rights by the retention of certain existing improvements which is contained in Alternative Measure 43B is not included in Initiative Measure 43. Instead, the initiative states that, except as permitted by it, "... there shall be no interference with or obstruction of the navigational rights of the public pursuant to common law as stated in such cases as the Washington Supreme Court decision in Wilbour v. Gallagher, 77 Wn. 2d 306 (1969)."

### CERTIFICATION

As Secretary of State of the State of Washington, I hereby certify that I have caused the text of all laws, proposed measures, ballot titles, official explanations, etc. that appear within this publication to be carefully compared with the original such instruments now on file in my office and find them to be a full and true copy of said originals.

Witness my hand and the seal of the State of Washington this 20th day of September, 1972.



A. LUDLOW KRAMER  
Secretary of State

SECTION 4. That all Washington State retailers holding a Class E license to sell beer at retail or those Washington State retailers holding a Class F license to sell wine at retail, excepting those Class E and Class F license holders who are allowed to sell beer or wine for on-premises consumption, will be allowed to sell intoxicating liquor at retail if they comply with the licensing requirement of Section 3 hereof, and further that the legislature of the State of Washington is hereby empowered to establish licensing requirements for retail stores which will sell as their primary business beer, wine and liquor at retail.

SECTION 5. That Washington State is prohibited from the reselling of any liquor, either at retail or wholesale.

SECTION 6. That the provisions of this initiative shall become effective July 1, 1973.

SECTION 7. That the Washington State Legislature may pass such laws or resolutions implementing this initiative as may be desirable or necessary to effectuate its purpose.

#### EXPLANATORY COMMENT

Initiative Measure No. 261 filed in the office of the Secretary of State as of January 11, 1972.

Sponsor filed 122,241 supporting signatures as of January 11, 1972.

Signatures found sufficient. Measure then certified to the November 7, 1972 state general election for approval or rejection by the voters.

#### COMPLETE TEXT OF

## Initiative Measure 276

*Ballot Title as Issued by the Attorney General;*

### Disclosure—Campaign Finances-Lobbying-Records

AN ACT relating to campaign financing, activities of lobbyists, access to public records, and financial affairs of elective officers and candidates; requiring disclosure of sources of campaign contributions, objects of campaign expenditures, and amounts thereof; limiting campaign expenditures; regulating the activities of lobbyists and requiring reports of their expenditures; restricting use of public funds to influence legislative decisions; governing access to public records; specifying the manner in which public agencies will maintain such records; requiring disclosure of elective officials' and candidates' financial interests and activities; establishing a public disclosure commission to administer the act; and providing civil penalties.

BE IT ENACTED, by the people of the State of Washington:

SECTION 1. Declaration of Policy. It is hereby declared by the sovereign people to be the public policy of the State of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

SECTION 2. DEFINITIONS. (1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, public official, department, division, bureau, board, commission or other state agency. "Local agency" includes every county, city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by R.C.W. 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of any specific constituency which has been filed with the appropriate election officer of that constituency.

(3) "Campaign depository" means a bank designated by a candidate or political committee pursuant to section 5 of this act.

(4) "Campaign treasurer" and "deputy campaign treasurer" mean the individuals appointed by a candidate or political

committee, pursuant to section 5 of this act, to perform the duties specified in that section.

(5) "Candidate" means any individual who seeks election to public office. An individual shall be deemed to seek election when he first:

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

(b) Announces publicly or files for office.

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

(7) "Commission" means the agency established under section 35 of this act.

(8) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services, for less than full consideration, but does not include ordinary home hospitality and the rendering of "part time" personal services of the sort commonly performed by volunteer campaign workers or incidental expenses not in excess of twenty-five dollars personally paid for by any volunteer campaign worker. "Part time" services, for the purposes of this act, means services in addition to regular full time employment, or, in the case of an unemployed person, services not in excess of twenty hours per week, excluding weekends. For the purposes of this act, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fund-raising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this act, by the actual cost of consumables furnished in connection with the purchase of such tickets, and only the excess over actual cost of such consumables shall be deemed a contribution.

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

(10) "Election" includes any primary, general or special election for public office and any election in which a ballot proposition is submitted to the voters.

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

(12) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(13) "Final report" means the report described as a final report in section 8, subsection 2, of this act.

(14) "Immediate family" includes the spouse and children living in the household and other relatives living in the household.

(15) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and

resolutions which having passed both houses, are pending approval by the Governor.

(16) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the State of Washington, or the adoption or rejection of any rule, standard, rate or other legislative enactment of any state agency under the state Administrative Procedure Acts, chap. 34.04 R.C.W. and chap. 28 B, 19 R.C.W.

(17) "Lobbyist" includes any person who shall lobby either in his own or another's behalf.

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

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

(20) "Person in interest" means the person who is the subject of a record or any representative designated by said person, except that if such person be under a legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.

(21) "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.

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

(23) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(24) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(25) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

As used in this act, the singular shall take the plural and any gender, the other, as the context requires.

## CHAPTER 1. CAMPAIGN FINANCING

SECTION 3. Applicability. The provisions of this act relating to election campaigns shall apply in all election campaigns other than (a) for precinct committeeman; (b) for the President and Vice President of the United States; and (c) for an office the constituency of which does not encompass a whole county and which contains less than five thousand registered voters as of the date of the most recent general election in such district.

SECTION 4. Obligation of Political Committees to File Statement of Organization. (1) Every political committee, within ten days after its organization or, within ten days after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county auditor of the county in which the candidate resides (or in the case of a political com-

mittee supporting or opposing a ballot proposition, the county in which the campaign treasurer resides). Each political committee in existence on the effective date of this act shall file a statement of organization with the commission within ninety days after such effective date.

(2) The statement of organization shall include but not be limited to:

- (a) The name and address of the committee;
- (b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;
- (c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses and titles of its responsible leaders;
- (d) The name and address of its campaign treasurer and campaign depository;
- (e) A statement whether the committee is a continuing one;
- (f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;
- (g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;
- (h) What distribution of surplus funds will be made in the event of dissolution; and
- (i) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this act.

3. Any material change in information previously submitted in a statement of organization shall be reported to the commission and to the appropriate county auditor within the ten days following the change.

**SECTION 5. Campaign Treasurer and Depositories.** (1) Each candidate, at or before the time he announces publicly or files for office, and each political committee, at or before the time it files a statement of organization, shall designate and file with the commission the names and addresses of:

(a) One legally competent individual, who may be the candidate, to serve as a campaign treasurer; and

(b) One bank doing business in this state to serve as campaign depository.

(2) A candidate, a political committee or a campaign treasurer may appoint as many deputy campaign treasurers as is considered necessary and may designate not more than one additional campaign depository in each other county in which the campaign is conducted. The candidate or political committee shall file the names and addresses of the deputy campaign treasurers and additional campaign depositories with the commission.

(3) (a) A candidate or political committee may at any time remove a campaign treasurer or deputy campaign treasurer or change a designated campaign depository.

(b) In the event of the death, resignation, removal, or change of a campaign treasurer, deputy campaign treasurer or depository, the candidate or political committee shall designate and file with the commission the name and address of any successor.

(4) No campaign treasurer, deputy campaign treasurer, or campaign depository shall be deemed to be in compliance with the provisions of this act until his name and address is filed with the commission.

**SECTION 6. Deposit of Contributions—Statement of Campaign Treasurer—Anonymous Contributions.** (1) All monetary contributions received by a candidate or political committee shall be deposited by the campaign treasurer or deputy treasurer in a campaign depository in an account designated, "Campaign Fund of \_\_\_\_\_" (name of candidate or political committee).

(2) All deposits made by a campaign treasurer or deputy

campaign treasurer shall be accompanied by a statement containing the name of each person contributing the funds so deposited and the amount contributed by each person: PROVIDED, that contributions not exceeding five dollars from any one person may be deposited without identifying the contributor. The statement shall be in triplicate, upon a form prescribed by the commission, one copy to be retained by the campaign depository for its records, one copy to be filled by the campaign treasurer with the commission, and one copy to be retained by the campaign treasurer for his records. In the event of deposits made by a deputy campaign treasurer, the third copy shall be forwarded to the campaign treasurer to be retained by him for his records. Each statement shall be certified as correct by the campaign treasurer or deputy campaign treasurer making the deposit.

(3) (a) Accumulated anonymous contributions in excess of one dollar from any individual contributor, and

(b) Accumulated anonymous contributions in excess of one per cent of the total accumulated contributions received to date or three hundred dollars (whichever is less).

shall not be deposited, used or expended, but shall be returned to the donor, if his identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state, and shall be paid to the state treasurer for deposit in the state general fund.

**SECTION 7. Authorization of Expenditures and Restrictions Thereon.** No expenditures shall be made or incurred by any candidate or political committee except on the authority of the campaign treasurer or the candidate, and a record of all such expenditures shall be maintained by the campaign treasurer.

**SECTION 8. Candidates' and Treasurers' Duty to Report.**

(1) On the day the campaign treasurer is designated, each candidate or political committee shall file with the commission and the county auditor of the county in which the candidate resides (or in the case of a political committee supporting or opposing a ballot proposition, the county in which the campaign treasurer resides), in addition to any statement of organization required under section 4, a report of all contributions received and expenditures made in the election campaign prior to that date: PROVIDED, that if the political committee is an organization of continuing existence not established in anticipation of any particular election the campaign treasurer shall report, at the times required by this act, and at such other times as are designated by the commission, all contributions received and expenditures made since the date of his or his predecessor's last report. In addition to any statement of organization required under section 4, the initial report of the campaign treasurer of such a political committee in existence at the time this act becomes effective need include only:

(a) The funds on hand at the time of the report, and

(b) Such other information as shall be required by the commission by regulation in conformance with the policies and purposes of this act.

(2) At the following intervals each campaign treasurer shall file with the commission and the county auditor of the county in which the candidate resides (or in the case of a political committee supporting or opposing a ballot proposition the county in which the campaign treasurer resides) a further report of the contributions received and expenditures made since the date of the last report:

(a) On the fifth and nineteenth days immediately preceding the date on which the election is held; and

(b) Within ten days after the date of a primary election, and within twenty-one days after the date of all other elections; and

(c) On the tenth day of each month preceding the election in which no other reports are required to be filed under this section.

The report filed under paragraph (b) above shall be the final report if there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and if in the case of a political committee, the committee has ceased to function and has dissolved. If the candidate or political committee has any outstanding debt or obligation, additional reports shall be filed at least once every six months until the obligation or indebtedness is entirely satisfied at which time a final report shall be filed. A continuing political committee shall file reports as required by this act until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the campaign treasurer shall cease and there shall be no obligation to make any further reports.

(3) The campaign treasurer shall maintain books of account in accordance with generally accepted accounting principles reflecting all contributions and expenditures on a current basis within three business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day and shall be open for public inspection during normal business hours at the principal campaign headquarters or, if there is no campaign headquarters, at the address of the campaign treasurer.

(4) All reports filed pursuant to this section shall be certified as correct by the candidate and the campaign treasurer.

(5) Copies of all reports filed pursuant to this section shall be readily available for public inspection at the principal campaign headquarters or, if there is no campaign headquarters, at the address of the campaign treasurer.

SECTION 9. Contents of Report. (1) Each report required under section 8 of this act shall disclose for the period beginning at the end of the period for the last report or, in the case of an initial report, at the time of the first contribution or expenditure, and ending not more than three days prior to the date the report is due:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the preceding twelve-month period: PROVIDED, that contributions not exceeding five dollars in aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the names and amounts of each such contributor;

(c) Each loan, promissory note or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note or security instrument;

(d) The name and address of each political committee from which the reporting committee or candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts, dates and purpose of all such transfers;

(e) All other contributions not otherwise listed or exempted;

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of twenty five dollars or more, and the amount, date and purpose of each such expenditure;

(g) The total sum of expenditures;

(h) The surplus or deficit of contributions over expenditures;

(i) The disposition made of any surplus of contributions over expenditures;

(j) Such other information as shall be required by the

commission by regulation in conformance with the policies and purposes of this act; and

(k) Funds received from a political committee not domiciled in Washington State and not otherwise required to report under this act (a "non-reporting committee"). Such funds shall be forfeited to the State of Washington unless the non-reporting committee has filed with the commission a statement disclosing: (i) its names and address; (ii) the purposes of the non-reporting committee; (iii) the names, addresses and titles of its officers or if it has no officers, the names, addresses and titles of its responsible leaders; (iv) a statement whether the non-reporting committee is a continuing one; (v) the name, office sought, and party affiliation of each candidate in the State of Washington whom the non-reporting committee is supporting, and, if such committee is supporting the entire ticket of any party, the name of the party; (vi) the ballot proposition supported or opposed in the State of Washington, if any, and whether such committee is in favor of or opposed to such proposition; (vii) the name and address of each person residing in the State of Washington or corporation which has a place of business in the State of Washington who has made one or more contributions to the non-reporting committee during the preceding twelve month period, together with the money value and date of such contributions; (viii) the name and address of each person in the State of Washington to whom an expenditure was made by the non-reporting committee on behalf of a candidate or political committee in the aggregate amount of twenty five dollars or more, the amount, date and purpose of such expenditure, and the total sum of such expenditures; (ix) such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this act.

(2) The campaign treasurer and the candidate shall certify the correctness of each report.

SECTION 10. Special Reports. In addition to the other reports required by this act:

(1) Any person who makes an expenditure in support of or in opposition to any candidate or proposition (except to the extent that a contribution is made directly to a candidate or political committee), in the aggregate amount of one hundred dollars or more during an election campaign, shall file with the commission a report signed by the contributor disclosing (a) the contributor's name and address, and (b) the date, nature, amount and recipient of such contribution or expenditure; and

(2) Any person who contributes in the aggregate amount of one hundred dollars or more during the preceding twelve month period to any political committee not domiciled in the State of Washington or not otherwise required to report under this act, if the person reasonably expects such political committee to make contributions in respect to any election covered by this act, shall file with the commission a report signed by the contributor disclosing (a) the contributor's name and address, and (b) the date, nature, amount and recipient of such contribution, and (c) any instructions given as to the use or disbursement of such contribution.

SECTION 11. Commercial Advertisers' Duty to Report. (1) Within fifteen days after an election each commercial advertiser who has accepted or provided political advertising during the election campaign shall file a report with the commission which shall be certified as correct and shall specify:

(a) The names and addresses of persons from whom it accepted political advertising;

(b) The exact nature and extent of the advertising services rendered;

(c) The consideration and the manner of paying that consideration for such services; and

(d) Such other facts as the commission may by regulation prescribe, in keeping with the policies and purposes of this act.

(2) No report shall be required from any commercial advertiser as to any single candidate or political committee when the total value of such political advertising does not exceed fifty dollars.

SECTION 12. Identification of Contributions and Communications. No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative or other person in such a manner as to conceal the identity of the source of the contribution.

SECTION 13. Forbids Use of Public Office Facilities In Campaigns. No elective official nor any employee of his office may use or authorize the use of any of the facilities of his public office, directly or indirectly, for the purpose of assisting his campaign for reelection to the office he holds, or for election to any other office, or for election of any other person to any office or for the promotion or opposition to any ballot proposition. Facilities of public office include, but are not limited to, use of stationery, postage, machines and equipment, use of employees of the office during working hours, vehicles, office space, publications of the office, and clientele lists of persons served by the office: PROVIDED, that this section shall not apply to those activities performed by the official or his office which are part of the normal and regular conduct of the office.

SECTION 14. Campaign Expenditure Limitations. (1) The total of expenditures made in any election campaign in connection with any public office shall not exceed the larger of the following amounts:

(a) Ten cents multiplied by the number of voters registered in the constituency at the last general election for the public office; or

(b) Five thousand dollars; or

(c) A sum equal to the public salary which will be paid to the occupant of the office which the candidate seeks, during the term for which the successful candidate will be elected; PROVIDED, that with respect to candidates for the office of governor and lieutenant governor of the State of Washington only, a sum equal to the public salary which will be paid the governor during the term sought, multiplied by two; and with respect to candidates for the state legislature only, a sum equal to the public salary which will be paid to a member of the state senate during his term.

(2) In any election campaign in connection with any statewide ballot proposition the total of expenditures made shall not exceed one hundred thousand dollars. The total of such expenditures in any election campaign in connection with any other ballot proposition shall not exceed ten cents multiplied by the number of voters registered in the constituency voting on such proposition.

## CHAPTER II. LOBBYIST REPORTING

SECTION 15. Registration of Lobbyists. (1) Before doing any lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the commission a lobbyist registration statement, in such detail as the commission shall prescribe, showing:

(a) His name, permanent business address, and any temporary residential and business addresses in Thurston County during the legislative session;

(b) The name, address and occupation or business of the lobbyist's employer;

(c) The duration of his employment;

(d) His compensation for lobbying; how much he is to be paid for expenses, and what expenses are to be reimbursed; and a full and particular description of any agreement, arrangement or understanding according to which his compensation, or any portion thereof, is or will be contingent upon the success of any attempt to influence legislation.

(e) Whether the person from whom he receives said compensation employs him solely as a lobbyist or whether he is a regular employee performing services for his employer which include but are not limited to the influencing of legislation;

(f) The general subject or subjects of his legislative interest;

(g) A written authorization from each of the lobbyist's employers confirming such employment;

(h) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this act;

(i) If the lobbyist's employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments or other consideration paid to such entity during either of the prior two years have exceeded five hundred dollars or who is obligated to or has agreed to pay fees, dues, payments or other consideration exceeding five hundred dollars to such entity during the current year.

(2) Any lobbyist who receives or is to receive compensation from more than one person for his services as a lobbyist shall file a separate notice of representation with respect to each such person; except that where a lobbyist whose fee for acting as such in respect to the same legislation or type of legislation or type of legislation is, or is to be, paid or contributed to by more than one person then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so paying or contributing, and the amount of the respective payments or contributions made by each such person.

(3) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(4) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, each January, and failure to do so shall terminate his registration.

SECTION 16. Exemption from Registration. The following persons and activities shall be exempt from registration and reporting under Sections 15, 17, 19, and 20 of this act:

(1) Persons who limit their lobbying activities to appearance before public sessions of committees of the legislature, or public hearings of state agencies.

(2) News or feature reporting activities and editorial comment by working members of the press, radio, or television and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station, or television station.

(3) Lobbying without compensation or other consideration: PROVIDED, such person makes no expenditure for or on behalf of any member of the legislature or elected official or public officer or employee of the State of Washington in connection with such lobbying. Any person exempt under this subsection (3) may at his option register and report under this act.

(4) The Governor.

(5) The Lieutenant Governor.

(6) Except as provided by Section 19(1), members of the legislature.

(7) Except as provided by Section 19(1), persons employed by the legislature for the purpose of aiding in the preparation and enactment of legislation.

(8) Except as provided by Section 19 elected state officers, state officers appointed by the Governor subject to confirmation by the Senate, and employees of any state agency.

SECTION 17. Reporting by Lobbyists. (1) Any lobbyist reg-

istered under section 15 of this act and any person who lobbies shall file with the commission periodic reports of his activities signed by both the lobbyist and the lobbyist's employers. The reports shall be made in the form and manner prescribed by the commission. They shall be due quarterly and shall be filed within thirty days after the end of the calendar quarter covered by the report. In addition to the quarterly reports, while the legislature is in session, any lobbyist who lobbies with respect to any legislation shall file interim weekly periodic reports for each week that the legislature is in session, which reports need be signed only by the lobbyist and which shall be filed on each Tuesday for the activities of the week ending on the preceding Saturday.

(2) Each such quarterly and weekly periodic report shall contain:

(a) The totals of all expenditures made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer during the period covered by the report, which totals shall be segregated according to financial category, including food and refreshments; living accommodations; advertising; travel; telephone; contributions; office expenses, including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof, paid or incurred for lobbying activities; and other expenses or services: PROVIDED HOWEVER, that unreimbursed personal living and travel expenses of a lobbyist not incurred directly or indirectly for any lobbying purpose need not be reported; and PROVIDED FURTHER, that the interim weekly reports of legislative lobbyists for the legislative session need show only the expenditures for food and refreshments; living accommodations; travel; contributions; and such other categories as the commission shall prescribe by rule. Each individual expenditure of more than fifteen dollars for entertainment shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such entertainment including any portion thereof attributable to the lobbyist's participation therein but without allocating any portion of such expenditure to individual participants.

(b) In the case of a lobbyist employed by more than one employer, the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(c) An itemized listing of each such expenditure in the nature of a contribution of money or of tangible or intangible personal property to any legislator, or for or on behalf of any legislator. All contributions made to, or for the benefit of, any legislator shall be identified by date, amount, and the name of the legislator receiving, or to be benefited by each such contribution.

(d) The subject matter of proposed legislation or rule-making; the proposed rules, standards, rates or other legislative enactments under chap. 34.04 R.C.W. and chap. 28B.19 R.C.W. (the state Administrative Procedure Acts) and the state agency considering the same; and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; PROVIDED, that in the case of appropriations bills the lobbyist shall enumerate the specific section or sections which he supported or opposed.

**SECTION 18. Reports by Employers of Registered Lobbyists.** Every employer of a lobbyist registered under this act shall file with the commission on or before January 31st of each year a statement disclosing for the preceding twelve months the following information:

(1) The name of each elected official candidate, or any member of his immediate family to whom such employer has paid any compensation, the value of such compensation and the consideration given or performed in exchange for such compensation.

(2) The name of any corporation, partnership, joint venture, association, union or other entity of which any elected official candidate, or any member of his immediate family is a

member, officer, partner, director, associate or employee and to which the employer has paid compensation, the value of such compensation and the consideration given or performed in exchange for such compensation.

**SECTION 19. Legislative Activities of State Agencies and Other Units of Government.** (1) Every legislator and every committee of the Legislature shall file with the commission quarterly reports listing the names, addresses, and salaries of all persons employed by the person or committee making the filing for the purpose of aiding in the preparation and enactment of legislation during the preceding quarter. The reports shall be made in the form and the manner prescribed by the commission and shall be filed between the first and tenth days of each calendar quarter.

(2) Unless expressly authorized by law, no state funds shall be used directly or indirectly for lobbying: PROVIDED, this shall not prevent state officers or employees from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties: PROVIDED FURTHER, that this subsection shall not apply to the legislative branch.

(3) Each state agency which expends state funds for lobbying pursuant to an express authorization by law or whose officers or employees communicate to members of the legislature on request of any member or communicate to the legislature requests for legislation or appropriations shall file with the commission quarterly statements providing the following information for the quarter just completed:

(a) The name of the agency filing the statement;

(b) The name, title, and job description and salary of each employee engaged in such legislative activity, a general description of the nature of his legislative activities, and the proportionate amount of his time spent on such activities.

(c) In the case of any communications to a member of the legislature in response to a request from the member, the name of the member making the request and the nature and subject of the request.

The statements shall be in the form and the manner prescribed by the commission and shall be filed within thirty days after the end of the quarter covered by the report.

(4) The provisions of this section shall not relieve any state officer or any employee of a state agency from complying with other provisions of this act, if such officer or employee is not otherwise exempted.

**SECTION 20. Grass Roots Lobbying Campaigns.** (1) Any person who has made expenditures, not reported under other sections of this act, exceeding five hundred dollars in the aggregate within any three month period or exceeding two hundred dollars in the aggregate within any one month period in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall be required to register and report, as provided in subsection (2), as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement, in such detail as the commission shall prescribe showing:

(a) The sponsor's name, address and business or occupation, and, if the sponsor is not an individual, the names, addresses and titles of the controlling persons responsible for managing the sponsor's affairs.

(b) The names, addresses, and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons.

(c) The names and addresses of all persons contributing to the campaign, and the amount contributed by each contributor.

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards or proposals which are the subject matter of the campaign.

(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including but not limited to the following: advertising, segregated by media and, in the case of large expenditures (as provided by rule of the commission), by outlet; contributions; entertainment, including food and refreshments; office expenses including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file monthly reports with the commission, which shall be filed by the tenth day of the month for the activity during the preceding month. The reports shall update the information contained in the sponsor's registration statement and in prior reports and shall show contributions received and totals of expenditures made during the month, in the same manner as provided for in the registration statement.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report, which notice shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement.

**SECTION 21. Employment of Legislators, Attaches, or State Employees; Statement, Contents and Filing.** If any person registered or required to be registered as a lobbyist under this act employs, or if any employer of any person registered or required to be registered as a lobbyist under this act, employs any member of the legislature, or any member of any state board or commission, or any employee of the legislature, or any fulltime state employee, if such new employee shall remain in the partial employ of the State or any agency thereof, then the new employer shall file a statement under oath with the commission setting out the nature of the employment, the name of the person to be paid thereunder, and the amount of pay or consideration to be paid thereunder. The statement shall be filed within fifteen days after the commencement of such employment.

**SECTION 22. Employment of Unregistered Persons.** It shall be a violation of this act for any person to employ for pay or any consideration, or pay or agree to pay any consideration to a person to lobby who is not registered under this act except upon condition that such person register as a lobbyist as provided by this act, and such person does in fact so register as soon as practicable.

**SECTION 23. Duties of Lobbyists.** A person required to register as a lobbyist under this act shall also have the following obligations, the violation of which shall constitute cause for revocation of his registration, and may subject such person, and such person's employer, if such employer aids, abets, ratifies or confirms any such act, to other civil liabilities, as provided by this act:

(1) Such persons shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the financial reports required to be made under this act for a period of at least six years from the date of the filing of the statement containing such items, which accounts, bills, receipts, books, papers and documents shall be made available for inspection by the commission at any time: PROVIDED, that if a lobbyist is required under the terms of his employment contract to turn any records over to his em-

ployer, responsibility for the preservation of such records under this subsection shall rest with such employer.

(2) In addition, a person required to register as a lobbyist shall not:

(a) Engage in any activity as a lobbyist before registering as such;

(b) Knowingly deceive or attempt to deceive any legislator as to any fact pertaining to any pending or proposed legislation;

(c) Cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its defeat;

(d) Knowingly represent an interest adverse to any of his employers without first obtaining such employer's written consent thereto after full disclosure to such employer of such adverse interest;

(e) Exercise any undue influence, extortion, or unlawful retaliation upon any legislator by reason of such legislator's position with respect to, or his vote upon, any pending or proposed legislation.

### CHAPTER III. REPORTING OF ELECTED OFFICIALS FINANCIAL AFFAIRS

#### SECTION 24. Elected Officials Reports of Financial Affairs.

(1) Every elected official (except President, Vice President and precinct committeemen) shall on or before January 31st of each year, and every candidate (except for the offices of President; Vice President and precinct committeeman) shall, within two weeks of becoming a candidate, file with the commission a written statement sworn as to its truth and accuracy stating for himself and his immediate family for the preceding twelve months:

(a) Occupation, name of employer, and business address; and

(b) Each direct financial interest in excess of five thousand dollars in a bank or savings account or cash surrender value of any insurance policy; each other direct financial interest in excess of five hundred dollars; and the name, address, nature of entity, nature and value of each such direct financial interest; and

(c) The name and address of each creditor to whom the value of five hundred dollars or more was owed; the original amount of each debt to each such creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each such debt; and the security given, if any, for each such debt: PROVIDED, that debts arising out of a "retail installment transaction" as defined in chap. 63.14 R.C.W. (Retail Installment Sales Act) need not be reported; and

(d) Every public or private office, directorship and position as trustee held; and

(e) All persons for whom actual or proposed legislation, rules, rates, or standards has been prepared, promoted, or opposed for current or deferred compensation; the description of such actual or proposed legislation, rules, rates or standards; and the amount of current or deferred compensation paid or promised to be paid; and

(f) The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of five hundred dollars or more; the value of such compensation; and the consideration given or performed in exchange for such compensation; and

(g) The name of any corporation, partnership, joint venture, association, union or other entity in which is held any office, directorship or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship or partnership; the nature of ownership interest; and with respect to each such entity the name of each governmental entity, corporation, partnership, joint

venture, sole proprietorship, association, union or other business or commercial entity from which such entity has received compensation in any form in the amount of five hundred dollars or more during the preceding twelve months and the consideration given or performed in exchange for such compensation; and

(h) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for such interest; and

(i) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for such interest, and the name and address of the person furnishing such consideration; and

(j) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds two thousand five hundred dollars in which a direct financial interest was held: PROVIDED, that if a description of such property has been included in a report previously filed, such property may be listed, for purposes of this provision, by reference to such previously filed report; and

(k) A list, including legal descriptions, of all real property in the State of Washington, the assessed valuation of which exceeds five thousand dollars, in which a corporation, partnership, firm, enterprise or other entity had a direct financial interest, in which corporation, partnership, firm or enterprise a ten percent or greater ownership interest was held; and

(l) Such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this act, as the commission shall by rule prescribe.

(2) Where an amount is required to be reported under subsection (1), paragraphs (a) through (k) of this section, it shall be sufficient to comply with such requirement to report whether the amount is less than one thousand dollars, at least one thousand dollars but less than five thousand dollars, at least five thousand dollars but less than ten thousand dollars, at least ten thousand dollars but less than twenty five thousand dollars, or twenty five thousand dollars or more. An amount of stock may be reported by number of shares instead of by market value. No provision of this subsection shall be interpreted to prevent any person from filing more information or more detailed information than required.

(3) Elected officials and candidates reporting under this section shall not be required to file the statements required to be filed with the Secretary of State under R.C.W. 42.21.060.

#### CHAPTER IV. PUBLIC RECORDS

SECTION 25. Duty to Publish Procedures. (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) rules of procedure;

(d) substantive rules of general applicability adopted as authorized by law, and statements of general policy or inter-

pretations of general applicability formulated and adopted by the agency; and

(e) each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed.

#### SECTION 26. Documents and Indexes To Be Made Public.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records. To the extent required to prevent an unreasonable invasion of personal privacy, an agency shall delete identifying details when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after June 30, 1972:

(a) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the agency;

(c) administrative staff manuals and instructions to staff that affect a member of the public;

(d) planning policies and goals, and interim and final planning decisions;

(e) factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) An agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) make available for public inspection and copying all indexes maintained for agency use.

(4) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) it has been indexed in an index available to the public; or

(b) parties affected have timely notice (actual or constructive) of the terms thereof.

(5) This act shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.

SECTION 27. Facilities for Copying. Public records shall be available to any person for inspection and copying, and agencies shall, upon request for identifiable records, make them promptly available to any person. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

SECTION 28. Times for Inspection and Copying. Public records shall be available for inspection and copying during

the customary office hours of the agency: PROVIDED, that if the agency does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency or its representative agree on a different time.

SECTION 29. Protection of Public Records. Agencies shall adopt and enforce reasonable rules and regulations, consonant with the intent of this act to provide full public access to official records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information.

SECTION 30. Charges for copying. No fee shall be charged for the inspection of public records. Agencies may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying.

SECTION 31. Certain Personal and Other Records Exempt. (1) The following shall be exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers or parolees.

(b) Personal information in files maintained for employees, appointees or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.

(d) Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the non-disclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement or penology agencies, except as the complainant may authorize.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.

(g) Except as provided by chap. 8.26 R.C.W., the contents of real estate appraisals, made for or by any agency relative to the acquisition of property, until the project is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(2) The exemptions of this section shall be inapplicable to

the extent that information, the disclosure of which would violate personal privacy or vital governmental interest, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or part, inspection of any record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

SECTION 32. Prompt Responses Required. Responses to requests for records shall be made promptly by agencies. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action for the purposes of judicial review.

SECTION 33. Court Protection of Records. The examination of any specific record may be enjoined if, upon motion and affidavit, the superior court for the county in which the record resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

SECTION 34. Judicial Review of Agency Actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is required.

(2) Judicial review of all agency actions taken or challenged under Sections 25 through 32 of this act shall be *de novo*. Courts shall take into account the policy of this act that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record *in camera* in any proceeding brought under this section.

(3) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars for each day that he was denied the right to inspect or copy said public record.

## CHAPTER V. ADMINISTRATION AND ENFORCEMENT

SECTION 35. Commission—Established—Membership. There is hereby established a "Public Disclosure Commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All

appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party. The original members shall be appointed within sixty days after the effective date of this act. The term of each member shall be five years except that the original five members shall serve initial terms of one, two, three, four and five years, respectively, as designated by the governor. No member of the commission, during his tenure, shall (1) hold or campaign for elective office; (2) be an officer of any political party or political committee; (3) permit his name to be used, or make contributions, in support of or in opposition to any candidate or proposition; (4) participate in any way in any election campaign; or (5) lobby or employ or assist a lobbyist. No member shall be eligible for appointment to more than one full term. A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission. Three members of the commission shall constitute a quorum. The commission shall elect its own chairman and adopt its own rules of procedure in the manner provided in chapter 34.04 R.C.W. Any member of the commission may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

Members shall serve without compensation, but shall be reimbursed for necessary traveling and lodging expenses actually incurred while engaged in the business of the commission as provided in chapter 43.03 R.C.W.

#### SECTION 36. Commission—Duties. The commission shall:

(1) Develop and provide forms for the reports and statements required to be made under this act;

(2) Prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this act;

(3) Compile and maintain a current list of all filed reports and statements;

(4) Investigate whether properly completed statements and reports have been filed within the times required by this act;

(5) Upon complaint or upon its own motion, investigate and report apparent violations of this act to the appropriate law enforcement authorities;

(6) Prepare and publish an annual report to the governor as to the effectiveness of this act and its enforcement by appropriate law enforcement authorities; and

(7) Enforce this act according to the powers granted it by law.

#### SECTION 37. Commission—Additional Powers. The commission is empowered to:

(1) Adopt, promulgate, amend and rescind suitable administrative rules and regulations to carry out the policies and purposes of this act;

(2) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this act, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this act;

(3) Make from time to time, on its own motion, audits and field investigations;

(4) Make public the fact that an alleged or apparent violation has occurred and the nature thereof;

(5) Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memorandums or other records which the commission deems relevant or material for the purpose of any investigation authorized under this act, or any other proceeding under this act;

(6) Adopt and promulgate a Code of Fair Campaign Practices;

(7) Relieve, by published regulation of general applicability, candidates or political committees of obligations to comply with the provisions of this act relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than one thousand dollars; and

(8) Enact regulations prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities and other municipalities and political subdivisions in preparing, publishing and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports and other materials prepared, published or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his regular examination of each agency under chapter 43.09 R.C.W. shall review such regulations, accounts and reports and make appropriate findings, comments and recommendations in his examination reports concerning those agencies.

(9) The commission, after hearing, by order may suspend or modify any of the reporting requirements hereunder in a particular case if it finds that literal application of this act works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required hereunder. Any citizen shall have standing to bring an action in Thurston County Superior Court to contest the propriety of any order entered hereunder within one year from the date of entry of such order.

#### SECTION 38. Secretary of State, Attorney General—Duties.

(1) The secretary of state, through his office, shall perform such ministerial functions as may be necessary to enable the commission to carry out its responsibilities under this act. The office of the secretary of state shall be designated as the place where the public may file papers or correspond with the commission and receive any form or instruction from the commission.

(2) The attorney general, through his office, shall supply such assistance as the commission may require in order to carry out its responsibilities under this act. The commission may employ attorneys who are neither the attorney general nor an assistant attorney general to carry out any function of the attorney general prescribed in this section.

SECTION 39. Civil Remedies and Sanctions. (1) One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this act by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this act, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying; PROVIDED, however, that imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this act.

(c) Any person who violates any of the provisions of this act may be subject to a civil penalty of not more than ten thousand dollars for each such violation.

(d) Any person who fails to file a properly completed statement or report within the time required by this act may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

(e) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

(f) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

SECTION 40. Enforcement. (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in Section 39.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this act, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this act.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or the production of the accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this act, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, shall be effective state-wide, and, upon application of the attorney general or said prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) Any person who has notified the attorney general in writing that there is reason to believe that some provision of this act is being or has been violated may himself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this act if the attorney general has failed to commence an action hereunder within forty days after such notice and if the attorney general has failed to commence an action within ten days after a notice in writing delivered to the attorney general advising him that a citizen's action will be brought if the attorney general does not bring an action. If the person who brings the citizen's action prevails, he shall be entitled to one-half of any judgment awarded, and to the extent the costs and attorney's fees he has incurred exceed his share of the judgment, he shall be entitled to be reimbursed for such costs and fees by the State of Washington: PROVIDED, that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the

person commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or treble damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court to be paid by the State of Washington.

SECTION 41. Limitation on Actions. Any action brought under the provisions of this act must be commenced within six years after the date when the violation occurred.

SECTION 42. Date of Mailing Deemed Date of Receipt. When any application, report, statement, notice, or payment required to be made under the provisions of this act has been deposited post-paid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing.

SECTION 43. Certification of Reports. Every report and statement required to be filed under this act shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

SECTION 44. Statements and Reports Public Records. All statements and reports filed under this act shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency.

SECTION 45. Duty to Preserve Statements and Reports. Persons with whom statements or reports or copies of statements or reports are required to be filed under this act shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years.

SECTION 46. Severability. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

SECTION 47. Construction. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

SECTION 48. Chapter and Section Headings Not Part of Law. Chapter and section captions or headings as used in this act do not constitute any part of the law.

SECTION 49. Effective Date. The effective date of this act shall be January 1, 1973.

SECTION 50. Repeals. Chapter 9, Laws of 1965, as amended by section 9, chapter 150, Laws of 1965 ex. sess., and R.C.W. 29.18.140; and chapter 131, Laws of 1967 ex. sess. and R.C.W. 44.64; and chapter 82, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 24; and chapter 98, Laws of

sixty-five

1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 25 are each hereby repealed.

#### EXPLANATORY COMMENT

Initiative Measure No. 276 filed in the office of the Secretary of State as of March 29, 1972.

Sponsor filed 162,782 supporting signatures as of July 6, 1972.

Signatures found sufficient. Measure then certified to the November 7, 1972 state general election for approval or rejection by the voters.

#### COMPLETE TEXT OF

## Referendum Bill 24

CHAPTER 82, LAWS OF 1972  
(42nd Leg., 2nd Ex. Session)

*Ballot Title as issued by the Attorney General:*

### Lobbyists—Regulation, Registration and Reporting

AN ACT regulating legislative lobbying; amending a prior 1967 act relating thereto; continuing to require registration of lobbyists but specifically defining lobbying as attempting to influence, through direct contact with state legislators, the passage or defeat of any legislation; requiring lobbyists to file itemized and detailed reports of lobbying expenditures during legislative sessions; transferring general responsibility for enforcement from the attorney general to the Senate and House Boards of Ethics; authorizing these boards to direct the attorney general to exercise certain enforcement powers; and replacing present criminal penalties with civil remedies including damages and injunctions against lobbyists and other violators.

LEGISLATIVE TITLE  
(Sub. House Bill No. 341)

#### LEGISLATIVE LOBBYING

AN ACT relating to legislative lobbying; providing for the registration and regulation of lobbyists; amending section 3, chapter 150, Laws of 1967 ex. sess. and RCW 44.60.030; amending section 1, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.010; amending section 2, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.020; amending section 3, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.030; amending section 4, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.040; amending section 6; chapter 131, Laws of 1967 ex. sess. and RCW 44.64.060; adding new sections to chapter 131, Laws of 1967 ex. sess. and to chapter 44.64. RCW; repealing section 5, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.050; and providing for a referendum.

BE IT ENACTED, by the Legislature  
of the State of Washington:

Section 1, Section 1, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.010 are each amended to read as follows:

When used in this chapter:

(1) ~~(((The term "contribution" includes a gift, subscription, loan, advance or deposit of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make a contribution, given with the intent of influencing the passage or defeat of any pending or proposed legislation.))~~

~~(((2)))~~ The term "expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure((,)).

~~(((3)))~~ (2) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons. The term does not include a member or member-elect of either house of the state legislature ~~((( ))~~, an elected state officer nor a gubernatorial appointee to a position requiring confirmation by the senate;

~~(((4)))~~ (3) The term "legislation" means bills, resolutions, amendments, motions, nominations, and other matters pending or proposed in either house or any committee of the legislature;

(4) The terms "lobby" and "lobbying" each mean attempting to influence, through direct contact with any legislator or legislators, the passage or defeat of any legislation by the legislature;

(5) The term "lobbyist" means any person, including any public employee, who shall lobby either on his own or another's behalf;

(6) The term "lobbyist's employer" means the person or persons by whom or on whose behalf the lobbyist is employed, and all persons by whom he is compensated for acting as a lobbyist;

(7) The term "code reviser" means the person so designated under the provisions of chapter 1.08 RCW;

(8) The terms "senate board of ethics" and "house board of ethics" mean the boards designated and defined in RCW 44.60.010;

(9) The term "prescribed form" means a form prescribed by the joint board of ethics.

Sec. 2. Section 2, chapter 131, Laws of 1967 ex. sess. and RCW 44.64.020 are each amended to read as follows:

(1) ~~(((Any person who shall be engaged for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington or the approval or veto of any legislation by the governor of the state of Washington shall register with the president of the senate and the speaker of the house before doing anything in furtherance of such object and shall give to such officers in writing and under oath a statement))~~. Before doing any lobbying a lobbyist shall register by filing with the code reviser a lobbyist registration statement executed under oath on a prescribed form, for each of his employers, showing:

(a) Name ~~(((and)))~~ permanent business address, and business address during the legislative session;

(b) Name and address of the ~~(((person or persons by whom he is employed and in whose interest he appears or works and by whom he is compensated)))~~ lobbyist's employer;

(c) The duration of such employment;

(d) If employed as a lobbyist, whether he is paid on a permanent basis with a lobbying assignment as a partial, temporary or incidental part of his duties, or whether his compensated employment is solely for lobbying purposes;

(e) A written authorization from ~~(((each person by whom he is so employed)))~~ the lobbyist's employer confirming such employment;

## **Electronic Records Management: Are Text Messages Public Records?**

**Purpose:** Provide guidance to state agencies and local government entities on whether text messages are public records for the purposes of records retention (chapter 40.14 RCW).

### **Are text messages public records?**

**YES** – If the text message relates to the conduct of public business (which means it is about the work of the agency), then it satisfies the definition of public records in RCW 40.14.010 (emphasis added):

*"As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, **regardless of physical form or characteristics, and including such copies thereof**, that have been **made by or received by any agency of the state of Washington in connection with the transaction of public business**, and legislative records as described in RCW 40.14.100."*

### **Are agency work text messages sent or received to a personally-owned device a public record?**

**YES** – If the text messages relate to the work of the agency, then it does not matter if the device involved is agency-owned or personally-owned; the records are still public records.

If you are conducting public business – it's a public record.

### **What about public records requests for text messages?**

For guidance on public records requests for text messages, please consult your agency's legal counsel or the Office of the Attorney General's Open Government Program at:

<http://www.atg.wa.gov/open-government-ombuds-function>

**Additional advice regarding the management of public records is available from  
Washington State Archives:**

[www.sos.wa.gov/archives](http://www.sos.wa.gov/archives)  
[recordsmanagement@sos.wa.gov](mailto:recordsmanagement@sos.wa.gov)

**Appendix B**

## OFFICE RECEPTIONIST, CLERK

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**To:** William John Crittenden  
**Cc:** 'Dan Hamilton'; 'Phillip Talmadge'; 'Michele Earl-Hubbard'; 'Judy Endejan'; 'Gonick, Peter (ATG)'; 'Pam Loginsky'; 'Ramsey Ramerman'; 'Stewart A. Estes'; 'Scott Peters'; Christina.Smith@co.pierce.wa.us; garfinkel@sgb-law.com; jeffj@vjmlaw.com; aiverson@washingtonea.org; anitah@wfse.org  
**Subject:** RE: Nissen v. Pierce County, No. 90875-3 - Amicus Brief of League of Women Voters of Washington

Received 5-4-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**Sent:** Monday, May 04, 2015 3:15 PM  
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**Subject:** Nissen v. Pierce County, No. 90875-3 - Amicus Brief of League of Women Voters of Washington

Dear Clerk-

Enclosed please find the Amicus Brief and Motion for Leave to File Amicus Brief of the League of Women Voters of Washington (League).

Thank you.

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