



STATE OF WASHINGTON
— OFFICE OF GOVERNOR BOB FERGUSON —

August 29, 2025

Via email

Alice Fiman
Compliance Manager
Public Disclosure Commission
pdc@pdc.wa.gov

Re: PDC Case Number 174537

Ms. Fiman:

The Governor's Office is pleased to provide this supplemental response to the complaint submitted by Joe Kunzler in the above-referenced matter. Thank you for clarifying the substance of the PDC's request and for offering us the opportunity to provide this additional response.

On June 24, 2025, the Governor's Office received the complaint in the above-referenced matter. The PDC's cover email accompanying the transmission stated that "The complaint alleges the following: Alleged violation of RCW 42.17A.635 for prohibited indirect lobbying." The complaint received by the Governor's Office did not reference RCW 42.17A.635 or "lobbying," but instead asserted a "violation of RCW 42.17A.555," the statute governing local officials' use of public facilities for promoting or opposing ballot initiatives. Because the Governor is not a local official, the Office provided a response largely under RCW 42.52.180, the analogous statute that applies to statewide officials, and also briefly addressed RCW 42.17A.635. This response was timely submitted on July 8, 2025. On August 1, 2025, the PDC clarified that it was seeking a response based on RCW 42.17A.635, and invited the Governor's Office to submit an additional response. Accordingly, the Office submits this additional response.

Overview of Relevant Law

RCW 42.17A.635 generally prohibits the use of public funds, directly or indirectly, for lobbying. RCW 42.17A.635(2). "Lobbying" means attempting to influence the passage or defeat of any Washington state legislation. RCW 42.17A.005(34). When lobbying is done by "presenting a program to the public," this is known as "grass roots lobbying." RCW 42.17A.640(1). The PDC's guidance defines grassroots lobbying as "a program addressed to the general public, a substantial portion of which is intended, designed or calculated primarily to influence state legislation." See Pub. Discl. Comm'n, *Grassroots Lobbying*, <https://www.pdc.wa.gov/registration-reporting/lobbying/grassroots-lobbying>. The PDC observes that "typical grassroots lobbying expenditures include" newspaper advertisements, creating websites, hiring someone to conduct

online activities, or hiring signature gatherers for a petition. But RCW 42.17A.635 does not prohibit lobbying unless it involves an expenditure of public funds. And informative communications to the public that do not involve a “call to action”—asking for public action such as signing a petition, contacting a legislature, or testifying on a bill—are permissible. *See* Closure Letter, PDC Case No. 119958 (Mar. 17, 2023), available at <https://www.pdc.wa.gov/rules-enforcement/enforcement/enforcement-cases/119958f>.

RCW 42.17A.635 also generally prohibits the use of facilities of a public office or agency to support or oppose an initiative to the legislature. RCW 42.17A.635(4). “Facilities of a public office or agency” has the same meaning as in RCW 42.17A.555 and 42.52.180; such facilities “include, but are not limited to, the use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.” RCW 42.52.180(1). However, the general prohibition on using facilities of a public office or agency does not apply to:

- “A statement by an elected official in support of or in opposition to any initiative to the legislature at an open press conference or in response to a specific inquiry”;
- “Activities that are part of the normal and regular conduct of the office or agency”; or
- “Activities conducted regarding an initiative to the legislature that would be permitted under RCW 42.17A.555 and 42.52.180 if conducted regarding other ballot measures.”

RCW 42.17A.635(4)(b)–(d). Activities “permitted under ... RCW 42.52.180” include:

- Statements of opposition or support “at an open press conference or in response to a specific inquiry”;
- Comments that do not involve an “actual, measurable expenditure of public funds”; and
- *De minimis* use of public facilities incidental to the preparation or delivery of communications reflecting an elected official’s views on proposed legislation “that foreseeably affect a matter that falls within their constitutional or statutory responsibilities.”

RCW 42.52.180(2)(b), (e).

Here, Mr. Kunzler’s complaint concerns a single tweet posted on the Governor’s official X/Twitter account which referenced an initiative to the legislature that would end voting by mail in Washington state. This tweet comports with RCW 42.17A.635 for several independent reasons. First, the tweet was part of a response to a “specific inquiry.” RCW 42.17A.635(4)(b), (d); RCW 42.52.180(2)(b). Second, it is common for the Governor’s Office to share with the public information that it has also shared with the media. RCW 42.17A.635(4)(c). Third, the tweet involved no “actual, measurable expenditure of public funds.” RCW 42.17A.635(4)(d); RCW 42.52.180(2)(b). Fourth, the tweet involved *de minimis* use of the official Twitter/X account, and it pertained to a matter that would foreseeably affect the Governor’s responsibilities to uphold the right to vote and ensure election security and integrity. RCW 42.17A.635(4)(d); RCW 42.52.180(2)(e). Fifth, to the extent RCW 42.17A.635’s provisions related to “lobbying” are at issue, the tweet was directed to members of the public but was not a form of “grassroots lobbying”; it involved no use of public resources other than *de minimis* staff time, and did not involve a “call to action.” For any or all of these reasons, the complaint should be dismissed.

1. The tweet is permissible under RCW 42.17A.635(4)(b) because it was part of a “response to a specific inquiry”

As discussed in our initial response, the tweet in question was posted after the Governor’s Office responded via email to two separate press inquiries regarding Initiative Measure No. IL26-126, which would end voting by mail in Washington state. Having responded directly to the media, staff posted largely the same responsive message content as a tweet accessible to the public. Thus, the tweet was part of a response to a “specific inquiry,” bringing it within the RCW 42.17A.635(4)(b) exemption.

2. The tweet is permissible under RCW 42.17A.635(4)(c) because it is common for the Governor’s Office to share with the public comments it has shared with the media

As noted above, the tweet in question was a public posting of largely the same responsive message content that had been provided to media inquiries about Initiative Measure No. IL26-126. In general, it is common for the Governor’s Office to share with the public comments it has also shared with the media. The official Twitter/X account is an important means of communicating directly with members of the public, helping to make the Governor’s Office more transparent and accessible to the people it serves. This brings the tweet additionally within the exemption found in RCW 42.17A.635(4)(c).

3. The tweet is permissible under RCW 42.17A.635(4)(d) because it would have been permitted under RCW 42.52.180 regarding a ballot measure

RCW 42.17A.635(4)(d) permits “[a]ctivities conducted regarding an initiative to the legislature that would be permitted under RCW 42.17A.555 and 42.52.180 if conducted regarding other ballot measures.” As detailed in our initial response, and below, the tweet in question falls neatly under the exemptions in RCW 42.52.180(2)(b) and RCW 42.52.180(2)(e). Because it would be permitted under 42.52.180 if conducted regarding a ballot measure, it is permitted under RCW 42.17A.635(4)(d) regarding an initiative to the legislature.

a. The tweet in question was part of a “response to a specific inquiry”

As discussed above, the tweet in question was part of a response to a specific inquiry, bringing it directly within the RCW 42.17A.635(4)(b) exemption *and* within the RCW 42.52.180(2)(b) exemption by way of RCW 42.17A.635(4)(d).

Further, as discussed below, even if the tweet had not been in response to a specific inquiry, “an official may comment on a proposition, provided there is no actual, measurable expenditure of public funds.” *Matter of Recall of Inslee*, 194 Wn.2d 563, 574, 451 P.3d 305, 311 (2019) (emphasis added). The RCW 42.52.180(2)(b) exemption applies for this reason as well.

b. A single tweet referencing an initiative to the legislature involves no “actual, measurable expenditure of public funds”

Regardless of its message, a single tweet involves no “actual, measurable expenditure of public funds” as defined by the Executive Ethics Board’s regulations. WAC 292-110-030 provides:

For purposes of RCW 42.52.180 (2)(b) ‘measurable expenditure’ means any *separately identifiable* cost or specific portion of a cost that is *beyond the normal and regular costs incurred by the agency* in responding directly to a specific inquiry from the media, a constituent, or any other person.

(Emphasis added.) The Governor’s Office has a subscription for X/Twitter that costs \$2.67 per month, but there is no separate cost associated with posting individual tweets. As such, there is no “separately identifiable” cost associated with a single tweet that is “beyond the normal and regular costs” of having an official account that is routinely used to communicate with the public. Similarly, while there is a cost associated with employing communications staff in general, these employees have a wide range of responsibilities related to communicating with the public about the Governor’s Office’s work, and there is no “separately identifiable” cost or specific portion of a cost associated with the few moments it takes to post a single tweet. Posting to X and other social media platforms is just one of the communications team’s many duties, which also include issue research, preparing talking points for the Governor’s events, drafting press releases, taking photos at every public event across the state, and responding to media inquiries. Posting on X represents a tiny fraction of staff time: in the month of June 2025, for example, members of the communications team posted just 55 tweets—an average of about 13 per week, or less than 2 per day. The few moments it takes a staff member to post a single tweet is not separately identifiable beyond the normal and regular cost of employing communications staff.

Thus, the single tweet in question fits neatly within the exemption under RCW 42.52.180(2)(b), regardless of the message it sends or its relationship to the Governor’s official duties—a question the PDC need not address to resolve this complaint. Regardless, as discussed below, the tweet in question also fits neatly under the exception under RCW 42.52.180(2)(e).

c. It is appropriate for the Governor to comment, at *de minimis* cost, on an initiative to the legislature that would foreseeably affect his responsibilities to uphold the right to vote and ensure election security and integrity

The tweet in question accurately stated that IL26-126 would end the right to vote by mail in Washington, and expressed the Governor’s Office’s opposition to the measure on the grounds that Washington state’s current election system is “convenient, safe and secure.” As described above, the cost of posting this single tweet was *de minimis*.

Further, this tweet commented on an initiative to the legislature that would foreseeably affect matters that fall within the Governor’s constitutional and statutory responsibilities. As the supreme executive officer of the state, it is the Governor’s duty to see that Washington’s laws are faithfully executed. Wash. const. art. III, §§ 2, 5. The right to vote is enshrined in our

constitution, and access to the ballot and free and fair elections are fundamental bulwarks of our democracy. Wash. const. art. I, § 19. Further, the entirety of Title 29A of the Revised Code of Washington is devoted to elections—including chapters governing voters and registration, voting systems, and elections by mail, among others. The Governor has the ultimate constitutional responsibility to see that these laws are faithfully executed. Wash. const. art. III, §§ 2, 5; *see* Memorandum re Restrictions on Use of Public Funds and Property to Support or Oppose Candidates or Ballot Measures (Mar. 28, 2019), https://ethics.wa.gov/sites/default/files/public/20190328_PublicFundsMemo.pdf (concluding that, under the subsection (2)(e) exception, “the governor ... may have authority to make statements on more issues than, say, the superintendent of public instruction or the insurance commissioner,” because of the broad scope of his official duties).

Additionally, the Governor has specific statutory roles related to election integrity and security. For example, the Governor is responsible for designating agencies to provide voter registration services, RCW 29A.08.310, and determining whether agencies shall implement automatic voter registration, RCW 29A.08.365; receives a confidential annual report from the secretary of state on election security breaches, RCW 29A.12.200; will participate in evaluating the alternative verification options pilot program, which will explore supplemental methods for ballot review besides signature verification, RCW 29A.40.111; and must be present for the secretary of state’s canvassing of questions submitted to the people for a vote and must declare the result, RCW 29A.60.260. The fulfillment of these roles would be affected by an initiative to the legislature ending the right to vote by mail and requiring voter ID and proof of citizenship to vote in-person, as Initiative Measure No. IL26-126 would do.

For these reasons, an official X/Twitter account is an effective and appropriate means of communicating with the public, at *de minimis* cost, about the Governor’s views on an issue that bears directly on his responsibility to protect the fundamental right to vote and all eligible Washington voters’ access to the ballot, while protecting the safety and security of our state’s elections. The tweet in question therefore fits neatly within the exception under RCW 42.52.180(2)(e).

4. The tweet in question was not a form of prohibited “lobbying” because it involved no expenditure of public funds and no public call to action

The complaint in this matter focuses on the use of “facilities of a public office or agency” and does not mention “lobbying.” As such, pursuant to the PDC’s clarification that RCW 42.17A.635 is the statute in question, the complaint appears to implicate only subsection (4) of that statute. But to the extent the PDC seeks a response pursuant to the statute’s “lobbying” provisions (subsections (2) and (3)), the Governor’s Office responds as follows.

First, RCW 42.17A.635(2)’s prohibition on the use of public funds for lobbying does not apply to the tweet in question because—as discussed above—there was no separately identifiable cost for posting the tweet, and doing so involved a few moments of *de minimis* staff time. Unlike the examples of “grassroots lobbying expenditures” in the PDC’s guidance, this single tweet did not entail any expenditures such as those associated with purchasing advertisements, hiring

dedicated lobbying staff, or paying hosting fees for an entire website. *See* Pub. Discl. Comm’n, *Grassroots Lobbying*, *supra*.

Second, because the tweet in question was directed to the public, it would be “grassroots” lobbying if it involved any lobbying at all. But it did not. The tweet was merely informative: it accurately described IL26-126 and expressed the Governor’s Office’s position on IL26-126. It did not call on the public, expressly or implicitly, to take any action to influence the legislation. The PDC has previously noted that, when advocating their positions on proposed legislation to the public, particularly through social media, state agencies should “ensure there is no implied ‘call to action’” such as “publicizing details about when [a] ... bill is up for hearing[.]” Closure Letter, PDC Case No. 119958 (Mar. 17, 2023), available at <https://www.pdc.wa.gov/rules-enforcement/enforcement/enforcement-cases/119958f>. The tweet in question did nothing of the sort and includes no call to action.

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Thank you again for the opportunity to provide this additional response. Please do not hesitate to contact me directly if any further information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin Beneski". The signature is fluid and cursive, with the first name "Kristin" written in a larger, more prominent script than the last name "Beneski".

Kristin Beneski
Chief Legal Counsel